

*African National Congress*

***NATIONAL EXECUTIVE  
COMMITTEE  
MEETING***

***DOCUMENTS* :**  
***Volume Four***

***15 December 1993***

## *Contents Page :*

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**FREEDOM ALLIANCE - STATEMENT OF THE LEADERS**  
**13 DECEMBER 1993**

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1. The Freedom Alliance reiterates that it is committed to:
  - (a) an all-inclusive constitutional settlement in order to assure longlasting peace and democracy in Southern Africa;
  - (b) achieving such settlement through peaceful negotiations by exploring all possible avenues.
2. Although the Freedom Alliance has engaged in constructive bilateral negotiations with the S A Government reaching commonality on some fundamental constitutional concerns and related matters set out in a list dated 16 November 1993, some important issues, including those which resulted from last moment changes to the draft constitution adopted at the multiparty conference, remain to be solved between the relevant parties.
3. The following fundamental issues are to be finally agreed upon on a multiparty basis. Paragraphs 3.1 to 3.4 have been on the agenda which have been discussed and on which commonality has been reached.
  - 3.1 The powers, functions and boundaries of provinces and related matters shall ensure autonomy of the provinces. A reformulated section 126 and schedule 6, regarding the said powers and functions, have been agreed upon in principal between the FA and the SAC. Final agreement on this item implies consequential amendments to the draft constitution, including provincial policing, public service, local government and territorial defence.
  - 3.2 Provinces shall have guaranteed fiscal and financial autonomy at least as set out in the reformulated sections 155 to 159 agreed between the FA and the SAC. Final agreement on this item shall imply consequential amendments to the draft constitution.
  - 3.3 Provision shall be made for provincial constitutions on the basis of a reformulated section 160 as proposed by the FA and annexed hereto as Annexure A (including consequential amendments to sections 161 and 164). The case of the Bophuthatswana constitution and it's constitutional position is to receive special attention.
  - 3.4 The integrity of the provinces, the existence of the fundamental rights set out in Chapter 3 and the role of the Constitutional Court in constitution-making shall be guaranteed as provided for in the amendments to sections 71, 73 and 74 proposed as per Annexure B. Clause 28(2) to be redrawn so as to ensure that the word deprivation is limited to expropriation of property and would not include confiscation.



The following issues have resulted from last minute changes to the draft constitution adopted at the multiparty process:

- 3.5 The voting system shall be based on two ballot papers for the national and provincial elections respectively. Final agreement on this item shall include amendments to Schedule 2 of the draft constitution and to the relevant provisions to the Electoral Bill.
- 3.6 Members of provincial legislatures shall be ordinarily resident in the province concerned. Section 132 (1) shall be amended accordingly.
- 3.7 Only South African citizens shall be entitled to vote in the elections. Section 6(a) (ii) is to be deleted and consequential deletions from the Electoral Bill are required.
- 3.8 Of the 400 members of the National Assembly 200 shall be elected from only provincial lists of party candidates. Section 40(2) shall be re-introduced and Schedule 2 shall be amended accordingly.
- 3.9 The assets of the existing provinces, TBVC states and self-governing territories relating to the powers and functions of a new province shall at the date of the commencement of the constitution vest in such province. Section 239 shall be amended accordingly.
- 3.10 Until the new provincial governments come into being the SAG and all other authorities shall honour all arrangements, agreements, treaties and obligations (including budgeting) in respect of the TBVC states and self-governing territories as well as the integrity of the said entities. Section 235 and Schedule 7 as well as the TEC Act of 1993 shall be amended accordingly.
- 3.11 The realization of the right of self-determination of the Afrikaner, the case of Bophuthatswana and other peoples on territorial bases are discussed by a sub-committee of the Freedom Alliance presently negotiating with the ANC/SACP alliance, shall be provided for in the constitutional draft. Schedules 1 and 4 shall be amended accordingly.
- 3.12 The name of the province KwaZulu-Natal shall be re-introduced instead of 'Natal' inter alia to reflect the position of the Kingdom of KwaZulu. Section 124 and Schedules 1 and 2 shall be amended accordingly.
- 3.13 Controlling violence and intimidation is a prerequisite for the holding of free and fair elections and any electoral process. All major parties shall be responsible and accountable to achieve this result. Legislation shall provide for the necessary structuring and accountability in respect thereof.
- 3.14 Final agreement in respect of paragraphs 3.1 to 3.13 above shall be reached before the passing of the draft constitution by Parliament.



4. If and when -

(a) final agreement in respect of paragraph 3 above is reached;

and

(b) the total package of agreements, including the improved draft constitution and related measures regarding the period until the provincial governments come into power, is approved by the respective decision-making bodies of the FA members, such as the cabinets, parliaments and/or political party governing bodies concerned, the FA would accept that the fundamental prerequisites for participation in any elections and related constitutional arrangements have been met, and would commit itself to participation in such constitutional process.

**Annexure A :****1. 160.**

(1) The provincial legislature shall be entitled to pass a constitution for the province by a majority of at least two-thirds of its members; Provided that such constitution may regulate otherwise any matter provided for in this constitution relating to the structure, powers and functions of the provinces; Provided further that such constitution shall be consistent with the provisions of Chapter 3, section 126 and sections 153 to 159 of this constitution as well as the Constitutional Principles set out in Schedule 4.

(2) as drafted (In the constitutional draft)

(3) The Constitutional Assembly shall, subject to the provisions of section 61 and 62 and notwithstanding the provisions of Chapter 5, be entitled to regulate affairs relating to provinces only to the extent that such regulation is not inconsistent with the constitution passed by a province; Provided that such regulation shall

(a) comply with the Constitutional Principles set out in Schedule 4;

(b) be approved by two thirds majority of all the members of every provincial legislature concerned; and

(c) be certified by the Constitutional Court as to consistency with the said Constitutional Principles.

(4) The text of a provincial constitution passed by the provincial legislature shall be of no force and effect unless the Constitutional Court has certified that it is not inconsistent with a provision referred to in sub-section (1); Provided that the decision of the Constitutional Court to certify shall be taken in the basis of received evidence and arguments presented before that Court, which certification shall be given within thirty days of the provincial constitution being referred to the Court, failing which the provincial constitution will come in force and effect.

(5) as drafted.

2. Section 161 is to be amended to add an additional sub-section which reads: '(6) The provisions of this section shall apply only to the extent that a province has not adopted its provincial constitution in terms of section 160 or to the extent that it is not otherwise provided for in a law of a province.'



3. Section 164 (2) is to be amended to add an additional sub-section which reads: '(g) The provisions of this sub-section shall apply only to the extent that a province has not adopted its provincial constitution in terms of section 160 or that it is not otherwise provided for in a law of a province.'

**Annexure B:**

1. Section 71 (2) is to be amended to add the following language at the end thereof:  
'Provided that such certification shall be on the basis of received evidence and argument presented, which decision shall be motivated.'
2. (a) section 73 (1) is to be amended to delete the words 'within two years.'  
(b) A new sub-section is to be added to section 73:  
'(13) The procedure set out in sub-sections (3) to (12) shall not be applicable to amend provisions relating to boundaries, powers and functions of the provinces, the provisions of Chapter 3, or the provisions relating to the Constitutional Court. Any amendment of Chapter 3 shall require a three-fourths majority of all the members of the Constitutional Assembly and may not diminish any of the rights set out in that Chapter. Any amendment to the powers and functions of the provinces may not diminish the provincial autonomy.'
3. Section 74 (1) is to be amended by inserting the words:  
'section 73 (13) 'after ' section' in the first line thereof.'



**STATEMENT BY THE EXECUTIVE COMMITTEE OF THE  
FREEDOM ALLIANCE AFTER A MEETING IN PRETORIA ON  
DECEMBER 12, 1993**

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The Freedom Alliance regards the setting of preconditions for negotiations between the FA, the SA Government and the ANC as unreasonable, because such preconditions have not been required of any other organisation in the negotiating process.

The question has to be asked whether the SA Government and the ANC sincerely want an all-inclusive settlement, with the full participation of the Freedom Alliance or not.

It is both inappropriate and improper for any political party/organisation to demand of or endeavour to prescribe to other independent parties/organisations on how they should act, what they should commit themselves to or what to participate in.

The FA believes that there are certain elements within both the SA Government and the ANC who are intent on preventing such an all-inclusive settlement from being achieved, as they are wedded to the processes and structures inherent in the World Trade Centre process and are not prepared to deviate from those agreements.

The FA points out that no party or organisation in the World Trade Centre process was, ever asked to submit itself as demanded by the ANC to the preconditions that are being required of the FA - namely that it commit itself to the transitional process and agree to participate in elections, without being aware of the outcome of negotiations.

The World Trade Centre negotiations resolved in terms of Resolution No 7 to negotiate various agreements which would, at the conclusion of the negotiations be assessed and examined as a final acceptable package of laws. This was specifically agreed upon on the 30th of May 1993 to accommodate the fears and reservations of the many parties who were apposed to the manner the process was being misused even at that time.

The FA claims this right as contained in resolution 7 in its negotiation with the SA Government and the ANC.

The FA believes this to be a reasonable and fair request, bearing in mind that its members cannot be expected to make binding and legal commitments in advance, without these being ratified and approved in the case of Bophuthatswana, for example - by its parliament.

The type of preconditions being demanded of the FA are not only unreasonable but unnecessary. The bona-fides of the Freedom Alliance have already been clearly established and proven in extensive bilaterals and agreements with the SA government. The FA's commitment to a negotiated political solution is a matter of public record.



The imposition of these preconditions has clearly resulted in more than a week of valuable negotiating time being wasted. This is not of the FA's doing.

Those who put new preconditions are actually acting in bad faith, delaying the negotiating process while simultaneously unduly hastening the passing of the Constitutional draft by Parliament.

We believe that successful negotiations require that there be no preconditions, and that the parties involved enter into them with completely open minds.

For our part we have never laid down a single condition. We say that if there is a genuine concern that agreements should be inclusive, then all of us should be prepared to move heaven and earth to achieve this.

The areas in which the Freedom Alliance has difficulties with the new constitution are well known. We believe solutions can be found. We are ready to take the process forward, and Southern Africans from across the political spectrum demand that all of us involved in the process, do so as a matter of urgency.

In the critical times in which Southern Africa finds itself we believe that it is incumbent upon all of us to display statemanship which will lead to a resolution of the impasses.

We are therefore urgently appealing to the SA Government and the African National Congress to approach the matter with a view to producing a genuine, all-inclusive settlement without preconditions, which will allow all political organisations to play a willing and constructive role in the creation of a new and lasting dispensation.

On this basis we should move forward without delay and with the interests of all South Africans uppermost in our minds, in order for agreements reached to be accommodated in the Parliamentary process.



**AMENDMENTS TO THE CONSTITUTION  
OF THE REPUBLIC OF SOUTH AFRICA  
SUBMITTED BY THE  
INKATHA FREEDOM PARTY**

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December 14, 1993

**NUMERIC REFERENCE SHEET**

SECTION 6	GROUP 2, ITEM 4
SECTION 40	GROUP 2, ITEM 5
SECTION 60	GROUP 1, ITEM 1 E
SECTION 72	GROUP 1, ITEM 4 C
SECTION 73	GROUP 1, ITEM 4 A AND B
SECTION 74	GROUP 1, ITEM 4 B
SECTION 98	GROUP 1, ITEM 1 F
SECTION 124	GROUP 2, ITEM 3
SECTION 126	GROUP 1, ITEM 1 A
SECTION 132	GROUP 2, ITEM 2
SECTION 155-9	GROUP 1, ITEM 2 A
SECTION 160	GROUP 1, ITEM 3 A
SECTION 161	GROUP 1, ITEM 3 B
SECTION 164	GROUP 1, ITEM 3 C
SECTION 177	GROUP 1, ITEM 1 C
SECTION 179	GROUP 1, ITEM 1 C
SECTION 191	GROUP 1, ITEM 2 D
SECTION 193	GROUP 1, ITEM 2 C AND E
SECTION 212	GROUP 1, ITEM 1 B
SECTION 214	GROUP 1, ITEM 1 D
SECTION 217	GROUP 1, ITEM 1 D
SECTION 218	GROUP 1, ITEM 1 D
SECTION 219	GROUP 1, ITEM 1 D
SECTION 221	GROUP 1, ITEM 1 D
SECTION 235	GROUP 2, ITEM 6
SECTION 239	GROUP 2, ITEM 6
SCHEDULE 2, ITEM 2	GROUP 2, ITEM 3
SCHEDULE 2, ITEM 4	GROUP 2, ITEM 5
SCHEDULE 2, ITEM 11	GROUP 2, ITEM 5
SCHEDULE 2, ITEM 17	GROUP 2, ITEM 3
SCHEDULE 2, ITEM 22	GROUP 2, ITEM 1
SCHEDULE 4, ITEM [CP]	GROUP 1, ITEM 2 B



AMENDMENTS TO THE CONSTITUTION  
OF THE REPUBLIC OF SOUTH AFRICA  
SUBMITTED BY THE  
INKATHA FREEDOM PARTY  
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December 14, 1993

Group #1 represent the most essential bottom lines without which an all-inclusive constitutional settlement in this country cannot be achieved. During intense bilateral discussions between the Freedom Alliance and the SAG/NP all the parties involved reached either an agreement in principle or an agreement in detail with reference to each of the four items listed under Group 1. These agreements are based on very extensive reconciliation and bridging of proposals. These agreements reflected and capitalized on the understandings reached during bilateral discussions between the SAG/NP and the KZG.

Group #2 are last moment make or break conditions made necessary by last moment amendments of the constitutional text resulting from bilateral discussion between the ANC/SACP alliance and the SAG/NP.

These amendments are bare minimum conditions and they relate one to the other as a block: the acceptance of some of the amendments and the rejection of others would deprive the block of amendments of any technical and political value. If accepted in their entirety and as it is proposed by the IFP, this minimum package of amendments will set the basis for an all inclusive solution and constitutional settlements, as stated in the November 30, 1993 and December 11, 1993 resolutions of the Central Committee of the IFP and in the December 13, 1993 Statement of the Leaders of the Freedom Alliance.

## GROUP #1

1. Section 126 [former 118] and consequential amendments

- A. Section 126 [former 118] is to be replaced by the formulation attached hereto as Annexure A.

Consequential Amendments

B. **Provincial Civil Service**

Section 212 (1) is to be amended to substitute the word "...Republic..." with the words "...National Government...", and an additional subsection is to be added to read: "(8) the provisions of this section shall apply also to the provincial civil service in all matters which are not otherwise regulated by a provincial law."



C. **Local Government**

Section 177 is to be amended to add the words: "Unless otherwise provided by a provincial law,...." before the word "A council". Section 179 is to be amended to add an additional subsection which reads "(6) The provision of this section shall apply to local governments unless it is otherwise provided for by a provincial law." Chapter 10 is to be amended to replace the words: "competent legislature" with the words: "provincial legislature".

D. **Provincial Police**

Section 214(1) shall be amended to delete the following words "...and provincial..." which appear twice in the text. Section 214(2)(a) is to be amended to delete the words: "...and a Commissioner for each province...". Section 214(2)(b) is to be amended to delete the words: "...at all levels...". Section 214 is to be amended to add a third subsection which reads: "(3) The provisions of this subsection shall apply, *mutatis mutandis*, to the provincial police service to be established and regulated by a provincial law." Section 217 (1) is to be amended to add the word "provincial" before the word "...Service...". Section 217(2)(a) is to be amended to delete the words: "...in terms of section 218(1)(b)". Section 217(2)(b) is to be amended to add the word "provincial" before the word "...law." Section 217(4) and (4) is to be deleted. Section 218(1)(b), the two proviso in subsections (1)(d) and (1)(k) respectively, and subsection (1)(n) are to be deleted. Section 219 (1) is to be amended to delete the words: "Subject to the provisions of section 214 and section 218 and". Section 219(1)(g) is to be amended to delete the words: "up to the rank of lieutenant-colonel". Section 219 (2) [heading only] and 219 (2)(b) are to be deleted and items (a), (c) and (d) are to be listed respectively as items (h), (i) and (j) of subsection (1). Section 212 (1) is to be amended to replace the words: "The Act of Parliament referred to in section 214(1)..." with the words: "The law of the competent legislature shall. Section 212 is to be amended to the words: "The Act" with the words: "the law" wherever they occur. Section 221(3) is to be amended to replace the words: "in section 214" with the words: "in subsection (1)"

E. **Legislative Role of the Provinces through the Senate**

Article 60 is to be deleted along with the words "...60(1)..." in article 59(3).

F. **Justiciability of section 126**

Section 98 (2)(e) is to be amended to add the following words at end: ".... including the reasonableness of the exercise of powers in terms of sections 126(3) as it relates to the interest of one or more province or its/their inhabitants".

2. **Section 155-9 [former 121] and consequential amendments**

- A. Sections 155-9 [former 121] is to be replaced by the formulation attached hereto as Annexure B.



### Consequential Amendments

- B. **Preserving Provincial fiscal autonomy**  
The first sentence of Constitutional Principle XXV is to be amended to read:  
"National and provincial governments shall have fiscal powers and functions, including the right to raise taxes, surcharges, levies and user charges".
- C. **Provincial auditing autonomy**  
Section 193 is to be amended to delete any reference to provincial and local governments.
- D. **Same**  
Section 191 is to be amended to add an additional subsection which reads"  
(12) Unless otherwise provided for in a provincial law, the provisions of this section shall apply to a provincial Auditor-General to be established and regulated by a law of a province".
- E. **Same**  
Section 193 is to be amended to add an additional subsection which reads" (9)  
Unless otherwise provided for in a provincial law, the provisions of this section shall apply to a provincial Auditor-General to be established and regulated by a law of a province".

### Provincial Constitutions

- A. Section 160 is to be amended and replaced as follows:
- (1) The provincial legislature shall be entitled to pass a constitution for the province by two third majority of its members, provided that such constitution may regulate otherwise any matter provided for in this constitution relating to the structure, powers and functions of the provinces; provided further that such constitution shall be consistent with the provisions of Chapter 3, section 126 and sections 155 to 159 of this constitution as well as the Constitutional Principles set out in Schedule 4.
- (2) *as drafted*
- (3) The Constitutional Assembly shall, subject to the provisions of section 61 and 62 and notwithstanding the provisions of Chapter 5, be entitled to regulate affairs relating to provinces only to the extent that such regulation is not inconsistent with the constitution passed by a province; provided that such regulation
- (a) shall comply with the Constitutional Principles set out in Schedule 4,
  - (b) be approved by two thirds majority of all the members of every provincial legislature concerned, and
  - (c) be certified by the Constitutional Court as to its consistency with said Constitutional Principles.



- (4) The text of a provincial constitution passed by the provincial legislature shall be of no force and effect unless the Constitutional Court has certified that it is not inconsistent with a provision referred to in subsection (1), provided that the decision of the Constitutional Court to certify shall be taken on the basis of evidence and arguments presented before that Court, which certification shall be given within thirty days of the provincial constitution being referred to the Court, failing which the provincial constitution will come in force and effect.
- (5) *as drafted*

### Consequential Amendments

- B. Sections 161 is to be amended to add an additional subsection which reads:  
"(6) The provisions of this section shall apply only to the extent that a province has not adopted its provincial constitution in terms of section 160 or that it is not otherwise provided for in a law of a province."
- C. Sections 164 (2) is to be amended to add an additional subsection which reads:  
"(g) The provisions of this subsection shall apply only to the extent that a province has not adopted its provincial constitution in terms of section 160 or that it is not otherwise provided for in a law of a province."

### 4. One versus Two-Stage Process - A bridging solution

- A. Section 71 (2) is to be amended to add the following word at the end thereof:  
"Provided that such certification shall be on the basis of received evidence and arguments presented, which decision shall be motivated."
- B. Section 73 is to be amended to add a new subsection which read: "(13) The procedure set out in subsection (3) through (12) shall not be applicable to amend provisions in this constitution related to boundaries, powers and functions of the provinces, the provisions of Chapter 3, and the provisions relating to the Constitutional Court. Any amendment of the provisions of Chapter 3 shall require a three-fourths majority of all the members of the Constitutional Assembly and may not diminish any of the rights set out in that Chapter. Any amendment to the powers and functions of the provinces may not diminish the degree of recognition and protection of the provincial autonomy".

Section 73 (1) is to be amended to delete the words: "...within two years...".

- C. Section 74 (1) is to be amended to insert a third point to read: "(c) subsection 73 (13) of this constitution."



## **GROUP #2**

### **Single ballot paper**

Schedule 2, item 22 is to be replaced with the following item: ". [NOTE: amendment will also be required in the Electoral Act].

### **Residence Requirement in Provincial Elections**

Section 132(1) is to be amended to add the following words: "and is ordinarily resident in that province."

### **KwaZulu/Natal**

Section 124(1)(c) and Schedule 2 items 2(a) and 17 are to be amended to replace the word "Natal" with the words: "KwaZulu-Natal". Schedule 1, Part 1 in the heading is to be amended to be read: "Areas in respect to KwaZulu-Natal".

### **Voting Right of non-South African citizens**

Section 6(a)(ii) is to be deleted.

### **Election of the National Assembly from Provincial Lists**

Section 40 is to be amended to add an additional subsection which reads: "(3) Of the members of the National Assembly 200 shall be elected from national lists of party candidates and 200 from provincial lists of party candidates". Schedule 2, item 4 is to be amended to add the following words at the end thereof: "..., provided that 200 candidates are listed in the party's provincial list.". Schedule 2, item 11 is to be amended to substitute the words: "items 8, 9 and 10" with the words: "items 5, 6 and 7"; and the words: "items 5, 6 and 7" with the words: "items 8, 9 and 10"; and the word: "2(b)" with the word: "2(a)".

### **Vesting of Provincial Powers and Rationalization**

Section 235(6)(b)(i) is to be amended to read: "...if any such law was immediately before the commencement of this constitution administered by, or under the authority of a functionary referred to in subsection (1)(a), (b) or (c), be administered by the competent provincial authority within the jurisdiction of the government of the province in which that law applies, to the extent that it so applies.". Section 235(8)(a) is to be deleted. Section 235(8)(b) is to be amended to read: "When the administration of law vest in a

competent authority in terms of this constitution, the President may to the extent that it is necessary for the efficient carrying out of the assignment (i) amend....". Section 235(9)(a) is to be amended to replace the words: "16 days" with the words: "one year" and to delete the word: "(ii)" after "6(b)". Section 239(1)(b) is to be amended to delete the words: "subject to paragraph (c)". Section 230(1) is to be amended to add to end thereof the following words: "Provided that the laws listed in Schedule 7 which have a bearing on the status, integrity and autonomy of the self-governing territories and TBVC states shall not be repealed until the Premier of each of the affected new provinces has assumed his or her office."



## **ANNEXURE A**

### **SECTION 126 (FORMER 118)**

#### **DISTRIBUTION OF POWERS AND FUNCTIONS BETWEEN THE OF CENTRAL GOVERNMENTS AND THE PROVINCES)**

1. The National Legislature and Executive shall have exclusive legislative and executive authority, unless and to the extent otherwise specified elsewhere in this Constitution, in respect of the following functional areas:
  - (a) Arbitration;
  - (b) Arms and ammunition;
  - (c) Aviation and national airports;
  - (d) Census;
  - (e) Citizenship, alien control, passports, immigration and emigration;
  - (f) Commercial law;
  - (g) Consumer protection
  - (h) Correctional services;
  - (i) Customs and excise;
  - (j) Currency, banking and control over financial institutions;
  - (k) Defence;
  - (l) External trade;
  - (m) Finance;
  - (n) Foreign affairs;
  - (o) Forests;
  - (p) Industrial law;
  - (q) Inquests;
  - (r) Internal movement of goods, capital, services and people;
  - (s) Labour law;
  - (t) Land, deed and corporate registrations;
  - (u) Marine resources;
  - (v) Media and communication law;
  - (w) Mineral resources and mining;
  - (y) National archives



- (x) National historical monuments;
- (z) National economic policy;
- (aa) National intelligence;
- (bb) National language policy;
- (cc) National parks and national botanical gardens;
- (dd) National public media;
- (ee) National planning and development;
- (ff) National public property;
- (gg) National public works;
- (hh) National roads and railways;
- (ii) National sport and recreation;
- (jj) Patents, trademarks and designs;
- (kk) Police, subject to the appropriate provisions of the Chapter 14;
- (ll) Postal service;
- (mm) Postmortems;
- (nn) Private law;
- (oo) Professional associations;
- (pp) Promotion of scientific research and development;
- (qq) Regulated substances and medicines;
- (rr) Stock exchange;
- (ss) Security of the state and the Constitution
- (tt) Sports and recreation;
- (uu) Taxation, subject to the appropriate provisions of Chapter 9;
- (vv) University and technikon education;
- (ww) Telecommunications;
- (yy) Water law;
- (xx) Weights, measures and standards;
- (zz) Unemployment insurance.

2. The Provincial Legislatures and Executives shall, subject to the provisions of subsection (3), have exclusive legislative and executive authority, unless and to the extent otherwise specified in this Constitution, in respect of the following functional areas:

- (a) Abattoirs;
- (b) Airports other than those contemplated in item 1(c);
- (c) Agriculture;



- (d) Animal control and diseases;
- (e) Cultural affairs;
- (f) Education at all levels, excluding university and technikon education;
- (g) Environment;
- (h) Health services;
- (i) Housing;
- (j) Land use, including planning, zoning and development;
- (k) Language policy and language's as languages of record for use in provincial administrations;
- (l) Local government subject to the provisions of Chapter 10;
- (m) Markets and pounds;
- (n) Nature conservation, excluding national parks established by or under the National Parks Act, 1976 (Act No 57 of 1976), and national botanical gardens and marine resources;
- (o) Police, subject to the appropriate provisions of Chapter 14;
- (p) Provincial public property;
- (q) Provincial public service, subject to the appropriate provisions of Chapter 13;
- (r) Provincial residency;
- (s) Provincial public works;
- (t) Provincial sport and recreation;
- (u) Public transport;
- (v) Racing, casinos, gambling and wagering;
- (w) Regional public media;
- (x) Regional planning and development;
- (y) Roads;
- (z) Road traffic regulation;
- (aa) Soil conservation;
- (bb) Taxation, subject to the appropriate provisions of Chapter 9;
- (cc) Tourism;
- (dd) Trade and industrial promotion;
- (ee) Traditional authorities;
- (ff) Urban and rural development;
- (gg) Welfare services;
- (hh) Water management.



3. An Act of parliament may deal with a matter referred to in subsection (2) and shall prevail over a provincial law inconsistent therewith only to the extent that:
  - (a) It deals with an aspect of national interest of a functional area which cannot be dealt with effectively by provincial legislation;
  - (b) It deals with a matter that, to be performed effectively, requires to be regulated or coordinated by uniform or minimum norms or standards that apply generally throughout the Republic;
  - (c) It is necessary for the maintenance of economic unity, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security; or
  - (d) The provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.
4. The legislative and administrative competence referred to in subsections (1), (2) and (3) shall include the competence to make laws and take actions which are reasonably necessary for or incidental to the effective exercise of such legislative competence.
5. An Act of Parliament shall prevail over a provincial law, as provided for in sub-section (3), only if it applies uniformly in all parts of the Republic.
6. An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent.



7. A provincial 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 or in respect of which an Act of Parliament prevails over a provincial law in terms of this section.
8. In respect of all residual functional areas not dealt with in subsection 1) to 3) the National Legislature and Executive and the Provincial Legislatures and Executives shall have concurrent legislative and executive authority: Provided that -
  - (a) In matters affecting all or more than one province, which can only be effectively dealt with by Parliament, Parliament shall have overriding legislative authority; and
  - (b) In matters affecting only one province, which can be adequately dealt with by that province, that province shall have overriding legislative authority.
- (9) The National Legislature and Executive shall have concurrent legislative and executive authority in respect of all functional areas in respect of which a provincial legislature or executive elects not to exercise jurisdiction to the extent that and until such legislature or executive elects to exercise jurisdiction.
- (10) Notwithstanding the provisions of this section, the National Legislature and Executive shall have legislative and executive authority in respect of a functional area allocated to a province if such province is unable or neglects to adequately deal therewith only to the extent that there is a compelling need therefor as determined by a court of law.



**ANNEXURE B:**

**PROVINCIAL FINANCE AND FISCAL AFFAIRS**

**ORIGINAL CLAUSE 121 NOW CLAUSE 155, 156, 157, 158 AND 159**

**Provinces' share of revenue collected nationally**

- 155 (1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to exercise and perform its powers and functions.
- (2) The equitable share of revenue referred to in section (1) shall consist of:
- (a) a percentage, fixed by an Act of Parliament on the basis of a resolution of the Senate of income tax on individuals which is collected nationally;
  - (b) a percentage, fixed by Act of Parliament on the basis of a resolution of the Senate, of value added tax which is collected nationally; and
  - (c) that share of the fuel levy which corresponds to the sale of fuel within the province; and
  - (d) other earmarked or unconditional allocations of national revenue made in terms of this section to the province.
- (3) The percentages referred to in subsection (2)(a), (b) and (c) shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission, and all payments to the provinces shall be effected on a regular basis.



- (4) Allocations made in terms of subsection 2(d) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account -
- (a) the provision that has to be made for interest and other payments in respect of the national debt; and
  - (b) the different fiscal capacities including the revenues derived from sources referred to in subsections 2(a), (b) and (c), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces; and
  - (c) the recommendations of the Financial and Fiscal Commission.

#### Levying of taxes by provinces

- 156 (1) (a) Provinces shall have the original powers to impose duties, levies or taxes on -
- (i) casinos;
  - (ii) gambling, wagering and lotteries;
  - (iii) betting.
  - (iv) transfer duty on the acquisition/sale/transfer of ownership of property
- (2) (a) A provincial legislature shall have original powers to raise other taxes and surcharges after taking into account the recommendations of the financial and fiscal commission - provided there shall be no discrimination against non-residents who are South African citizens; and
- (b) Provincial legislatures shall be competent to enact legislation authorising the imposition of levies, duties and user charges in accordance with the



recommendations of the financial and fiscal commission - provided there shall be no discrimination against non-residents who are South African citizens.

- (3) A provincial legislature shall not be entitled to raise taxes detrimentally affecting national policies, inter-provincial commerce, or the national mobility of goods, services, capital and labour.

### Raising of loans by provinces

157 (1) A province -

- (a) shall subject to subsection (2) to raise loans for current expenditure; and
- (b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the content of any such Act in its draft form have been submitted to and considered by Parliament.

2

- (2) Loans referred to in subsection (1)(a) may be raised for bridging finance during a fiscal year subject to such reasonable conditions as may be prescribed by Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the content of any such Act in its draft form have been submitted to and considered by Parliament.
- (3) A province may not guarantee a loan unless -
- (a) the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given; and



### **Revenue allocations by national government**

**158 Financial allocations made by national government in terms of subsection 155(2)-**

- (a) to a provincial or local government shall be made through an appropriation Act; and**
- (b) to a local government shall be made via the provincial government of the province in which the local government is situated.**

### **Provincial Revenue Funds**

- 159 (1) There is hereby established in the administration of each province a Provincial Revenue Fund into which shall be paid all revenue raised by or accruing to the provincial government, or revenues destined for local governments where the provincial government is the conduit as referred to in subsection 158(b).**
- (2) No money may be withdrawn from a Provincial Revenue Fund otherwise than by virtue of an appropriation made in accordance with a law of the provincial legislature concerned.**



5. Electoral Bill	Bill introduced in Parliament. Contact : A Tredoux, 461-3455	<ol style="list-style-type: none"> <li>1. SA Blind Workers' Organisation.</li> <li>2. New clause on qualifications for nomination and future of civil servants appearing on the list who otherwise do not find their way into the legislatures.</li> <li>3. Query on definition of "qualified person".</li> <li>4. Consequential amendments flowing from Constitution.</li> <li>5. Technical changes by State Law Advisers.</li> <li>6. Conflicts between the Constitution and this Bill.</li> </ol>
6. Independent Electoral Commission Amendment Bill	Bill introduced in Parliament. Contact : A Tredoux, 461-3455	<ol style="list-style-type: none"> <li>1. Recommendation by R Rosenthal on amendment of "International Observer" - 12 December 1993.</li> </ol>
7. Closed Pension Fund Bill	Bill introduced in Parliament.	

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# **BILLS BEING CONSIDERED BY THE PARLIAMENTARY MONITORING TASK GROUP**

**14 DECEMBER 1993**

Title	Stage of Processing	Queries/suggestions raised or made by Negotiators/Interested Parties/ State Law Advisers
1. Local Government Transition Bill	Bill at State Law Advisers for certification. Contact : J Wolmarans, 461-5840	1. Proposal from Mr Landers on Special Electoral Court. 2. Technical changes by State Law Advisers. 3. Proposals which have since been withdrawn by J Wolmarans. 4. Two amendments relating to Traditional Authorities and filling of vacancies.
2. Abolition of Restriction on Free Political Activity Bill	Two proposed amendments discussed with O Kellner on 10 December 1993. To discuss question of responsible Minister with Mr Coetsee today.	1. Proposal of the SACP made in Council on 1 December 1993 in respect of banning of organisations. 2. Suggestion of 8 December 1993 by H Varney.
3. Restoration and Extension of South African Citizenship Bill	Bill introduced in Parliament. Contact : A Tredoux, 461-3455	1. Two queries raised with A Tredoux in connection with clause 4.
4. Transfer of Walvis Bay to Namibia Bill	Bill introduced in Parliament. Contact : A Hoffman, 45-6300	

10



<p>8. Constitution of the Republic of South Africa, 1993</p>	<p>Bill being considered by Standing Committee on 14 December 1993.</p>	<ol style="list-style-type: none"> <li>1. D Schutte on clause 40 (2) - use of "ordinarily resident" and exceptions in respect of certain holders of office (letter of 7 December 1993).</li> <li>2. National Unity and Reconciliation.</li> <li>3. Clause 42 (1) (e).</li> <li>4. Wits on academic freedom.</li> <li>5. Amendments proposed by J Wolmarans on 8 December 1993 and 12 December 1993.</li> <li>6. Clause on training of Defence Force members.</li> <li>7. Suggestion on prosecutions relating to conscription (H Varney - 8 December 1993).</li> <li>8. Constitutional amendment made by Kwazulu Legislature.</li> <li>9. Discussions with Surveyor-General on Schedule 1.</li> <li>10. C Eglin on clause 247.</li> <li>11. Language clause,- comments by Department of National Education (8 December 1993).</li> </ol>
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12



<p>Constitution of the Republic of South Africa, 1993 (continued)</p>	<p>Bill being considered by Standing Committee on 14 December 1993.</p>	<ol style="list-style-type: none"> <li>12. Suggestion on section 240 (5) (Advocate de Lange).</li> <li>13. Clause 226 (6) (query by Advocate Chaskalson).</li> <li>14. State of national defence and deployment (clauses 82 (4) (b), 227 and 228).</li> <li>15. D Schutte's further recommendations (letter of 10 December 1993)</li> <li>16. Clauses 4 and 7 (2) - reference to the judiciary.</li> <li>17. Seven issues referred to the Planning Committee for approval.</li> <li>18. What happens if the Eastern Cape is divided into two provinces?</li> <li>19. Consequential amendments to other laws as a result of what is in the Constitution.</li> <li>20. Amendments by State Law Advisers.</li> </ol>
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