

U1 THE CONSTITUTION OF THE  
FEDERAL REPUBLIC OF SOUTH AFRICA

PREAMBLE

WE, the people of South Africa, mindful of our unique and diverse

heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognising the right of people to organise themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the Federal Republic of South Africa to provide the people of South Africa and the member States with a Federal government to serve their individual and collective needs, wants and aspirations.

FUNDAMENTAL PRINCIPLES

1. Inherent Rights and Obligations

The Federal Republic of South Africa acknowledges and recognises that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the Federal State and a general obligation of social responsibility to the people of the Federal Republic.

2. Source of Government

All political power is inherent in the people. All government originates with the people, is founded only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organise and regulate their interests autonomously.

3. Sovereignty of the Federal Republic of South Africa

The Federal Republic of South Africa is a sovereign Government operating within a federal system of split sovereignty with the member States of the federation. The Federal Republic of South Africa recognises its obligations toward the member States of the federation, the primary of which is to safeguard and promote the rights, powers and liberties guaranteed by this constitution to the citizens of the Federal Republic of South Africa. The sovereignty of the Federal Republic of South

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Africa as asserted under this constitution is indivisible, inalienable and untransferable.

#### Territory

The territory of the Federal Republic of South Africa is indivisible and inalienable. The territory of the Federal Republic of South Africa includes the territory of the member States of KwaZulu/Natal, Satswa, Kei, [...].

#### State's Unity

The Federal Republic of South Africa is one and indivisible. The powers of the Federal Republic may be exercised through the member States.

#### Citizenship

South African citizenship is acquired, maintained and lost in accordance to the law. No one born in South Africa can be deprived of his or her South African citizenship. No one can be deprived of his or her citizenship for political reasons.

No citizen of the Federal Republic of South Africa shall be deprived of citizenship except in such cases as they may be listed in the law and based on voluntary relinquishment. Parliament may grant citizenship in special cases. The law shall regulate the right of asylum in the Federal Republic of South Africa.

#### Language

The official languages of the Federal Republic of South Africa shall be English and Afrikaans. The Federal Republic shall protect and encourage the use of languages other than the official languages at all levels of society with special attention to the use of other languages as a medium of instruction in private schools or in schools subsidised or financed by or through the Federal Republic, subject to compliance with such requirements as may be imposed by the law of the member States to ensure proficiency of the official languages or for pedagogic reasons.

#### State's Symbols

The coat of arms, the flag and the anthem of the Federal Republic of South Africa shall be determined by a law adopted by a two-thirds majority of Parliament.

#### Federal obligations

Through the exercise of its own powers or by assisting member States, the Federal Republic of South Africa shall ensure internal security and safety, promote balanced economic development, foster social development, guarantee environmental and consumer protection, ensure health services, education and welfare for its citizens, constantly strive to improve the quality of life of all people in the Federal Republic, preserve and protect the State's religious, linguistic and ethnic heritage and cultural diversity, nourish the people's right to the pursuance of happiness both as individuals and as members of their social formations, protect the family, extend special protection to maternity and paternity and to the children,

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extend special protection for women, the disadvantaged and less privileged portions of the population, and strive in its actions and policies to achieve social justice in accordance with the principles of this constitution.

#### Equality

All citizens of the Federal Republic of South Africa have equal social dignity, shall be equal before the law and shall share an equal right of access to political, social and economic opportunities irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status.

The Federal Republic of South Africa shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities. For this purpose the Federal Republic of South Africa may take measures in favour of segments of the population requiring special assistance.

#### Rule of Freedom

All conduct and activities which are not prohibited shall be permitted. The Federal Republic of South Africa may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.

#### International Law

The legal system and international action of Federal Republic of South Africa shall conform with generally accepted principles of customary international law and with international standards of treaty law. The Federal Republic of South Africa shall strive to respect and maintain all its international law obligations, and shall reject the use of war or international violence as means to resolve international conflicts. The Federal Republic of South Africa may accept limitations of its sovereignty to promote international cooperation, organization and integration on a regional or global basis.

#### Traditional and Customary Rules

The Federal Republic of South Africa shall recognise and protect the application of traditional and customary rules not inconsistent with the principles and provisions of this constitution in all matters left to the autonomy of individuals and that of social and traditional formations to which individuals belong on a voluntary basis or from which they have not dissociated themselves in a manner prescribed by the law of the member States. For this purpose the Federal Republic of South Africa may assist member States to ensure that the integrity of the legal systems of traditional and customary rules is safeguarded so that such rules are produced in accordance with the canons and the sources governing their production and application, and are not modifiable or repealed by ordinary state law. Traditional

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or customary laws shall not have territorial application unless so authorised by law, in which case they shall be subject to the law to the extent that they apply to individuals who do not share in such tradition or custom.

#### Supremacy of the Constitution

This constitution shall be the supreme law of the State and shall be applied and enforced to the fullest extent possible in all judicial and administrative procedures as well as in interpersonal relations under the control of the Federal Republic of South Africa. No law adopted under this constitution may be derogated by laws of the member States.

#### FUNDAMENTAL RIGHTS

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#### Individual and Collective Rights

Fundamental rights are recognised and shall be protected both in their individual as well as in their collective exercise, and they imply the right to establish institutions, adopt rules of conduct and regulate interests which are instrumental to the collective exercise of such rights. All powers established and recognised under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise. Å»

#### Justiciability of rights

All rights and freedoms recognised and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In the case of a violation of the rights and freedoms recognised and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a prima facie violation of rights, shall be granted preliminary relief pending the final disposition of the case.

#### Limits on the exercise of the rights

The law may impose reasonable restrictions on the exercise of the rights set forth in this constitution to protect the rights of others and for compelling reasons of public interest. However, in such a case the law must respect the essential content of the rights, and the limitation on the exercise of the right must not have the practical effect of preventing or deterring the free exercise of the rights in their reasonable manifestations.

#### Physical and psychological integrity

The physical and psychological integrity of any individual shall be inviolable. No one shall be authorised to inflict any type of violence on another individual or to take a life. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.

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No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence.

#### Freedom of communication

All persons shall be free to express and communicate their thoughts in private and in public, in oral, written, visual or any other fashion, and to establish institutions for such a purpose. All forms of censorship or limitation on the contents of such communications shall be prohibited.

Limitations on the contents of commercial speech may be imposed to guarantee the truth and the fairness of the representations made to consumers and to ensure fair competition, provided that there shall be no prohibition of comparative advertising.

Limitations on the form of communication may be imposed as to time, place and manner so as to protect and respect the rights of others and compelling public interests, but not to the extent that the limitation on the forms communication becomes a limitation on the contents thereof.

No one shall be compelled directly or indirectly to disclose or express his or her ideology, creed, religious belief, or political opinions.

#### Freedom of Religion

Religious freedoms are recognised and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organise activities for this purpose. The Federal Republic of South Africa shall not take any action supporting or endorsing any particular religious belief or confession or conditioning the exercise of religious freedom to any requirement, and shall promote conditions for the equal and free exercise of all religions and beliefs in the State.

#### Liberty

No one shall be deprived of his liberty without cause and due process of law. Unwarranted arrest and detention shall be allowed only on the basis of probable cause related to an offence punishable by imprisonment. Anyone arrested or detained shall be informed of his or her rights in a language that he or she understands, shall be informed of the reasons for the arrest and detention with an indication of the charges, and shall have a court hearing within twenty four hours

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from the time of his or her arrest, after which the detention may continue only by court order based on factually corroborated allegations.

Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.

Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.

Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.

Any government authority shall inform anyone who is the subject of an investigation for any reason.

No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law.

Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.

No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the offence was committed. There shall be no special or post facto judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.

#### Travel and movement

Everyone shall have the right to travel, move and reside within or outside the

Federal Republic of South Africa. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic shall have the right to take domicile in the any part of the territory.

#### Privacy

Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation. All private communications and all aspects of private life shall be protected. Search and seizure may be allowed only on the basis of a warrant

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issued on the basis of corroborated allegations, and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention.

Anyone has the right to access the information collected on him or her by the Government or by private data or information banks.

#### Freedom of the Media

Anyone has the right to publish and distribute printed materials. The press and the media of mass communication shall have the right to inform the public on matters of public interest provided that they do not publish erroneous information as a result of gross professional negligence or malice. The media have the duty to rectify all erroneous information they publish which damages the reputation of others.

#### Assembly and Association

Everyone has the right of peaceful assembly. No notice shall be required for assembly in a private place or in a place open to the public. For assembly in a public place prior notice shall be given to the competent authority which may prohibit the assembly only for reasonable apprehension of public security and safety. Everyone has the right to associate for any legal purpose. Associations pursuing directly or indirectly political purposes by means of military training or association operating in a para-military fashion shall be prohibited.

#### Family rights

A man and a woman have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice. However, both spouses shall have equal rights, obligations and dignity. Both parents shall have responsibility for the upbringing, formation and education of the children, even if born outside wedlock. The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as they shall be recognised to children born in wedlock. Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case. Both parents have the right and the duty to choose an acceptable formation and education for their children.

#### Procreative Freedom

All people who so desire shall enjoy the freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe. Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

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## 28. Cultures and Traditions

Everyone shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

## 29. Human rights in the Constitution

All fundamental human rights and all those other rights which are inherent to fundamental human needs and aspirations as they evolve with the changes and growth of society, and as they will be recognisable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

## ECONOMIC, SOCIAL AND POLITICAL RIGHTS

### Economic Rights:

## 30. Free Enterprise

The right to free economic initiative and enterprise shall be recognised, protected and encouraged by the Federal Republic and the member States. The Federal Republic shall assist the member States to assist small businesses and- provide other incentives to encourage access to economic opportunities. Within the limits set forth by the law to protect the public interest, each enterprise shall be free to choose and organise the means of the production as it best sees fit.

## 31. Contractual autonomy

Within the limits set forth by the law to protect the public interest, the Federal Republic shall assist the member States to recognise and protect the right of individuals to self-regulate and organise their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.

## 32. Commercial and Insolvency Law

Each member State shall promote uniformity of their commercial and insolvency laws with those of other states and countries.

## 33. Permits and Licensing requirements

The Federal Republic shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements. Permits and licences shall be issued on the basis of objective and reasonable standards and criteria.

## 34. Private Property

Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social,

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environmental and collective needs. The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the power of taxation.

#### Expropriation

The Federal Republic of South Africa or another entity authorised by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.

#### Property of the Federal Republic

The Federal Republic of South Africa or its instrumentalities may own property as private or public property. Public property shall not be alienated or encumbered and shall be related to the exercise of public functions or shall be held by the Federal Republic or its instrumentalities in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. Parliament shall publish a yearly report on the property owned by the Federal Republic indicating their current and planned use and their maintenance and carrying costs.

#### Public Enterprise

No enterprise shall be acquired or conducted by the Federal Republic of South Africa or its instrumentalities either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorised by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatised.

#### Communal Property

The Federal Republic shall assist the member States to recognise and protect Communal Property. Communal property shall be administered and regulated by traditional and customary Rules.

#### Practices in restraint of trade

All monopolies and practices and agreements in restraint of interstate trade, commerce and free market competition shall be prohibited.

#### Agriculture

The Federal Republic of South Africa shall assist the member States in encouraging productive agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The Federal Republic of South Africa shall also assist the member States promoting agricultural cooperation and assisting farmers on a cooperative basis.

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## Social Rights:

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### Right to Education

All citizens shall have the right to receive a basic education and professional

training. The Federal Republic of South Africa may set general standards to assist the members States in determining the period and the minimum educational requirements for compulsory education. The Federal Republic shall support the citizens' aspiration to higher education by means of scholarship and by promoting the highest standards of excellence in education.

Both private and public schools shall ensure open and equal access to educational opportunities. Parents shall be entitled to participate in the administration and operation of their children's schools.

### Right to Work

Everyone shall have the right to access any job opportunity for which he or she is qualified. The Federal Republic shall assist the member States to promote the full employment of all citizens. No one's employment shall be terminated for political reasons or in violation of his or her constitutionally protected rights. Everyone shall have the right to receive a fair compensation for his or her work, shall be entitled to at least one vacation day a week, to a period of paid vacations during the year and to a severance payment. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law of the member States.

### Protection of Women

The Federal Republic shall operate to ensure that both federal and state law extend special protection to women in recognition of their function and condition in society. The Federal Republic shall assist the member State to guarantee maternity leave, to provide assistance to mothers in the work force, and to ensure equal access of women to political, social and economic opportunities by means of special treatment and privileges to be in force until such time when the condition of women in the Federal Republic has significantly improved.

### Senior Citizens

The Federal Republic shall assist the member States to promote the economic sufficiency of senior citizens and provide social services to assist them in relation to their housing, care, health, cultural and leisure needs.

### Youth

The Federal Republic shall assist the member States to promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

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#### Schools

Everyone shall have the right to establish private schools. Private schools shall have the power to determine their own curricula and syllabi within the general parameters set forth by law of the member States and by the Federal Republic for the purposes of recognition and equipollence of degrees.

#### Universities

All public universities and institutes of higher education in the Federal Republic shall be entitled to regulate their organisation and operations within the general parameters set forth by law of the member States.

#### Health Care

All citizens shall have the right to receive medical attention and care in case of need. The law of the member States shall determine the implementation of this right. The Federal Republic shall assist the member States to develop policies of prevention, treatment, rehabilitation and integration of those who are physically, sensorially and mentally handicapped, including those who are substance addicted.

#### Job Conditions

The law shall ensure safe job conditions and shall provide special protection for women, minors and untrained labour. &

#### Housing

The Federal Republic shall assist the member States to promote conditions to ensure that all citizens have the possibility of living in a dignifying habitation and to facilitate the purchase of residences through credit facilitation and other programmes. All citizens have the right to receive shelter and shall have equal access to housing opportunities.

#### Research, Arts and Teaching

The freedom of scientific research, artistic expression in all its forms and teaching is recognised and shall be guaranteed.

#### Right to a Pleasant and Clean Environment

The Federal Republic of South Africa shall recognise the rights of present and future generations of citizens to live in and enjoy a pleasant and clean environment. The law shall determine the cases and the limits in which citizens may bring legal actions on behalf of the community against those who cause environmental damages. The Federal Republic shall assist the member States in protecting and promoting the quality of the human and natural environment, and may set forth environmental standards and criteria.

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#### 54. Labour Rights

Everyone shall have the freedom to form and join trade unions and employers' associations. Member States shall respect and protect the right to strike but may limit its exercise in cases determined by their law for reasons of public security and safety. Labour organisations shall have the right to negotiate and execute collective bargaining agreements to be effective with force of law vis-a-vis the category of workers covered by their provisions. During these negotiations the labour organisation shall be represented on the basis of the number of their members. Trade unions shall have the right to conduct reasonable activities in the work place aimed at improving labour conditions. Member States may impose requirements on the trade unions only to ensure that they are organised and operated with full internal democracy.

#### Political Rights:

#### 55. Right to Vote

a. All citizens of eighteen years or older shall have the right to vote. The vote shall be personal, secret, free, and equal. The right to vote may be suspended by a judicial adjudication of incompetence, or by an irrevocable sentence for major crimes specified by the law. .

b. The law recognises, and the Federal Republic of South Africa shall facilitate, the exercise of the right to vote by citizens who are outside the State.

#### 56. Right to Petition and to Initiate Legislation

Any citizen has the right to petition Parliament and any branch or level of government. A citizen's legislative proposal signed by five hundred citizens may be submitted to Parliament.

#### 57. Freedom of Information

Any citizen has the right to access and receive any information or document which is in the possession of the Government of the Federal Republic of South Africa or its direct instrumentalities or of any of the commissions or agencies established under this constitution, provided that such document or information is not privileged as established by law to protect privacy, commercial secrets or national or State security. During the process of judicial review of the government's decision to withhold information, the court shall have the power to examine /in camera the information withheld.

#### 58. Political Parties

The citizens have the right to form political parties to participate in all levels of democratic life. No one shall be directly or indirectly compelled in any way to join

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a political party or shall be penalised for not belonging to one. Political parties shall ensure internal democracy in their organisation and operations.

#### Media of Mass Communication

Anyone shall have the right to establish media of mass communication, including newspapers, cable, radio and television stations. The law shall regulate the rights of citizens and political parties to access media of mass communication under the control of the government or in situations of virtual hegemony or monopoly.

#### OBLIGATIONS AND DUTIES

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#### Allegiance to the Constitution

All citizens shall have the duty to uphold this constitution and live by the rule of law. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

#### Contribution to Public Expenditures and Needs

All citizens have the duty to contribute to the common needs and to public expenditure by reasons of their resources. The tax system shall follow principles of progressive taxation, but shall not create a disincentive for the production of wealth.

The Federal Republic of South Africa shall encourage voluntary charitable activities and other forms of expression of social solidarity.

#### Military obligations

All citizens have the sacred duty to defend the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the Republic.

#### Duty to work

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the Republic

#### Family duties

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

#### FEDERAL POWERS

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#### Powers of the Federal Republic of South Africa

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The Federal Republic of South Africa shall have the power to exercise exclusive legislative, administrative and judicial functions and powers in the following subject matters:

- monetary system, foreign credits, exchange and convertibility
- general principles of legislation to coordinate the regulation of banking, credit and insurance
- general principles of legislation to coordinate the regulation of environmental protection of national interest
- general principles of legislation to coordinate economic development and foster interstate commerce among the states
- general principles of legislation to coordinate the technical regulation of equipment of communication
- legislation to provide negotiation and procedural coordination of the State's policies with national policies and the policies of other states in the field of transportation, energy, interstate and foreign commerce, economic development, consumer protection, banking and social welfare in so far as they relate to the interests of the Federal Republic of South Africa. Parliament may enact legislation to empower the Government to enter into agreements with the Government of the Federal Republic of South Africa to ensure policy coordination in other fields. :
- nationality, immigration, emigration, alienage and the right of asylum
- international relations
- defence against foreign enemies
- organisation and administration of the federal system of justice in the subject matters of federal prerogative
- admiralty and maritime law and regulations
- air transportation law and regulations
- protection of intellectual property rights
- external customs, tariffs and foreign trade
- legislation on weights and measures
- use of the area of exclusive economic influence
- other matters as authorised by a constitutional law of the Federal Republic of South Africa.

The Federal Republic of South Africa shall have the power to summon the State militia to defend the territory, freedom and liberty of the Federal Republic of South Africa from an external enemy. When entering or stationing in the territory of a member State, the armed forces of the Federal Republic of South Africa or the armed forces of other member States shall seek the approval of the concerned

member State.

All powers not reserved by this constitution to the Federal Republic of South Africa shall belong to member States and to the people respectively. When required by

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this constitution to assist member States in the exercise of their functions, the Federal Republic of South Africa shall do so in a fashion which preserves the integrity of the jurisdiction of the concerned member State. However, it may condition its assistance to the compliance with reasonable criteria and directives.

#### Federal Power of Taxation

The Federal Republic of South Africa shall have the power to impose reasonable taxes and duties in the territory to support its functions under this constitution. In the exercise of this power the Federal Republic shall consult with the member States.

In providing assistance to member States, including but not limited to direct and indirect financial assistance, the Federal Republic of South Africa shall ensure that the overall amount of revenues collected in the territory by the Federal Republic, by member States and by their respective direct instrumentalities is equally distributed among the member States on the basis of their population adjusted by compelling geographical and social considerations. To achieve this purpose, the financial transfers of the Federal Republic to the member States shall be adjusted and administered so as to equalize among all member States the overall amount of revenues collected or transferred. To achieve this result, during its consultations with any member State the Federal Republic may condition transfers and financial assistance to the member states to the fact that the member States raises a certain amount of revenues in its state territory.

An independent Financial Equalization Commission shall receive information from the Government and from the member States on the federal transfers to the member States, including financial and non financial assistance, and shall report with recommendations to the Parliament and the Government. The report of the Commission shall accompany the presentation of the budget in Parliament. The Commission shall consist of seven members appointed for five years with a resolution of the Senate adopted by a two thirds majority.

#### Position of the Member States in the Federation

The Federal Republic of South Africa recognizes and protects the sovereign right of the member States to democratically adopt state constitutions within the parameters set forth in this constitution, provided that such state constitutions are ratified by popular referendum. New member states may be created within the territory of the Federal Republic of South Africa, provided that a new constitution for the one or more states to be created is approved by the absolute majority of all South African citizens who are citizens of the one or more states directly affected. The state constitutions adopted before the adoption of this constitution are hereby ratified.

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## THE LEGISLATURE

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## Parliament

Parliament represents the people of the Federal Republic of South Africa and shall consist of two houses, a National Assembly and a Senate. The members of both

houses are elected for a five year term.

Any citizen of twenty one years or older may be elected to the National Assembly, any citizen thirty five years or older may be elected to the Senate. No one shall be a member of both houses simultaneously, nor shall hold any other public office at the time of his or her qualification to office. The electoral law may determine additional cases of incompatibility and lack of qualification. The members of Parliament shall disclose any employment or profession of whatever nature conducted during the time of their legislative office. At any time they shall disclose potential conflicts of interest in relation to any activity of the house they belong to. A conflict of interest shall not disqualify a member of Parliament.

The National Assembly shall consist of 250 members each of whom shall be elected in one of the 250 constituencies into which the State shall be divided for the purposes of this election. The Senate shall consist of four members for each member State elected on the basis of the constituency system

The office of the members of Parliament terminates upon qualification of their successors.

The members of Parliament shall represent the interest of the people in its totality and complexity and shall not be deemed to be bound by any specific mandate.

Parliament shall meet annually in one ordinary session from September to December. Each house shall be summoned in session at any time by its President, any of its Vice Presidents, by the President of the Federal Republic or by one tenth of its members. Parliament shall meet twenty days after the election of its members and shall proceed to verify the eligibility and qualification of its members.

All meetings of any house of Parliament and any committee thereof are public and may be broadcast. In special cases any house of Parliament or committee thereof may hold meetings behind closed doors. The reasons justifying the secrecy shall be confidentially disclosed to the Constitutional Court which may order that the meeting be public.

## Powers of Parliament

Parliament shall exercise the legislative power of the Federal Republic of South Africa, approve its budgets, control the action of the Government, ratify by law all

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international treaties of the Federal Republic and exercise the other powers granted by this constitution.

Each house shall establish its own Rules, autonomously approve its own budget, and regulate the personnel. The Rules and any amendment thereof shall be approved by absolute majority. The Rules shall recognise and respect the role of the opposition and protect political minorities. The Rules may limit but not prohibit reasonable filibustering.

Each house shall elect a President and two Vice Presidents for a two year term and shall assign its members to committees. Joint sessions of Parliament shall be presided over by the President of the National Assembly and shall be governed by its Rules. The Presidents shall exercise the administrative powers and police authority within their respective houses. All political parties shall be represented in the committees of each house.

Each house shall be validly in session when at least half of its members are present. Unless otherwise provided for in this constitution, all deliberations of any of the houses of Parliament must be adopted by the majority of the members who are present.

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Parliament shall adopt legislation to implement this constitution and to meet the needs, wants and aspirations of the people of the Federal Republic.

Parliament shall approve the budget and the year end financial statements of the Federal Republic. Parliament shall have the power to authorise the government to operate for no more than three months with a provisory budget pending the approval of the budget. The law approving the budget shall not introduce additional taxes or expenses. Any law involving new or additional expenses shall indicate the source of revenue to cover them.

Parliament shall have the power to adopt ad hoc legislation to enable the Governor to a single exercise of the power to pardon or give amnesty for specified types of offenses committed prior to the introduction of the legislative proposal.

Each house in accordance with its Rules shall have the power to oversee and control the public administration of the Federal Republic. The committees of each house shall have the power to hold hearings in relation to which they may compel the appearance of witnesses and the production of documents, and shall have the power to request any Minister or public official to appear, provide information, conduct research and produce reports.

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- a. The legislative function shall be jointly exercised by both houses of Parliament. Any member of each of the two houses shall have the power to introduce legislation. The Government shall have the power to introduce legislation in either or both houses. Each legislative proposal shall be accompanied by a brief report. Legislative proposals shall be assigned by the Rules Committee to one of the committees of the house in which the proposal has been introduced. The committee shall read any proposal, submit it to article by article vote and to a vote on the entire proposal, and send it to the full house for approval. The full house shall read the proposal, submit it to article by article vote and to a vote on the entire proposal. The legislative proposal approved in identical text by both houses shall be transmitted to the Governor for signature and promulgation.
- b. The President shall have the power to veto the legislative proposal in its entirety or on a line-item basis, in which case the legislative proposal shall be remanded to Parliament along with a message of the President. If Parliament by absolute majority of its members votes to override the veto, the President shall sign and promulgate the law.
- e. The law shall be promulgated within ten days from the President's signature and becomes effective ten days from its promulgation unless a shorter term is provided for by the law itself. All laws shall be published in an Official Gazette on the day of their promulgation.
- d. All political parties shall be represented in the committees of each house.
- e. Each house shall have the power to adopt rules of organisation and operation.

#### 71. Privileges and immunities

No member of Parliament shall sustain criminal or civil liability for the opinions expressed in connection with his or her office in or outside Parliament. During the time of his or her mandate no member of Parliament shall be searched, detained or tried for any offence without the authorization of the house to which he or she belongs, or of a predetermined committee thereof. This shall not apply to arrest in flagrante delicto. The law shall determine the salary of the members of

Parliament.

### THE EXECUTIVE

#### 72. The President

- a. The President shall be elected by the majority of the votes cast in a state-wide constituency election. The President shall be forty years or older and shall be elected for a five year term not renewable. The President shall not hold any other public office or exercise any other trade or profession.

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The President is the Head of the State, the Prime Minister of the Government of the Federal Republic, the supreme commander of the Armed Forces and represents the federation. The President may exercise independently from the Government only the following powers:

- accreditation of ambassadors and foreign delegations
- approval and promulgations of the laws
- civilian and military awards and honours as provided by the law
- first convocation of the Parliament after elections and when .appropriate
- organization and operation of the President's office
- clemency, indemnity and amnesty when so empowered by the law
- matters ascribed to the President by this constitution.

All actions of the Presidents must be countersigned by the competent Minister who shall bear joint responsibility for the actions of the President

Should the President be incapacitated, the functions ascribed by this constitution to the President are exercised by the President of the Senate while the Minister of Home Affairs shall also act as chief Minister of the Government. Should the President become permanently incapacitated the President of the National Assembly shall call an election.

The President may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of Parliament in a joint session summoned by the President of the National Assembly. The President may be removed from office only on the grounds of mental incapacity, treason or felony. The Constitutional Court shall direct the investigation.

The Government

The Government shall conduct all administrative functions authorised and all missions mandated by the law.

The Government consists of the President and the Ministers. The Ministers are chosen and nominated by the President. Within ten days from its formation the Government shall be collectively confirmed by a vote of confidence of both houses of Parliament. At any time and with three days's prior notice to its members, any house of Parliament may adopt with a simple majority a resolution of no-confidence, in which case the Government shall resign and a new Government shall be chosen and appointed by the President. At any time and with ten days's prior notice to its members, any of the houses of Parliament may adopt with a two-thirds majority of its members a no-confidence resolution causing the resignation of the President and fixing a date within forty days from the adoption of the resolution for the election of a new President. Any confidence or no-confidence resolution must be introduced by at least twenty percent of the members of the house, must be accompanied by a report and shall be voted with personal calls.

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The vote of one or both houses against a legislative initiative or a proposal submitted by the Government shall not be construed as a no-confidence vote.

The members of the Government are collectively responsible for the actions of the Government. Each Minister shall be individually responsible for the actions of his or her ministry.

The Senate, by absolute majority of its members, may authorise that criminal charges be pressed against the President or a Minister for crimes committed in connection with the exercise of their functions. The Senate by simple majority may authorise that criminal charges be pressed against the President or a Minister for crimes not connected with the exercise of their functions. This latter authorization shall not be required to proceed on such charges after the President or the Minister has relinquished his or her office. The Constitutional Court shall decide on the charges against the President or a Minister authorised by the Senate and shall determine sanctions as it deems it appropriate.

The office of President or Minister shall be incompatible with any other public office or profession or employment.

The Government shall be organised by law in accordance with this constitution. Public officials shall be held personally accountable for the actions of the offices under their direction. Each ministry or agency shall be held liable for damages caused by gross negligence or malice of government officials.

The law may establish independent regulatory agencies. The people in charge of the agency shall be in a fiduciary relationship with one or more members of the Government at whose will they may be removed, but do not need to resign when the government resigns or its term expires. The Government and the responsible Ministers shall be accountable to Parliament for the actions and operations of the independent regulatory agencies. The law may extend to the people in charge of the agencies the same immunities set forth in this constitution for the members of the Government.

All actions of the Government and of the public administration are subject to judicial review for violation of the law and improper use of discretionary powers. This shall not apply to high actions of government.

#### THE JUDICIARY

74.

#### Independence of the Judiciary

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The Judiciary shall have jurisdiction on cases or controversies which, when proposed, are based on the application of federal law and regulations. Justice shall be administered in the name of the people of the Federal Republic of South Africa. Judges shall be subject only to the law. They may not be removed from office without the authorization of the Judicial Service Commission.

#### Judicial Service Commission

The Judicial Service Commission is the organ of self governance of the judiciary. The President shall be the President of the Commission. The Commission consists of an additional twenty members to be selected among judges, lawyers and advocates with at least ten years of professional experience and university law professors. Seven shall be elected by judges and prosecutors, six appointed by Parliament, three by the bar association, two by the Attorney General and two by the Civil Service Commission, and they shall serve for one non-renewable five-year term during which time they shall not exercise any other professional activity or hold other public office.

The Commission shall implement and administer the fundamental principles on the organisation of the judicial services set forth in a general law to be adopted by Parliament. The Commission shall set forth and administer the rules on the selection by public competition and on the qualification of judges, the rules on transfers, promotions and assignments of judges, age limits, and the code of judicial conduct and responsibility to be enforced by the Commission. The Commission may receive and shall consider complaints and requests for disciplinary actions against judges and prosecutors received from the Government and the general public.

The Judicial Service Commission shall approve all appointments of exceptionally distinguished university law professors, lawyers and advocates to any level of the judgeship made by Parliament. The Commission shall also determine qualifications, rules and procedures for the election of judges of peace and honorary judges.

The Judicial Service Commission shall approve the rules adopted by any court to regulate the proceedings before it and the related administrative functions.

The Judicial Service Commission shall submit to Parliament a yearly budget, including proposed salary levels for all people working in the judicial services. As a part of its budget the Commission shall collect and administer for the benefit of the judicial service all taxes and duties levied in relation to the administration of justice as they are authorised by law. Any funds which have not been spent by the end of the fiscal year shall be carried over to the following year. The Commission may initiate legislation in matters related to the judiciary and judicial services.

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76. The Supreme Court

The Supreme Court of the Federal Republic of South Africa shall guarantee the uniform interpretation of the law and shall be the court of final appeal.

77. Specialised Courts

a. During peace time military courts shall have jurisdiction only over military personnel on active duty.

b. Tribal, customary, and religious courts shall have concurrent jurisdiction over cases and controversies which, when proposed, are based on the application of traditional and customary law and religious rules respectively. The law of the member States shall identify and recognise such courts, and determine to which limited extent they may decide on incidental issues and matters not based on traditional and customary law or on religious rules.

c. There shall be no special or extraordinary tribunal or courts. Within the ordinary court system the Judicial Commission may create specialised sections for given subject matters, and may require the participation of qualified experts to the administration of justice in forms and manners determined by the law.

78. Prosecutors

The office of the Director of Public Prosecution shall be a distinct and separate part of the judiciary equally governed by the Judicial Service Commission. The carrier and the roles of judgeship and prosecution are separate and only in exceptional circumstance shall the Judicial Service Commission authorise a prosecutor to take the office of judge or vice versa. Prosecutors are entitled to the same guarantees, immunities and financial treatment as judges. The prosecution of criminal offenses shall be mandatory. The Director of Public Prosecution shall submit a yearly report to the Judicial Service Commission on the cases which his office has not prosecuted because of special agreements with the suspected party or for other public interest reasons. The report may omit the names of the concerned parties.

ECONOMIC PROVISIONS

79. Balanced Budget

a. At the beginning of the fiscal year the Government shall submit to Parliament a balanced budget for approval. Parliament shall amend and modify any item or portion of the draft budget. The approved budget shall indicate sources of revenue to cover all federal State expenditure.

b. By a vote of two-thirds of its members Parliament may authorise the Government to finance the budget by resorting to public debt. When seeking such authorization the Government shall provide a report indicating the foreseeable sources of

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repayment of the public debt and the underlying economic assumptions. Any increment of the public debt shall be so authorised.

The budget shall be divided in titles, sections and chapters. Any allocated funds which by the end of the fiscal year have not been spent shall be automatically carried over to the next year within the same budget chapter if it exists, or shall be transferred to the most closely related budget chapter if the same budget chapter no longer exists.

#### Banking

â\200\230The Federal Republic shall regulate banking to ensure harmony in the monetary policies set forth by the member states and to guarantee the strength and prosperity of the monetary and banking systems of the Federal Republic of South Africa. An autonomous Central Bank of the Federal Republic of South Africa shall be established. The President of the Central Bank shall be appointed by the President with the advice and consent of Parliament and serves at the pleasure of the President. The President of the Central Bank shall submit a yearly report to Parliament on the monetary status of the Federal Republic and on the status of the banking system of the country. The Central Bank shall have regulatory powers on banking and credit, and shall be independent within the parameters of the law to use tools of monetary intervention in the public interest. The Central Bank shall have the power to determine its organisation and operations.

#### Privatisation Commission

A Privatisation Commission shall be established to transfer to the private sector the enterprises which are under the control of any government in conflict with the provisions of this constitution. The Commission shall consist of nine highly qualified and independent experts in economics, finance and business administration, three appointed by the President, four by Parliament and two by the Chamber of Commerce.

The Privatisation Commission shall develop a privatisation plan to be submitted to Parliament for approval. The Commission shall adjust the implementation of the privatisation plan so as to best cope with changing economic circumstances, seeking the approval of Parliament when necessary. The privatisation effort shall be balanced, shall maximise economic efficiency and shall support economic growth. The phases and the time frame of this effort shall be set in the privatisation plan. The Government shall implement the privatisation plan.

The Privatisation Commission shall monitor the implementation of the privatisation plan so as to ensure that the privatisation effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste. Every six months the Commission will issue a report to Parliament.

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The Privatisation Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of Parliament.

#### OTHER POWERS OF THE FEDERAL REPUBLIC

82.

##### The Independent Auditor General

There shall be an independent Auditor General. The Auditor General shall audit the financial activities of the Federal Republic, the Commissions, the independent regulatory agencies, and any enterprise, entity or instrumentality owned or controlled by the Federal Republic. All administrative actions involving financial expenditure shall be subject to the preventive financial control of the Auditor General or his designees. The law shall ensure the independence of the Auditor General.

##### The Civil Service Commission

The Civil Service Commission shall consist of thirteen members, two appointed by the President, three by Parliament, two by the Judiciary Commission, two by the Chamber of Commerce and four by the representatives of consumer groups registered with Parliament and convened for this purpose by a committee of Parliament. The members of the Commission shall be qualified and independent experts on public administration, business management or regulatory processes. The members shall not hold any other public office and prior to their appointment shall disclose any possible conflict of interest. After the appointment they may not undertake activities which may cause additional conflicts. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to Parliament its own budget.

The Civil Service Commission shall propose to Parliament legislation organising and maintaining all public offices of the Federal Republic including independent regulatory agencies, determining missions, competence, jurisdictions and responsibilities of each office. The Federal Republic may submit proposed legislation to the Commission. Concerned interests may also submit proposals to the Commission.

The Commission shall oversee the operations of the public administration of the Federal Republic to ensure impartiality and efficiency, to prevent governmental waste, corruption, nepotism, inefficiency and disfunctions, and to guarantee equal access by all citizens to the services and job opportunities offered by public offices. The Commission shall investigate and report on complaints concerning the

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operation of any administrative office in the Federal Republic, including police, defence force and the prison service.

The Civil Service Commission shall identify requirements and qualifications for holding any given public office and supervise open competition to fill the posts. The Commission shall also develop and submit to the approval of the Federal Republic any affirmative action programme to be implemented within governmental structures.

The Civil Service Commission shall also develop, monitor and assist the adoption and implementation by the federal offices and agencies of procedures accompanying the major administrative actions and all rule-making processes to solicit and ensure the participation and the input of the affected interests and of the public.

The Civil Service Commission shall prepare a yearly report on the status of the public administration expressing any applicable recommendation, and may provide testimony to Parliament and hearings held by the Government.

#### Electoral Commission

The Electoral Commission shall consist of nine members, three appointed by the President, three by Parliament, and three by the Judiciary Commission. The members of the Commission shall be qualified and independent professionals. The members may not hold any other public office and prior to their appointment shall disclose any possible conflict. After the appointment they may not undertake activities which may cause additional conflicts of interest. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the Federal Republic administration. The Commission proposes to Parliament its own budget.

The Electoral Commission shall organise and supervise the elections provided for in this constitution. The Electoral Commission shall ensure the fairness of the political debate and the effective opportunity for all citizens to participate in the democratic process. The Commission shall adopt rules to ensure fair campaigning and to prevent violence and intimidation, and shall have the power to summon and direct the Federal Republic police and militia to ensure peace and order during the political campaign period, and during and immediately after the elections.

The Commission shall issue rules requiring all political parties and candidates to disclose sources and amounts of financing, rules setting limits to the financing received from any given source, and rules governing the conduct of political parties and candidates during the campaign period. All constitutions of political parties shall be deposited with the Commission.

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The Commission may initiate legislation on electoral matters and shall administer and distribute any public financing to political parties and candidates provided for the legislation.

The Electoral Commission may organise political debates and decide time allocation in government controlled media of mass communication. When necessary to ensure the fairness, impartiality and balance of the electoral process, the Commission may require private media of mass communication to publish statements or to provide coverage of given information.

The Electoral Commission shall determine and update the boundaries of the electoral constituencies of the National Assembly. In doing so the Commission shall aim to ensure internal balance in each constituency and representation of the variety of social and cultural interests present in the Federal Republic. Each constituency shall aim to have the same number of electors.

The Electoral Commission administers the elections and announces the results:

The rules adopted by the Electoral Commission and its actions may be challenged before the Constitutional Court with an emergency procedure for violation of the principles of this constitution, or because arbitrary or capricious or inappropriate.

#### Regulatory Relief Commission

The Regulatory Relief Commission shall consist of thirteen members, two appointed by the President, three by Parliament, two by the Judiciary Commission, two by the Chamber of Commerce and two by representatives of consumer groups and two by representatives of industry registered with Parliament and convened for this purpose by a committee of Parliament. The members of the Commission shall be qualified experts on public administration, business management or regulatory processes.

The Regulatory Relief Commission shall be empowered to request the repealing or amendment of burdensome, unnecessary or inadequate regulations and permit requirements adopted by Parliament, the Government and any independent regulatory agency. Any entity receiving such a request of the Commission shall reply within twenty days. If the Commission does not deem the reply to be satisfactory, it may introduce legislation in the appropriate legislature.

The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in Parliament and hearings held by Governments, as required.

#### Economic Development Commission

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The Economic Development Commission shall consist of thirteen members, one appointed by the President, four by the Senate, two by the Civil Service Commission, two by the Chamber of Commerce, two by representatives of consumer groups and two by representatives of the trade unions registered with Parliament and convened for this purpose by a committee of Parliament. The members of the Commission shall be qualified experts in economics, finance, business management and futurism.

The Economic Development Commission shall prepare a nation wide plan of economic development of the Federal Republic and assistance to businesses to be implemented through legislation and administrative activities of the Federal Republic. The Commission may recommend actions to be taken by, and forms of assistance to be provided to the member States. The Commission shall monitor the implementation of the plan as approved by the Federal Republic and recommend modifications and adjustments as necessary.

The Economic Development Commission shall prepare and submit to Parliament a yearly report on the status of the economy, and on foreseeable economic and technological trends at State, national and international level.

The Regulatory Relief Commission may prepare or commission additional reports on economic and financial matters and may provide testimony in Parliament and hearings held by Government, as required.

#### Environmental Commission

The Environmental Commission shall consist of thirteen members, two appointed by the President, three by Parliament, two by the Judiciary Commission, two by the Chamber of Commerce and four by representatives of environmental groups registered with Parliament and convened for this purpose by a committee of Parliament. The members of the Commission shall be qualified experts on environmental sciences or social sciences.

The Commission shall investigate matters related to the protection of the natural and human environment, may introduce legislation at State and regional level to protect and enhance the quality of the natural and human environment, and may make recommendations to State and Regional Departments of the Environment.

The Commission shall investigate and report on complaints concerning the improper utilisation of non-renewable natural resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of the State.

The Environmental Commission shall prepare a yearly report on the status of the environment in the Federal Republic expressing any applicable recommendations, and may provide testimony in Parliament and in hearings held by Government, as required.

#### Consumer Affairs Commission

The Consumer Affairs Commission shall consist of thirteen members, two appointed by the President, three by Parliament, two by Judiciary Commission, two by the Chamber of Commerce and four by representatives of consumer groups registered with Parliament and convened for this purpose by a committee of Parliament. The members of the Commission shall be qualified experts on consumer protection, environmental problems or social sciences.

The Consumer Affairs Commission shall investigate matters related to the protection of consumers, and may introduce legislation at State and regional level to protect consumers. Of its own power the Commission may request that general terms and conditions of adhesion contracts be negotiated with and approved by the Commission as a condition of their validity and enforceability.

The Commission shall have the power to determine the requirements for product labelling including product information and warnings.

The Commission may be delegated by the State or regional legislature to set prices and rates for services and products rendered in conditions of natural monopoly.

Any immediately adversely affected interest may seek judicial review of any decision of the Commission.

The Consumer Affairs Commission shall prepare a yearly report on the status of consumer protection expressing any applicable recommendations, and may provide testimony in Parliament and in hearings held by Government, as required.

#### Other Powers

Individuals and social, cultural, religious and political formations when exercising their powers or their autonomy within the freedom and liberties recognised and guaranteed by this constitution, shall have equal standing as the powers of the Federal Republic.

#### REFERENDUM

90.

#### Referendum

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Three hundred and fifty thousand citizens with voting rights, shall have the power to call a referendum to repeal a law or a portion thereof. The referendum shall be validly held if at least fifty percent of those entitled to vote participate. The proposal shall be approved by the majority of the votes validly cast.

#### ARMED FORCES

##### 91. Armed Forces

a. The Armed Forces shall be organised by law adopted with a two thirds majority of Parliament. The law may require compulsory service in the armed forces when required by special and extraordinary circumstances. The law shall ensure internal democracy in the Armed Forces indicating how the exercise of constitutional rights may be limited so as to be compatible with military duties.

b. The supreme command of the Armed Forces shall vest in the Supreme Military Committee. The Supreme Committee shall be chaired by the President and consists of three civil members and three members of the militia appointed by Parliament in accordance with the law.

e The Armed Forces may be divided in subdivisions under different commands.

d. Citizens of the State may participate in the armed forces of the Federal Republic of South Africa only on a voluntary basis. In case of war or of authorised mobilisation the Federal Republic of South Africa may conduct military proscription through the militia or and may instruct the offices of the State militia as required.

e. The State shall not suppress the citizens' right to bear arms, but may limit it in special cases and circumstances. '

#### EMERGENCY POWERS

##### 91. Emergency Powers

a. The President may declare an emergency in the Federal Republic or in determined areas of the federation. The Declaration of Emergency shall provide a general indication of the type of emergency and shall indicate in general terms which powers and resources of the Federal Government, the member States and the local governments, or of the citizenry the President intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and actions the President intends to undertake. Within twenty four hours the President shall summon Parliament to a joint session to ratify the Declaration of Emergency. Parliament may modify the Declaration of Emergency. If the emergency is such that Parliament may not be summoned into

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session, the Declaration of Emergency shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the President of the National Assembly in this order.

The President shall modify the Declaration of Emergency to provide additional information, to detail the information previously provided and to report on the actions undertaken to respond to the emergency.

Parliament or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time. The President may require that Parliament or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.

Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in this constitution.

#### CONSTITUTIONAL GUARANTEES

92.

93.

#### Jurisdiction of the Constitutional Court

The Constitutional Court shall have original and exclusive jurisdiction in the following matters:

- review the constitutionality of the legislation of the Federal Republic
- provide a binding but general advice to any court of last resort of member States engaged in the interpretation or assessment of constitutionality or validity of federal law
- resolution of conflicts between federal and State legislation to be conducted in a fashion consistent with the provisions of the constitutions of member States
- resolution of conflicts between Federal Republic of South Africa and the member States to be conducted in a fashion consistent with the with provisions of the constitutions of the member States.
- resolution of conflicts between member States
- resolution of conflicts between powers of the Federal Republic
- criminal charges against the President and the Ministers
- verification of the democracy of the statutes of political parties
- other matters as set forth in this constitution or in constitutional laws.

#### Composition and operation of the Constitutional Court

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The Constitutional Court shall consist of fifteen members, three of whom shall be appointed by the President, six by Parliament with resolution supported by two-thirds of the members of each house of Parliament, three by the Judicial Service Commission and three by the bar association.

The Justices of the Constitutional Court are chosen among lawyers and advocates with more than twenty yearsâ\200\231 professional experience, university law professors with ten years of experience and higher court judges. The Justices may be foreign citizens.

The Justices are appointed for ten years running from the day on which they assume office. The Justices shall not hold any other public office or exercise any other profession in the State or anywhere in the Federal Republic of South Africa, and may not be renewed for another term. Upon retirement the Justices shall not hold any public office in the Federal Republic.

The Constitutional Court may operate by committees of four or more Justices. The members of the Constitutional Court shall elect a Chief Justice for a three year term. The Constitutional Court may adopt its own rules of organisation and operation consistent with this constitution and any applicable constitutional law. The law may not regulate any matter related to the Constitutional Court. The Court may adopt rules to integrate its composition with additional members for the exercise of its jurisdiction on charges against the President and the Ministers. Such rules will determine the qualification, if any, of the additional members and their powers.

While members of the Constitutional Court, Justices are immune from any criminal prosecution. Justices may be impeached for any reason by a resolution adopted by three fourths of the members of both houses of Parliament. Their salaries are set forth by the law and shall not be inferior to the salary of a Minister. The Constitutional Court drafts and proposes to Parliament its own budget.

#### Access to the Constitutional Court

Any issue of constitutionality of laws, or democracy of the statutes of political parties or validity and legitimacy of a collective bargaining agreement raised by any of the parties to a case or controversy before any court, which is not manifestly without foundation, shall be remanded to the Constitutional Court for resolution.

Political parties represented in Parliament, the Ombudsman as well as trade unions, civic and consumer groups, major media of mass communication and other social, religious and cultural formations registered with the Constitutional Court in accordance with its rules, may commence an action to declare the unconstitutionality of laws. One hundred members of a political party may commence an action to review the democracy of their political party statute.

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Any member State, the Federal Republic of South Africa, the Ombudsman and any power of the Federal Republic may commence an action to resolve a conflict among government organisations.

Decisions of the Constitutional Court shall declare null and void any administrative action, or political party's statute or collective bargaining agreement which are in violation of this constitution. The decision of the Constitutional Court may also mandate the rule of resolution of a conflict among the government's organisations and powers of the Federal Republic.

All decisions of the Constitutional Court shall have erga omnes retroactive effect and may provide rules to recognise rights meriting protection and which vested in good faith under norms declared null, void or ineffective.

#### The Ombudsman

The Ombudsman shall be independent and subject only to this Constitution and to the law. No public official shall interfere with the exercise of the Ombudsman's functions or shall refuse full assistance as it may be needed. The Ombudsman's salary are set forth by the law and shall not be inferior to the salary of a Minister. The office of the Ombudsman drafts and proposes to Parliament its own budget.

The Ombudsman shall either be a judge, a lawyer or an advocate. The Ombudsman shall be appointed by Parliament on the recommendation of the Judicial Service Commission. The Ombudsman shall hold office for a non-renewable six year term. The functions of the Ombudsman include the investigation of the complaints concerning violations of rights and freedoms, abuse or use for political purposes of power, corruption and misappropriation of public monies, unfair, harsh, insensitive or discourteous treatment of anyone in the Federal Republic by a public official of any level of government, including but not limited to police, defence forces and prison personnel, manifest injustice, or conduct of a public official of any level of government which would properly be regarded as unlawful, oppressive or unfair.

The Ombudsman shall have the power to take appropriate action to call for the remedying, correction and reversal of injustices and violations of laws and regulations through the most fair, proper and effective means, including:

- negotiation and compromise between the parties concerned,
- causing the complaint along with the Ombudsman's findings to be reported to the superior of the offending party,
- referring the matter to the Director of Public Prosecution, with a recommendation,
- bringing proceedings in a competent Court for suitable remedies to secure the termination of the offending action or conduct, the compensation of the victims and/or the modification of the offending procedures,

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bringing proceeding before the Constitutional Court to challenge the constitutionality of legislation, or before a court to challenge the validity of regulations,

reviewing laws in force before the enactment of this constitution to ascertain their consistency with the principles and provisions of this constitution so as to make recommendations to the President and Parliament.

The Ombudsman shall have the power to compel the appearance of witnesses and the production of documents and records relevant to his or her investigation. The Ombudsman shall also have the power to cause anyone contemptuous of his or her subpoenas to be prosecuted before a competent Court.

The Ombudsman shall submit an annual report to Parliament on the exercise of his or her powers and functions.

The Ombudsman may be removed from office before the end of his or her term by the President acting on the recommendation of the Judicial Service Commission. The Ombudsman may be removed from office only on the grounds of mental incapacity or for gross misconduct. The Judicial Service Commission shall conduct the investigation and report to the President and Parliament. 3

The Ombudsman shall empower assistant district Ombudsmen who shall serve in decentralised offices on the basis of districts designated by the Ombudsman with the aim of maximising the accessibility of the Ombudsman's services and protection.

#### AMENDMENT PROCEDURES

96.

#### Amendment Procedures

This constitution may be amended by resolution adopted by two thirds of the members of both houses of Parliament and ratified by the two-thirds majority of the member States expressed in popular referenda. Constitutional laws and resolutions admitting new member states whose territory is outside the present territory of the Federal Republic of South Africa shall be adopted with the same procedure.

#### FINAL AND TRANSITIONAL PROVISIONS

97.

#### Federal Board of Chiefs and Traditional Rulers

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A law adopted in consultation with the member States shall establish a Federal Board of Chiefs and Traditional Rules as an autonomous entity with the power to determine its rules of organization and operation. The Board should coordinate institutions within member States which represent and/or express Chiefs and Traditional Rulers. The Board may express recommendations to, and shall be consulted by any power of the Federal Republic in any matter affecting Chiefs and Traditional Rulers. The Board may promote the recognition of selected Traditional Rules with preeminent standing in the community to be regulated through international treaties between such Traditional Rulers and the Republic of South Africa.

#### Election of the Senate

Until all member States are established pursuant to State constitutions the election of the members of the Senate shall take place in the same forms and modalities prescribed for the election of the members of the National Assembly by grouping constituencies together so that the Senate shall have 64 members.

#### Properties of the Republic of South Africa in the member States

All properties located in the Federal Republic of South Africa of which the ownership or control immediately prior to the time of adoption of this constitution vested in the Republic of South Africa or in any other body, statutory or otherwise, constituted by or for the benefit of the Republic of South Africa or any of its instrumentalities, shall be automatically transferred to and shall be vested in the member States where they are located or with which they have a substantial connection. This shall include, but shall not be limited to, movable and immovable property whether tangible or intangible and any rights and interests therein, including but not limited to, equity positions, corporate shares, bonds and obligations, and options and warrants, wherever they might be located. This article shall not apply to property necessary or instrumental to the exercise of federal powers.

#### State succession

All laws, regulations and administrative actions in force in the territory of the federation at the time of adoption of this constitution shall remain in force and shall be deemed adopted and ratified by the Federal Republic of South Africa provided that they are not in conflict with this constitution.

#### Adoption of this Constitution and General Elections

This Constitution shall be adopted by two-thirds of the de jure or de facto representatives of the member States convened in a convention as such or as multiparty negotiating convention and shall be ratified in a nation wide referendum approving this constitution with at least fifty one per centum of the votes validly cast.

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This constitution shall come into force after ninety days from the date of its ratification. Within ninety days from the ratification of this constitution the Transitional Electoral Commission shall set the date for, and call a general election to fill the electoral offices provided for in this constitution to be held no later than April 15, 1994. The Transitional Electoral Commission shall determine the constituency for such election, prepare the electors' lists and attend to all the other

matters related to the election. The Transitional Electoral Commission shall consist of nine highly qualified individuals, four appointed by the de jure or de facto representatives of the member States convened in a convention as such or as multiparty negotiating convention two by the Chamber of Commerce, two by the bar association, and one appointed by the other eight members. Should this not be possible, the President of the former Republic of South Africa, with the advice of the de jure or de facto representatives of the member States convened in a convention as such or as multiparty negotiating convention shall determine the composition of the Transitional Electoral Commission.

#### Interpretation of this Constitution

As used in this constitution inclusive language shall not necessarily be interpreted to the exclusion of similar language or situations.

Adopted by  
the representatives of the member States  
gathered in a constitutional convention  
Ratified by the People of South Africa  
in a nation-wide referendum

DRAFT  
June 18, 199