

18.05.93

MULTIPARTY NEGOTIATION PROCESS
TECHNICAL SUBCOMMITTEE #2
ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

FIRST POSITION PAPER
OF THE INKATHA FREEDOM PARTY

The IFP believes that South Africa can and must go for a straight run to democracy adopting a final federal constitution by the end of 1994. Therefore, the IFP does not believe in the need for a transitional constitution or for fundamental rights during the transition.

Moreover, political and personal freedoms during the period leading to election should be addressed through the work of subcommittee #7 on the amendment and repeal of discriminatory and restricting legislation, as well as through the activities of the TECs and the work of the structures established under the National Peace Accord.

However, the IFP has taken a clear position on the Bill of Rights which at any stage must be inclusive of all essential and internationally recognized human rights. Human rights must be accompanied by adequate mechanisms for their enforcement and justiciability.

The IFP has fully endorsed the Bill of Rights set forth in the Constitution of the State of KwaZulu/Natal approved by the KwaZulu Legislative Assembly on December 1, 1992. This Technical

Subcommittee should make reference to such a Bill of Rights both for the actual list of recognized and protected rights as well as for the mechanisms set forth for their enforcement and justiciability, including the office of the Ombudsman.

The IFP believes that the Bill of Rights set forth in the Constitution of the State of KwaZulu/Natal sets the standards for human right protection an any stage of the process of democratization of South Africa, and that therefore any exercise aimed at drafting a Bill of Rights for South Africa within any given institutional purposes shall not derogate from the minimum requirements set forth in the Constitution of the State of KwaZulu/Natal, which is attached herewith as Annex e I.

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**THE CONSTITUTION
OF THE STATE OF
KWAZULU/NATAL**

**THE CONSTITUTION
OF THE STATE OF
KWAZULU/NATAL**

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RESOLUTION

ADOPTED BY THE KWAZULU LEGISLATIVE ASSEMBLY

1ST DECEMBER 1992

WHEREAS the KwaZulu Legislative Assembly is extremely concerned by the delays and uncertainties in the process of negotiating a constitution for South Africa which will ensure the long sought-after blessings of freedom, democracy, pluralism and social justice for all South Africans:

WHEREAS the KwaZulu Legislative Assembly strongly believes that only a Federal system with residual powers in the States and internal regionalisation can ensure long-lasting freedom and democracy in South Africa and a correct system of checks and balances:

WHEREAS history and common knowledge of political sciences teach that it is unlikely that central powers willingly promote the transformation of their structures into effective Federal structures:

WHEREAS the KwaZulu Legislative Assembly believes that it is its historical duty to respond to the growing demands for federalism arising from all sectors of the region of KwaZulu/Natal:

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WHEREAS the Region of KwaZulu/Natal is held together by strong historical ties and commonality of interest and perspectives which justify and demand the self-determination of the Region in the form of a Federal State within the Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has witnessed the progressive and irresistible deterioration of the institutional and economic situation in South Africa, in a climate of ever-growing and seemingly unstoppable violence which threatens to evolve into a civil war:

WHEREAS the KwaZulu Legislative Assembly was established for the fundamental purpose of providing for the welfare of all the people of KwaZulu:

WHEREAS the KwaZulu Legislative Assembly believes that the welfare of the citizens demands that steps towards the construction of federalism are taken without any further delay:

WHEREAS the KwaZulu Legislative Assembly has received from the Chief Minister and the Government of KwaZulu a constitutional proposal to erect the region of Natal and KwaZulu into statehood within the framework of a Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has analyzed such proposal and found that in its general vision and fundamental parameters it meets the needs, wants and aspirations of the people of KwaZulu/Natal:

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WHEREAS the call for Federalism in this region has been expressed forcefully by our Honourable Chief Minister at least since the early seventies, creating a stream of thought and action which inspired the establishment of the Buthelezi Commission leading to the KwaZulu/Natal Indaba and the formation of the Joint Executive Authority:

WHEREAS the Constitution of the State of KwaZulu/Natal builds and capitalises on the experience of the KwaZulu/Natal Indaba and on the work of the Buthelezi Commission:

WHEREAS the KwaZulu Legislative Assembly, mindful of its responsibilities towards its people and Almighty God, feels that the adoption of the Constitution of the State of KwaZulu/Natal can no longer be delayed:

WHEREAS the KwaZulu Legislative Assembly understands that the Constitution of the State of KwaZulu/Natal will be submitted to a State-wide debate and scrutiny which will include its submission for approval to the Joint Executive Authority, and to existing social and cultural formations, all of which the KwaZulu Legislative Assembly strongly encourages and supports:

WHEREAS the KwaZulu Legislative Assembly deems it to be part of the functions of the KwaZulu government to promote the analysis and scrutiny of the Constitution of KwaZulu/Natal throughout the State, and deems that the Inkatha Institute and the IFP Information Centre are amongst the centres which can adequately carry out this function on behalf of the government of KwaZulu:

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association, and one appointed by the other eight members. Should this not be possible, the Joint Executive Authority shall determine the composition of the Transitional Electoral Commission.

113. Interpretation of this Constitution

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

WHEREAS the KwaZulu Government intends to adopt the Constitution of the State of KwaZulu/Natal with the understanding that with its final ratification the Constitution will become the supreme law of the land and shall stand as such regardless and in spite of whatever course the negotiations at central level will happen to take

NOW THEREFORE the KwaZulu Legislative Assembly HEREBY:

RESOLVES that **THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL IS HEREBY** approved by the KwaZulu Legislative Assembly as a document which will guide and prompt the process and its adoption by the JEA and ratification and empowerment by the South African government, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be provided with the broadest circulation possible and that seminars, debates and other forms of public scrutiny be promoted by all adequate forums including the Inkatha Institute and the IFP Information Centre, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be forwarded for approval to the Joint Executive Authority which is hereby requested to fix a date on which a popular referendum will be held for final ratification of the Constitution, and to appoint a referendum committee to make such adjustments on the referendum date as they may deem necessary.

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such as to restore the rights and privileges as if the repudiated action never existed.

111. Fathers of the State Advisory Board

The Members of the Joint Executive Authority of KwaZulu/Natal shall be life members of the Fathers of the State Advisory Board and shall be entitled to remuneration established by law and not inferior to that of a member of the General Assembly. They may run for other offices. The Fathers of the State Advisory Board may express recommendations to any of the powers of the State in any matter related to the implementation of this constitution. Additional members may be appointed by the Governor with the advice and consent of the General Assembly.

112. Ratification of this Constitution and General Elections

This constitution shall come into force the day of its ratification by a referendum approving this constitution with at least fifty one percent of the votes validly cast. Within sixty days from the ratification of this constitution the Transitional Electoral Commission shall call a general election to fill the electoral offices provided for in this constitution. 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, two appointed by the KwaZulu government, two by the Joint Executive Authority, two by the Chamber of Commerce, two by the bar

surrounding areas, and may authorize the establishment of a special basin authority.

109. Properties of the Republic of South Africa in the State

All properties located in the State of KwaZulu/Natal 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 vest in the State of KwaZulu/Natal. 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.

110. State succession

All laws, regulations and administrative actions in force in the territory of the State at the time of adoption of this constitution shall remain in force and shall be deemed adopted and ratified by the State of KwaZulu/Natal provided that they are not in conflict with this constitution. However, the General Assembly may repudiate and declare null, void and ineffective for all purposes any action of the South Africa Government in the territory of the State of KwaZulu/Natal adopted prior to this constitution when such actions were contrary to the fundamental principles of this constitution. Unless otherwise regulated by the General Assembly, the effects of the repudiation shall be

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- d. There shall be no less than nine Regions and no more than twenty one. In exceptional cases a Region may consist of one metropolitan area, provided that such Region has sufficient economic and population basis and that the creation of such Region does not adversely affect the economy of the surrounding areas. A Region consisting of one metropolitan area does not need to be divided into municipalities.

107. Election of the Senate

Until the Regions are established 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 House of Delegates by grouping three constituencies together so that the Senate shall have 117 members.

108. Durban

The law may authorize special exemptions from taxation and other requirements for the area of the port of Durban and the

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bly, which ever comes first, a Commission on Regionalization shall be formed. The Commission shall have twenty one members appointed from a list of one hundred independent, qualified, suitable individuals prepared and approved by the General Assembly. The Governor shall appoint four members, the representatives of the trade, industry and labour, and the Judicial Commission shall appoint three members each, and four members shall be appointed by the General Assembly. One additional member shall be chosen by the members of the Commission so appointed and shall serve as the Commission's chairperson. The members of the Commission shall elect a chairperson and adopt its own rules of organization and operation. The Commission shall seek and solicit broad public participation, including but not limited to public hearings, and may commission studies and reports.

- b. Within nine months from its establishment the Commission on Regionalization shall prepare a proposed subdivision of the State of KwaZulu/Natal into Regions to be approved by the General Assembly with two-third majority of its members. The General Assembly has the power to request the Commission on Regionalization to make any change to the proposed subdivision of the State as a condition of its approval of the subdivision. If by two thirds majority the Commission refuses to make such changes, the General Assembly may approve the subdivision only on the basis of the concurrent positive advice of the Governor.

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AMENDMENT PROCEDURES

104. Amendment Procedures

This constitution may be amended by resolution adopted by two thirds of the members of both houses of the General Assembly and ratified by the absolute majority of votes cast in a popular referendum.

FINAL AND TRANSITIONAL PROVISIONS

105. Transitional Government

- a. Upon the ratification of this constitution, the joint executive of the Natal province and the KwaZulu government shall become the Transitional Government and shall jointly exercise the ordinary administration of the State of KwaZulu/Natal until the new Government and General Assembly are elected pursuant to this constitution.
- b. Within three months from the time of ratification of this constitution the Transitional Government shall call the general elections.

106. Creation of the Regions

- a. Within six months from the time of the ratification of this constitution or from the opening of the General Assem-

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cles and provisions of this constitution so as to make recommendations to the Governor and the General Assembly.

- d. 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.
- f. The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.
- g. The Ombudsman may be removed from office before the end of his or her term by the Governor acting on the recommendation of the Judicial Service Commission. The Ombudsman may only be removed from office on the grounds of mental incapacity or for gross misconduct. The Judicial Service Commission shall conduct the investigation and report to the Governor and the General Assembly.
- h. The Ombudsman shall empower assistant district Ombudsmen who shall serve in decentralized offices on the basis of districts designated by the Ombudsman with the aim of maximizing the accessibility of the Ombudsman's services and protection.

FINAL AND TRANSITIONAL PROVISIONS

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man 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 State by a public official, including police, defence forces and prison personnel, manifest injustice, or conduct of a public official which would properly be regarded as unlawful, oppressive or unfair.

- c. 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,
 - bringing a 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 prin-

political party's statute or a collective bargaining agreement which are in violation of the constitution, and shall be ineffective in the territory of the State any action or law of the Federal Republic of South Africa which is in conflict with this constitution. The decision of the Constitutional Court may also mandate the rule of resolution of a conflict among the government's organizations and powers.

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

103. The Ombudsman

- a. 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 the General Assembly its own budget.
- b. The Ombudsman shall either be a judge, a lawyer or an advocate. The Ombudsman shall be appointed by General Assembly on the recommendation of the Judicial Service Commission. The Ombudsman shall hold office for a non-renewable six year term. The functions of the Ombuds-

THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL

PREAMBLE

We, the people of Natal and KwaZulu, 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, recognizing the right of people to organize 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 State of KwaZulu/Natal to provide the people of KwaZulu/Natal with a government to serve their individual and collective needs, wants and aspirations.

FUNDAMENTAL PRINCIPLES

1. Inherent Rights and Obligations

The State of KwaZulu/Natal acknowledges and recognizes that all individuals have the natural right to life,

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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 State and a general obligation of social responsibility to the people of the State

2. Source of Government

All political power is inherent in the people. All government originates with the people, is found 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 organize and regulate their interests autonomously.

3. Relationship with the Federal Republic of South Africa

The State of KwaZulu/Natal is a sovereign member state of the Federal Republic of South Africa. The State of KwaZulu/Natal recognizes its obligations toward the Federal Republic of South Africa and the other member states of the Federal Republic of South Africa in so far as they do not infringe upon the rights, powers and liberties guaranteed by this constitution to the citizens of Natal/KwaZulu and to the State of KwaZulu/Natal. The sovereignty of the State of KwaZulu/Natal as asserted under this constitution is indivisible, inalienable and untransferable.

102. Access to the Constitutional Court

- a. Any issue of constitutionality of State or Regional laws, or legitimacy of actions or legislation of the Federal Republic of South Africa within the State, 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 demanded to the Constitutional Court for resolution.
- b. Political parties represented in the General Assembly, 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 adopted by the State or the Regions or the illegitimacy within the State of actions or legislation of the Federal Republic of South Africa. One hundred members of a political party may commence an action to review the democracy of their political party statute.
- c. The Regions, the Federal Republic of South Africa, the Ombudsman and any power of the State may commence an action to resolve a conflict among government organizations.
- d. Decisions of the Constitutional Court shall declare null and void any act of the State or of the Regions, or a

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sional experience, university law professors and higher court judges. The Justices may be foreign citizens.

- c. The Justices are appointed for ten years beginning from the day on which they assume office. They 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 State.
- d. 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 organization 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 Governor and the Ministers. Such rules will determine the qualification, if any, of the additional members and their powers.
- e. 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 the General Assembly. 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 the General Assembly its own budget.

4. Territory

The territory of the State of KwaZulu/Natal is indivisible and inalienable. The State of KwaZulu/Natal shall engage in negotiations with the other states of the Federal Republic of South Africa and with the Federal Republic of South Africa to increase its territory so as to include areas which are historically, culturally and socio-economically strictly connected to the territory of the State of KwaZulu/Natal. The territory of the state includes territorial waters.

5. State's Unity

The State of KwaZulu/Natal is one and indivisible. The powers of the State shall be exercised through the State and the Regions as set forth in this constitution. The State and the Regions shall encourage and promote decentralization of their powers and delegation to local governments.

6. Citizenship

All Citizens of the Federal Republic of South Africa residing in Natal or in KwaZulu shall be citizens of the State of KwaZulu/Natal. No citizen of KwaZulu/Natal shall be deprived of citizenship except in such cases as they may be listed in the laws of the State and based on voluntary relinquishment. The General Assembly may grant citizenship in special cases. A resident of the State

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shall be anyone who has been lawfully domiciled in the State for over six months

7. Language

The official languages of the State of KwaZulu/Natal shall be English, Zulu and Afrikaans. The State shall protect and encourage the use of languages other than the official languages. Nothing in this constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools subsidized or financed by the State, or the Regions or by the Federal Republic of South Africa, subject to compliance with such requirements as may be imposed by law to ensure proficiency of the official languages or for pedagogic reasons. In units of local government where considerable portions of the population speak a language other than English, Zulu and Afrikaans a different language may be used as an additional official language under conditions and in a manner to be determined by law.

8. State's Symbols

The coat of arms, the flag and the anthem of the State of KwaZulu/Natal shall be determined by a law adopted by a two thirds majority of the General Assembly.

9. State's obligations

The State of KwaZulu/Natal shall ensure internal security and safety, promote balanced economic development,

- review the constitutionality of the legislation of the State
- review constitutionality of the legislation of the Regions
- resolution of conflicts between the legislation of the Regions and State legislation
- resolution of conflicts between Regions
- review constitutionality of the federal legislation
- resolution of disputes on the legitimacy of the exercise within the territory of the State of federal powers in matters reserved to the exclusive jurisdiction of the Federal Republic of South Africa.
- resolution of conflicts between powers of the State
- criminal charges against the Governor and the Ministers
- validity and legality of collective bargaining agreements
- verification of the democracy of the statutes of political parties
- other matters as set forth in this constitution or in constitutional laws.

101. Composition and operation of the Constitutional Court

- a. The Constitutional Court shall consist of fifteen members, three of whom shall be appointed by the Governor, six by the General Assembly with resolution supported by two thirds of the members of each house of the General Assembly, three by the Judicial Service Commission and three by the bar association.
- b. The Justices of the Constitutional Court are chosen among lawyers and advocates with more than twenty years profes-

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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 House of Delegates in this order.

- b. The Governor 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.
- c. The General Assembly or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time. The Governor may require that the General Assembly 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.
- d. 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 recognized and guaranteed in this constitution.

CONSTITUTIONAL GUARANTEES

100. Jurisdiction of the Constitutional Court

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

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 State, 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, 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.

10. Equality

- a. All citizens of the State of KwaZulu/Natal 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.
- b. The State of KwaZulu/Natal 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 State of KwaZulu/Natal may take measures

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in favour of segments of the population requiring special assistance.

11. Rule of Freedom

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

12. Federal Law

All statutes and regulations validly adopted by the Federal Republic of South Africa as well as international law as recognized by the Federal Republic of South Africa shall have immediate force and effect in the State of KwaZulu/Natal in so far as they are not inconsistent with this constitution.

13. Traditional and Customary Rules

The State of KwaZulu/Natal shall recognize 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 law. Traditional and customary rules are produced in accordance with the rules and the sources governing their production and shall not be modified or

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 authorized mobilization the State of KwaZulu/Natal shall conduct military proscription through the militia to supply armed forces to the Federal Republic of South Africa.

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

EMERGENCY POWERS

99. Emergency Powers

a. The Governor may declare an emergency in the State on in determined areas of the State. 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 State, of the Regions, of the municipalities or of the citizenry the Governor 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 Governor intends to undertake. Within twenty four hours the Governor shall summon the General Assembly to a joint session to ratify the Declaration of Emergency. The General Assembly may modify the Declaration of Emergency. If the emergency is such that the General Assembly may not be summoned into session, the Declaration of Emergency shall be submitted to the Constitutional Court

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REFERENDUM

97. Referendum

One hundred thousand citizens ~~with voting~~ rights, or three Regional Congresses 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.

STATE MILITIA

98. State Militia

- a. The State militia shall be organized by law. The law may require compulsory service in the State militia. The law shall ensure internal democracy in the militia indicating how the exercise of constitutional rights may be limited so as to be compatible with military duties.
- b. The supreme command of the State militia shall vest in the Supreme Military Committee. The Supreme Committee shall be chaired by the Governor and consists of three civil members and three members of the militia appointed by the General Assembly in accordance with the law.
- c. The militia may be divided in subdivisions under different commands

repealed by the law. Traditional or customary laws shall not have territorial application unless so authorized 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. All traditional and customary law shall be collected and published by a committee of the General Assembly working in conjunction with the affected interests.

14. 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 State of KwaZulu/Natal.

FUNDAMENTAL RIGHTS

15. Individual and Collective Rights

Fundamental rights are recognized 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 recognized under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise.

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16. Justiciability of rights

All rights and freedoms recognized and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In case of a violation of the rights and freedoms recognized 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.

17. 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.

18. Physical and psychological integrity

- a. The physical and psychological integrity of any individual shall be inviolable. No one shall be authorized 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.

- c. The Commission shall have the power to determine the requirements for product labelling including product information and warnings
- d. 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.
- e. Any immediately adversely affected interest may seek judicial review of any decision of the Commission.
- f. The Consumer Affairs Commission shall prepare a yearly report on the status of consumer protection expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

96. Other Powers

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

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able natural resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of the State.

- c. The Environmental Commission shall prepare a yearly report on the status of the environment in the State expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

95. Consumer Affairs Commission

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

- b. 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.

19. Freedom of communication

- a. All persons shall be free to express and communicate their thought 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.
- b. 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.
- c. 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.

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

20. Freedom of Religion

Religious freedoms are recognized and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organize activities for this purpose. The State of KwaZulu/Natal 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.

21. Liberty

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

status of the economy, and on foreseeable economic and technological trends at State, national and international level.

- d The Regulatory Relief Commission may prepare or commission additional reports on economic and financial matters and may provide testimony in the General Assembly and Regional Congresses as required.

94. Environmental Commission

- a The Environmental Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by representatives of environmental groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on environmental sciences or social sciences.
- b 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 the State and Regional Departments of the Environment.
- c The Commission shall investigate and report on complaints concerning the improper utilization of non-renew-

- c. The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congress as required.

93. Economic Development Commission

- a. The Economic Development Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, 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 the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts in economics, finance, business management and futurism.
- b. The Economic Development Commission shall prepare a State wide plan of economic development of the State and assistance to businesses to be implemented through legislation and administrative activities of the State and the Regions. The Commission shall monitor the implementation of the plan as approved by the State and the Region and recommend modifications and adjustments as necessary.
- c. The Economic Development Commission shall prepare and submit to the General Assembly a yearly report on the

- b. 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.
- c. Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.
- d. Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.
- e. Any government authority shall inform anyone who is the subject of an investigation for any reason.
- f. 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.
- g. 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.
- h. No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the

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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.

22. Travel and movement

Everyone shall have the right to travel, move and reside within or outside the State. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic of South Africa shall have the right to take domicile in the State.

23. Privacy

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

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

92. Regulatory Relief Commission

- a. The Regulatory Relief Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, 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 the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on public administration, business management or regulatory processes.
- b. The Regulatory Relief Commission shall be empowered to request the repealing or amendment of burdensome, unnecessary or inadequate regulations and permit requirements adopted by the General Assembly, the Government, the Regional Congresses, the Regional governments, any independent regulatory agency and municipal governments. 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.

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- c. 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.
 - d. The Commission may initiate legislation at State and regional level on electoral matters and shall administer and distribute any public financing to political parties and candidates provided for in State and regional legislation.
 - e. The Electoral Commission may organize political debates and decide time allocation in State or Region 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.
 - f. The Electoral Commission shall determine and update the boundaries of the electoral constituencies of the House of Delegates and the Regional Congresses. 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 State. Each constituency shall aim to have the same number of electors.
 - g. The Electoral Commission administers the elections and announces the results.

24. 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.

25. 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 paramilitary fashion shall be prohibited.

26. 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 recognized 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.

27. 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.

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

91. Electoral Commission

- a. The Electoral Commission shall consist of nine members, three appointed by the Governor, three by the General Assembly, 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 State administration. The Commission proposes to the General Assembly its own budget.
- b. The Electoral Commission shall organize and supervise the elections provided for in this constitution and in the constitution of the Regions. 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 State police and militia to ensure peace and order during the political campaign period, and during and immediately after the elections.

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

- d. 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 State and Regional governments any affirmative action programme to be implemented within governmental structures.
- e. The Civil Service Commission shall also develop, monitor and assist the adoption and implementation by State and Regional 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.
- f. 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 the General Assembly and Regional Congresses as required.

aspirations as they evolve with the changes and growth of society, and as they will be recognizable 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 recognized, protected and encouraged by the State. The State shall 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 organize 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 State shall recognize and protect the right of individuals to self regulate and organize 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.

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32. **Commercial and Insolvency**

The State shall promote uniformity of its commercial and insolvency laws with those of other states and countries.

33. **Permits and Licensing requirements**

The State 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, 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 State's power of taxation.

35. **Expropriation**

The State or another entity authorized by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.

36. **Property of the State and the Regions**

The State and the Regions may own property as private or public property. Public property shall not be alienated

by the Chamber of Commerce and four by the representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. 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 the General Assembly its own budget.

- b. The Civil Service Commission shall propose to the General Assembly or to the Regional Congresses the legislation organizing and maintaining all public offices of the State and the Regions, including independent regulatory agencies, determining missions, competence, jurisdictions and responsibilities of each office. Both the State and the Regional Governments may submit proposed legislation to the Commission. Concerned interests may also submit proposals to the Commission.
- c. The Commission shall oversee the operations of the public administration of the State and of the Regions to ensure impartiality and efficiency, to prevent governmental waste, corruption, nepotism, inefficiency and

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88. Modification of the Municipality's boundaries

Provided that all municipalities involved have consented, municipal boundaries may be modified, two or more municipalities may be merged or one municipality may be divided in two or more municipalities by a law of the Regional Congress adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

OTHER POWERS OF THE STATE

89. The Independent Auditor General

There shall be an independent Auditor General. The Auditor General shall audit the financial activities of the State, the Region, the Commissions, the independent regulatory agencies, and any enterprise, entity or instrumentality owned or controlled by the State or the Regions. 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.

90. The Civil Service Commission

- a. The Civil Service Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two

or encumbered and is related to the exercise of public functions or is held by the State or the Regions in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. The General Assembly shall publish a yearly report on the property owned by the State and the Regions indicating their current and planned use and their maintenance and carrying costs.

37. Public Enterprise

No enterprise shall be acquired or conducted by the State or the Regions either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorized 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 privatized.

38. Property of the Federal Republic of South Africa

All tangible and intangible properties of the Federal Republic of South Africa in the State of KwaZulu/Natal shall be subject to the same rules and limitations set forth in this constitution for the properties of the State.

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39. **Communal Property**

Communal property is recognized and shall be protected. Communal property shall be administered and regulated by traditional and customary Rules.

40. **Practices in restraint of trade**

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

41. **Agriculture**

The State of KwaZulu/Natal shall encourage agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The State shall promote agricultural cooperation and assist farmers on a cooperative basis.

Social Rights:

42. **Right to Education**

- a. All citizens shall have the right to receive a basic education and professional training. The law shall determine the period and the minimum educational requirements for compulsory education. The State shall support the citizen's aspiration to higher education by means of

appoint caretakers to conduct ordinary administration during the election period.

86. **Modification of the Region's boundaries**

Provided that all the Regional Congresses of all the Regions involved have consented, Regional boundaries may be modified, two or more Regions may be merged or one Region may be divided in two or more Regions by a law of the General Assembly adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

87. **Municipalities**

- a. Municipalities shall be recognized and established by law. Under the parameters set forth by law to ensure uniformity of types each municipality shall have the right to choose its rules of organization and operation. Municipalities may vary in size and population basis. The administrative and regulatory activities of the municipalities shall ensure and promote the democratic participation of citizens.
- b. Irrespective of the form of organization, all municipalities within a Region shall exercise similar type of jurisdiction, including the municipality's own jurisdiction as set forth in law and the jurisdiction over administrative and regulatory matters delegated by the Region.

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Government who shall acknowledge it within twenty days. The legislation shall be promulgated within ten days from such acknowledgement and becomes effective ten days from its promulgation. **Within the period** allowed for the acknowledgement, when **the State Government** believes that the regional legislation **exceeds** the jurisdiction of the Region or is in conflict with State or national interests or with the interests of other Regions, the State Government shall request that the Regional Congress reexamines the legislation. If the Regional Congress approves the legislation by an absolute majority of its members, within fifteen days from the communication of such approval the State Government may challenge the validity of the legislation before the Constitutional Court on constitutional grounds and before the General Assembly in joint session for conflict of interest.

85. Dissolution of the Regional Congress or Government

The State government shall have the power to cause the dissolution of a Regional Congress when a Regional Congress has seriously violated this constitution or has engaged in a pattern of violations of law, has refused to dissolve a Regional government which engaged in such conduct, or is otherwise incapable of functioning or expressing a majority. The dissolution shall be ordered by a resolution of the Governor adopted with the advice and consent of the General Assembly. Within three days of the dissolution the Electoral Commission shall call regional elections within two months. The dissolution decree may

scholarship and by promoting the highest standards of excellence in education

- b 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.

43. Right to Work

Everyone shall have the right to access any job opportunity for which he or she is qualified. As a matter of priority, the State shall 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 severance payment upon termination. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law.

44. Protection of Women

The law shall extend special protection to women. The law shall guarantee maternity leave and provide assistance to mothers in the work force. Until such time when the social status of women in the State has significantly improved, the law shall recognize special privileges for

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women in all programmes and measures aimed to ensure equal access to political, social and economic opportunities, shall establish and maintain a Ministry for Women's Affairs, and reserve a portion of the available public offices to women.

45. Senior Citizens

The law shall 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.

46. Youth

The law shall promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

47. 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 for the purposes of recognition and equipollence of degrees.

48. Universities

All public universities and institutes of higher education in the State shall be entitled to regulate their organization

shall determine the qualification for, and additional incompatibilities of the office of member of the Regional Congress. The members of the Regional government shall be elected from within the Regional Congress. The Regional Congress shall have the power to adopt its own Rules and elect a President.

- d. Each Regional Congress by absolute majority of its members shall adopt a constitution for the Region which shall be consistent with the principles and the provisions of this constitution. The constitution of the Region shall be approved by law. The constitution of the Region shall provide for the exercise of the power of referendum on regional legislation and regulations.

84. Coordination between State and Regions

- a. A Representative of the State Government residing in the Region shall control the State's administrative functions in the Region and coordinate them with the Regional administrative functions.
- b. The Representative of the State Government shall have the power to challenge in court the validity of the administrative actions of the Region. The Representative of the State Government shall also have the power to request the Regional Congress or the Regional government to reexamine ~~the~~ administrative action.
- c. All the legislation adopted by the Regional Congress shall be communicated to the Representative of the State

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Every six months the Commission will issue a report to the General Assembly.

- d. The Privatization Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of the General Assembly.

REGIONS AND MUNICIPALITIES

83. The organs of the Region

- a. Each Region shall have a Congress and a Regional government. The Regional Congress shall exercise the legislative functions mandated to the Region and the other functions set forth in this constitution. It may also submit legislative proposals to the General Assembly.
- b. The Regional government shall execute the regional legislation and carry out the administrative activities of the Region. The Chairperson of the Regional government represents the Region, promulgates the regional legislation, and directs and oversees the administrative functions delegated by the State to the Region in compliance with the instructions received from the State's Government.
- c. The Regional Congress shall consist of 76 members elected from no less than 38 constituencies in which the Region shall be divided for the purposes of this election. No one shall sit in two Regional Congresses. The law

and operations within the general parameters set forth by law

49. Health Care

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

50. Job Conditions

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

51. Housing

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

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52. **Research, Arts and Culture**

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

53. **Right to a Pleasant and Clean Environment**

The State shall recognize 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.

54. **Labour Rights**

Everyone shall have the freedom to form and join trade unions and employers' associations. The State shall respect and protect the right to strike but may limit its exercise in cases determined by the law for reasons of public security and safety. Labour organizations 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 organization 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

use tools of national intervention in the public interest. The Central Bank shall have the power to determine its organization and operations.

82. **Privatization Commission**

- a. A Privatization 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 Governor, five by the General Assembly and two by the Chamber of Commerce.
- b. The Privatization Commission shall develop a privatization plan to be submitted to the General Assembly for approval. The Commission shall adjust the implementation of the privatization plan so as to best cope with changing economic circumstances, seeking the approval of the General Assembly when necessary. The privatization effort shall be balanced, shall maximize economic efficiency and shall support economic growth. The phases and the time frame of this effort shall be set in the privatization plan. The Government shall implement the privatization plan.
- c. The Privatization Commission shall monitor the implementation of the privatization plan so as to ensure that the privatization effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste.

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- b By a vote of two thirds of its members the General Assembly may authorize 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 repayment** of the public debt and the underlying **economic assumptions**. Any increment of the public debt shall be so authorized.
- c 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.

81. Banking

The State shall regulate banking in harmony with the monetary policies set forth by the Federal Republic of South Africa. An autonomous Central Bank of the State of KwaZulu/Natal shall be established. The President of the Central Bank shall be appointed by the Governor with the advice and consent of the General Assembly and serves at the pleasure of the Governor. The President of the Central Bank shall submit a yearly report to the General Assembly on the monetary status of the State and on the status of the banking system. The Central Bank shall have regulatory powers on banking and credit, and shall be independent within the parameters of the law to

conditions. The State may impose requirements on the trade unions only to ensure that they are organized 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 recognizes, and the State 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 the General Assembly, the Regional Congresses and any branch or level of government. A citizens legislative proposal signed by five hundred citizens may submitted to the General Assembly.

57. Freedom of Information

Any citizen has the right to access and receive any information or document which is in the possession of the

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State or Regional governments or of any of the commissions or agencies established in this constitution, provided that such document or information is not privileged as established by law to protect privacy, commercial secrets or national and 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 of the State 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 a political party or shall be penalized for not belonging to one. Political parties shall ensure internal democracy in their organization and operations.

59. 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.

79. 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 authorize 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 offences 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

80. Balanced Budget

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

77. The Supreme Court

The Supreme Court of the State of KwaZulu/Natal shall guarantee the uniform interpretation of the law and shall be the court of final appeal.

78. Specialized 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 shall identify and recognize 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 specialized 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. Specialized sections may include family, labour, traffic, administrative, criminal, public auditing, corporate and international law matters.

OBLIGATIONS AND DUTIES

60. Allegiance to the Constitution

All citizens of the State shall have the duty to uphold this constitution. 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.

61. Contribution to Public Expenditures and Needs

- a. 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.
- b. The State shall encourage voluntary charitable activities and other forms of expression of social solidarity.

62. Military obligations

All citizens have the sacred duty to defend the territory of the State and when so required 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 State.

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63. Duty to work

All capable citizens have a duty to contribute with their work and skills to the common development and growth of the State and of the Federal Republic of South Africa

64. 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.

DIVISION OF GOVERNMENTAL POWERS

65. Regions and municipalities

The State is divided into Regions and municipalities. Regions are established as autonomous entities and are provided with powers and jurisdiction in accordance with the principles set forth in this constitution.

66. Powers of the State

The State of KwaZulu/Natal shall have all those powers which are not reserved to the people, to the Regions or to the Federal Republic of South Africa respectively.

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.

- c. The Judicial Service Commission shall approve all appointments of exceptionally distinguished university law professors, lawyers and advocates to any level of the judgeship made the General Assembly. The Commission shall also determine qualifications, rules and procedures for the election of judges of peace and honorary judges.
- d. The Judicial Service Commission shall approve the rules adopted by any court to regulate the proceedings before it and the related administrative functions.
- e. The Judicial Service Commission shall submit to the General Assembly 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 authorized 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.

THE JUDICIARY

75. Independence of the Judiciary

Justice shall be administered in the name of the people of the State of KwaZulu/Natal. Judges shall be subject only to the law. They may not be removed from office without the authorization of the Judicial Service Commission.

76. Judicial Service Commission

- a. The Judicial Service Commission is the organ of self governance of the judiciary. The Governor 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 the General Assembly, 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.
- b. The Commission shall implement and administer the fundamental principles on the organization of the judicial services set forth in a general law to be adopted by the General Assembly. 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,

67. Powers of the Federal Republic of South Africa

- a. In accordance with the principles of this constitution, the State of KwaZulu/Natal recognizes the power of Federal Republic of South Africa to exercise exclusive legislative, administrative and judicial functions and powers in the following 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. The General Assembly may enact legislation to empower the Government to

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enter into agreements with the Government of the Federal Republic of South Africa for the policy coordination in other fields.

- nationality, immigration, migration, alienage and the right of asylum
 - international relations
 - defence against foreign enemies
 - organization 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 authorized by a constitutional law of the State of KwaZulu/Natal.
- b. 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. No Federal armed forces or armed forces of other states shall have the power to enter or be stationed in the State of KwaZulu/Natal without the approval of the State.
- c. No power of the Federal Republic of South Africa shall be legitimately exercised and valid in the State of KwaZulu/Natal if inconsistent with the principles and provisions of this constitution.

- e. The office of Governor or Minister shall be incompatible with any other public office or profession or employment.
- f. The Government shall be organized 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.
- g. 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 the General Assembly 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.
- h. 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.

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time and with ten days prior notice to its members, any of the houses of the General Assembly may adopt with a two thirds majority of its members a **no-confidence** resolution causing the resignation of the **Governor** and fixing a date within forty days from the **adoption of the resolution** for the election of a new Governor. **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. 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.**

- c. 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.
- d. The Senate, by absolute majority of its members, may authorize that criminal charges are pressed against the Governor or a Minister for crimes committed in connection with the exercise of their functions. The Senate by simple majority may authorize that criminal charges are pressed against the Governor 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 Governor or the Minister has relinquished his or her office. The Constitutional Court shall decide on the charges against the Governor or a Minister authorized by the Senate and shall determine sanctions as it deems it appropriate.

- d. The power of the Federal Republic of South Africa to levy taxes and impose duties within the State of KwaZulu/Natal or in relation to activities or properties located in the State of KwaZulu/Natal shall be exercised only with the advice and consent of the State of KwaZulu/Natal to be rendered by the Joint Commission on Finance of the General Assembly chaired for this purpose by the Governor and integrated with six additional members with voting rights representing trade, industry and labour and nominated by the Speaker of the House and appointed by the Governor
- e. Representatives of the Federal Republic of South Africa may participate without voting rights in the activities of the Joint Commission on Finance. The Joint Commission on Finance shall meet at least once every two years to advise the Federal Republic of South Africa on the type and extent of Federal taxation and revenue collection permitted in the State of KwaZulu/Natal. Any resolution adopted by the Joint Commission on Finance in this respect shall have effect only in the second calendar year following the year in which the resolution is adopted.

68. Powers of the Regions

- a. The Regions shall have the power to assume legislative and/or administrative jurisdiction in the following matters:

organization and operation of the offices of the Region, including administrative instrumentalities of the Region

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- custody and maintenance of the Region's buildings and other infrastructures
- determination of municipal boundaries
- police, fire and rescue, and coast patrol, not excluding the power of the State to coordinate police and investigations and to maintain emergency security forces
- government of the territory, including housing and all phases of zoning
- social assistance
- health and hygiene
- public education
- protection of the natural and human environment, including implementation of the State's environmental mandates
- public works of regional interest within the Region's territory
- water projects, canal and irrigation systems of regional interest and thermal and mineral waters
- railways and roadways of regional interest within the territory of the region
- ports of refuge, recreational ports and airports of regional interest
- regulation of agriculture and livestock
- woodland and forestry
- hunting and fishing in inland waters
- regional economic development including small business assistance
- markets and expositions
- handicrafts
- professional training and job search
- museums, libraries and conservatories of regional interest

ascribed by this constitution to the Governor are exercised by the President of the Senate while the Minister of Home Affairs shall act as Chief Minister of the Government. Should the Governor become permanently incapacitated the President of the House of Delegates shall call an election.

- c. The Governor may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of the General Assembly in a joint session summoned by the President of the House of Delegates. The Governor may only be removed from office on the grounds of mental incapacity or for treason. The Constitutional Court shall direct the investigation.

74. The Government

- a. The Government shall conduct all administrative functions authorized and all missions mandated by the law.
- b. The Government consists of the Governor and the Ministers. The Ministers are chosen and nominated by the Governor. Within ten days from its formation the Government shall be collectively confirmed by a vote of confidence of both houses of the General Assembly. At any time and with three days prior notice to its members, any house of the General Assembly 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 Governor. At any

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72. Privileges and immunities

No member of the General Assembly shall sustain criminal or civil liability for the opinions expressed in connection with his or her office in or outside the General Assembly. During the time of his or her mandate no member of the General Assembly 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 the General Assembly.

THE EXECUTIVE

73. The Governor

- a. The Governor shall be elected by the majority of the votes cast in a state-wide constituency election. The Governor shall be forty years or older and shall be elected for a three-year term renewable only once. The Governor shall not hold any other public office or exercise any other trade or profession.
- b. The Governor is the Head of the State, the Chief Minister of the State's government and represents the State. The Governor may exercise independently from the Government the powers vested in him or her under this constitution. Should the Governor be incapacitated the functions

- monuments of regional interest
 - promotion of culture and research, and protection and teaching of the languages of the Region
 - regulation and promotion of tourism and tourism industry
 - promotion of sport and recreation facilities
 - promotion of performing arts and related infrastructures
 - other matters authorized by a constitutional law of the State.
- b. State law may require the Regions to implement State legislation in other matters. State law may also define matters in which the State and the Region share joint or concurrent legislative and/or administrative jurisdiction in forms and matters prescribed in the law.
 - c. The State has legislative and administrative power in any matter in which the Region has not exercised its jurisdiction
 - d. The legislative powers of the Regions must be exercised within the fundamental principles of State legislation in the subject matter and shall not be in contrast with the national interest or with the interest of other Regions.
 - e. The Regions exercise of administrative functions shall be normally delegated to the municipalities. When possible regional legislation should allow for implementation by local ordinances so as to adjust to local interest and characteristics, especially in matters related to the government of the territory.

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- f. State law may directly empower municipalities with administrative functions of local interest, and may delegate to the Regions additional administrative functions.
- g. The Regions have financial independence and autonomy in the manners and within the limits established by State law. State law shall coordinate regional finance with the finance of the State and of the municipalities. State law shall define the power of the Regions to levy taxes and impose duties and shall attribute to the Regions a portion of the State's revenues.
- h. Regions shall not levy import or export or transit duties, nor shall they take any action which may hinder in any way the free circulation of people and goods among the Regions or limit the citizen's rights to exercise in any portion of the State's territory their profession, employment or job.
- j. State law shall determine the type of public and private property owned by the Regions.

THE LEGISLATURE

69. The General Assembly

- a. The General Assembly represents the people of the State of KwaZulu/Natal and shall consist of two houses, a

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 Governor 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 the General Assembly along with a message of the Governor. If the General Assembly by absolute majority of its members votes to override the veto, the Governor shall sign and promulgate the law.
- c. The law shall be promulgated within ten days from the Governor'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 organization and operation.

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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.

- g. The General Assembly 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 offences committed prior to the introduction of the legislative proposal.
- h. Each house in accordance with its Rules shall have the power to oversee and control the public administration of the State. 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.

71. **Legislative Iter**

- a. The legislative function shall be jointly exercised by both houses of the General Assembly. 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

House of Delegates and a Senate. The members of both houses are elected for a five year term.

- b. Any citizen of the State twenty one years or older may be elected to the House of Delegates, any citizen thirty five years or older may be elected to the Senate. No one shall be a member of the two 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 the General Assembly 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 the General Assembly.
- c. The House of Delegates shall consist of 350 members each of whom shall be elected in one of the 350 constituencies into which the State shall be divided for the purposes of this election. Each Regional Congress shall adopt a resolution appointing two of its members to the Senate. Four additional members of the Senate shall be elected in each of the Regions by proportional vote in a region-wide constituency.
- d. The office of the members of the General Assembly terminates upon qualification of their successors.

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

f. The General Assembly 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 Governor or by one tenth of its members. The General Assembly shall meet twenty days after the election of its members and shall proceed to verify the eligibility and qualification of its members.

g. All meetings of any house of the General Assembly and any committee thereof are public and may be broadcast. In special cases any house of the General Assembly 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.

70. Powers of the General Assembly

a. The General Assembly shall exercise the legislative power of the State, approve its budgets, control the action of the Government and exercise the other powers granted by this constitution.

b. 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 recognize and respect the role of the opposition and protect political minorities. The Rules may limit but not prohibit reasonable filibustering.

c. 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 the General Assembly shall be presided over by the President of the House of Delegates 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.

d. 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 the General Assembly must be adopted by the majority of the members who are present.

e. The General Assembly shall adopt legislation to implement this constitution and to meet the needs, wants and aspirations of the people of the State.

f. The General Assembly shall approve the budget and the year end financial statements of the State. The General Assembly shall have the power to authorize the government to operate for no more than three months with a provisory budget pending the approval of the budget. The