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**EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL**

**TWENTY SIXTH REPORT OF THE TECHNICAL
COMMITTEE ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
15 NOVEMBER 1993**

***CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
1993***

ACT

To introduce a new Constitution for the Republic of South Africa and to provide for matters incidental thereto.

PREAMBLE

In humble submission to Almighty God,
We the people of South Africa declare that -

WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

AND WHEREAS it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

NOW THEREFORE the following provisions are adopted as the Constitution of the Republic of South Africa:

CHAPTER 1 Formal and Constituent Provisions

National symbols

2. (1) The national anthem and the design of the flag of the Republic shall be as set out in a proclamation by the State President in the *Government Gazette* acting in terms of an Act of Parliament.¹

(2) The coat of arms and the seal of the Republic existing on the date of the coming into operation of this Constitution, shall continue to be the coat of arms and the seal of the Republic.²

Languages³

3. (1) Afrikaans, English, siNdebele, sePedi, seSotho, siSwati, xiTsonga, seTswana, tshiVenda, siXhosa and siZulu shall be the official South African languages at national level and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

(2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and Parliament shall make provision for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).

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1. It is suggested that an Act of Parliament be passed in the coming special session empowering the State President to promulgate such proclamation on the advice of the Transitional Executive Committee.
 2. If the coat of arms or seal is to be replaced, this provision will require a constitutional amendment. If however the intention of the Council is to provide for a new coat of arms and seal by means of an Act of Parliament passed by a simple majority, express provision should be made therefor.
 3. This entire provision is based on a bilateral document of the South African Government and the ANC submitted to us.

(3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with all public administrations at the national level in any official South African language of his or her choice.

(4) Regional differentiation in relation to language policy and practice shall be permissible.

(5) A provincial legislature may, by a two thirds majority, determine any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language existing in any area or in relation to any function at the time of the coming into operation of this Constitution, may be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with all public administrations at provincial level in any one of the official languages of his or her choice determined by law in terms of subsection (5).

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any provincial legislature may, subject to the provisions of this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice in relation to the use of languages at all levels of government shall be subject to and based on the provisions of this section and the following principles:

- (a) the creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;

- (b) the extension of those rights relating to language and the status of languages which at the date of commencement of this Constitution are restricted to certain regions;
- (c) the prevention of the use of any language for the purposes of exploitation, domination or division;
- (d) the promotion of multilingualism and the provision of translation facilities;
- (e) respect for languages spoken in the Republic other than the official languages and the encouragement of their use in appropriate circumstances; and
- (f) Non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10) Legislation shall provide for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (1) and to further the development of the official South African languages.

(11) The Pan South African Language Board shall be consulted and invited to make recommendations in relation to any proposed legislation contemplated in this section.

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Signature and enrolment of Acts

64. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the *Government Gazette* shall be enrolled in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and such copies shall be conclusive evidence of the provisions of the Act.

(2) In case of conflict between the copies of an Act enrolled in terms of subsection (1), the copy signed by the President shall prevail.

(3) The public shall have the right of access to the copies of Acts of Parliament enrolled in terms of subsection (1) subject to such regulations as may be prescribed by Parliament to protect the safety and durability of the said copies and the convenience of the Registrar's staff.

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Signature and Enrolment of provincial legislation

110. (1) Any valid law of a provincial legislature which has been duly passed by such legislature, shall be signed by the Premier, published in the *Provincial Gazette*, enrolled in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and such copy shall be conclusive evidence of the provisions of the law.

(2) In case of conflict between the copies of a law enrolled in terms of subsection (1), the copy signed by the Premier shall prevail.

(3) The public shall have the right of access to the copies of the laws of a provincial legislature enrolled in terms of subsection (1) subject to such regulations as may be prescribed by Parliament to protect the safety and durability of the said copies and the convenience of the Registrar's staff.

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The supremacy of the Constitution

4. (1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, subject to section 88(5) and (6) and section 91(4) be of no force or effect, to the extent of its inconsistency.

(2) The provisions of this Constitution binds all the legislative, executive and judicial organs of state at all levels of government.

CHAPTER 2 Citizenship and the Franchise

Citizenship

5. (1) There shall be a South African citizenship, and the acquisition, loss⁴ and restoration of South African citizenship shall be regulated by Act of Parliament.

(2) Every person who is a South African citizen shall, subject to the provisions of this Constitution, exercise franchise rights in South Africa and enjoy all other rights, privileges and benefits and be subject to all duties, obligations and responsibilities of citizenship in South Africa as are accorded or imposed upon him or her in terms of this Constitution.

The franchise

6. Every person who is -

- (a) a South African citizen or a person who in terms of the *Electoral Act, 1993*⁵ is qualified to vote;
- (b) of or over the age of 18 years; and
- (c) not subject to any disqualification as may be prescribed by law,

shall be entitled to vote in elections of members of the National Assembly, the legislature of a province or a local government in accordance with the laws governing that particular election.

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- 4. There appears to be a conflict between this provision and section 20 insofar as the latter provision prohibits the deprivation of citizenship.
 - 5. This insertion is subject to the approval by the Negotiating Council of the draft electoral bill.

SCHEDULE 7

Constitutional Principles

I

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

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

V

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

VI

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

VII

The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

VIII

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

IX

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

X

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

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged. This principle shall not derogate from the provisions of Principle III.

XII

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

XIII

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

XIV

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

XV

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

XVI

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

XVII

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

XVIII

The powers, boundaries and functions of national and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a special majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

XIX

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

XX

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

XXI

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

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
- [5. Where minimum standards across the nation are required for the rendering of services, the power to set such standards should be allocated to the national government.]**
5. The determination of national economic policies, and the power to promote inter-provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
6. provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - 6.1 for the purposes of provincial planning and development and the rendering of services; and
 - 6.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the province.

7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.
8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or provincial governments.

XXII

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

XXIII

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

XXIV

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

XXV

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

XXVI

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

XXVII

A Financial and Fiscal Commission, in which [representing *inter alia*] each [of the] province shall be represented, recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

[Notwithstanding the provision of any other clause,] The right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

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

XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community functioning on a basis of fairness and which shall serve all members or the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functions of the public service, as well as the conditions of service of its members, shall be regulated by law.
2. Every member of the public service shall be entitled to a fair pension.

XXXI

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

XXXII

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.

SCHEDULE 9

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at all levels, excluding university and technikon education.

Health services

Housing

Language policy and the regulation of the use of official languages within a province, subject to section 3.

[Language policy and language/s as languages of record for use in provincial administrations]

Local government subject to the Provision of Chapter 10

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police subject to the provisions of Chapter 13

Provincial public media

Public Transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services