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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.

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

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,

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

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

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.

- 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.

- 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.

- 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. A" 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.

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

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 Law**

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

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

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

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

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.

52. Research, Arts and Teaching

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

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

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.

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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