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African National Congress

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TO : KADAR ASMAL
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Dear Comrades

Please find herewith the regime's position on issues which have been tabled in the bilaterals and are to be tabled in the negotiating forum.

Please comment.

Yours sincerely

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DIRECTOR: LEGAL AND CONSTITUTIONAL AFFAIRS DEPARTMENT

Kegume - 26/8/93.

**VOORGESTELDE VERANDERINGE AAN DIE
OORGANGSGRONDWET RAKENDE
EKSKLUSIEWE EN KONKURRENTE
BEVOEGDHEDE**

- 1 Die volgende aanpassings word aan die bestaande klousule 118(1) voorgestel:
- (a) dat plaaslike regering (*Local government*) verskuif vanaf klousule 118(4) (*concurrent legislative competence*) na 118(1) (*exclusive legislative competences*);
 - (b) dat, in die lig van die verskuiwing van plaaslike regering, dit onnodig is om die volgende funksionele domeine afsonderlik uit te spel, en dat dit derhalwe geskrap word:
 - (c) *Town planning*
 - (d) *Firefighting, ambulance services and other civil protection services*
 - (e) *Markets and pounds*
 - (f) *Delivery of water, electricity and other essential services;*
 - (c) dat die begrip *SPR* voor *Traditional authorities and indigenous law* gevoeg word, sodat die bepaling dit moontlik maak dat tradisionele owerhede ook op sentrale vlak aangespreek kan word en sodat die betrokke bepaling soos volg lui:

- (g) *SPR traditional authorities and indigenous law;*
- (d) dat *Road traffic* en *SPR roads* saamgevoeg word onder die benaming *SPR roads and traffic;* en
- (e) dat *Gemeenskapsontwikkeling (Community development)* as 'n funksie by die lys gevoeg word.

1.2 Klousule 118(1) sien, na die bogenoemde veranderinge, soos volg daar uit:

118(1) Subject to the provisions of subsection (2) an SPR government shall have exclusive legislative competence, including all necessary ancillary powers pertaining thereto, in the following functional areas:

- (a) *The appropriation of SPR revenue and moneys for financing the government and services of the SPR*
- (b) *SPR planning and development*
- (c) *Language policy and language(s) for official use in the SPR*
- (d) *SPR cultural affairs*
- (e) *SPR traditional authorities and indigenous law*
- (f) *SPR tourism and recreation*
- (g) *SPR public media*
- (h) *SPR roads and traffic*
- (i) *SPR public transport*

- (j) *Casinos, racing and gambling*
- (k) *Community development*

2 Klousule 118(4) word, na die verskuiwing van die funksionele domein plaaslike regering na klousule 118(1) en na die byvoeging en aanpassing van enkele funksionele domeine, gewysig na die volgende (veranderinge en/of byvoegings aan die bestaande bepalings word by wyse van dubbele onderstreping aangedui):

118(4) An SPR government shall, subject to the provisions of subsection (5), have full legislative competence for SPR purposes, and Parliament shall, subject to the provisions of subsection (7), have concurrent legislative competence in the following functional areas:

- (a) *Subject to the provisions of section 121, taxation for SPR purposes*
- (b) *Housing and urban development*
- (c) *Education*
- (d) *Health services*
- (e) *Social welfare*
- (f) *Agriculture*
- (g) *Nature conservation*
- (h) *Environment affairs*
- (i) *Public works*
- (j) *Police services*

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- (k) Correctional services
- (l) Forestry
- (m) Civic affairs and migration.
- (n) Culture
- (o) Energy Regulation
- (p) Justice Administration
- (q) Land Surveying and Deeds Registration
- (r) Manpower
- (s) Mining and Minerals
- (t) Trade and Industrial Promotion
- (u) Transport Affairs
- (v) Provision of Roads

- 3 Hierbenewens word voorgestel dat die volgende bewoording as subklousule (6) bygevoeg word, wat beteken dat die bestaande subklousules (6), (7) en (8) verander na subklousules (7), (8) en (9):

118(6) Die wetgewende bevoegdheid van die Parlement ten opsigte van die funksies in subartikel (4) uiteengesit, word beperk tot die aspekte soos uiteengesit in Skedule 8.

- 3.1 Die Engelse bewoording van hierdie voorgestelde klousule lui soos volg:

118(6) The legislative competence of Parliament in respect of the functions set out in subsection (4) shall be limited to the aspects as set out in Schedule 8.

- 4 Vervolgens word voorgestel dat 'n Skedule 8 ingevoer word, wat as Bylae A (in Afrikaans) en Bylae B (in Engels) aangeheg word.

BYLAE A

Skedule 8

Funksies	Aspekte binne die wetgewende bevoegdheid van die Parlement
1. Belasting vir SPS-doeleindes	Geen
2. Behuising en Stedelike Ontwikkeling	<ul style="list-style-type: none"> (i) Behuisingstrategie; (ii) Norme en standaarde; en (iii) Behuising ondersteuningsmaatreëls.
3. Onderwys en Opleiding	<ul style="list-style-type: none"> (1) Die bepaling van algemene beleid ten opsigte van die volgende sake: <ul style="list-style-type: none"> (i) Professionele registrasie van opvoeders; (ii) Arbeidsverhoudinge met betrekking tot opvoeders; en (iii) Die breër regulering van tersiêre onderwysinstellings. (2) Die bepaling van norme en standaarde ten opsigte van die volgende sake: <ul style="list-style-type: none"> (i) Onderwysprogramme; en (ii) Eksaminering en sertifisering van kwalifikasies.
4. Gesondheidsdienste	<ul style="list-style-type: none"> (i) Omgewingstoestande wat 'n gesondheidsgevaar inhou en gevaarlike stowwe; (ii) Aansteeklike en oordraagbare siektes; (iii) Farmaseutiese produkte; (iv) Menslike weefsel; (v) Sterilisasie en aborsie; (vi) Mediese skemas;

(vii) Beheerliggame ten opsigte van gesondheidsberoepe; en

(viii) Geestesgesondheid.

NB: Die Direkteur-generaal: Nasionale Behuising en Bevolkingsontwikkeling deel mee dat hulle die voorafgaande formulering ondersteun, maar dat hulle probleme met die uitvoering daarvan voorsien.

5. Maatskaplike Welsyn

(i) Maatskaplike intervensie in die lewens van mense;

(ii) Maatskaplikewerk-professie;

(iii) Proerbeamptes;

(iv) Nasionale oorlegplegende strukture;

(v) Nasionale Fondsinsameling;

(vi) Nasionale rampe;

(vii) Bestaansbeveiliging;

(viii) Standaard vir statutêre voorgeskrewe behandeling; en

(ix) Bevolkingsbeplanning.

6. Landbou

Die bepaling van algemene beleid en koördinering van die volgende sake:

(i) Dieregesondheid;

(ii) Landbouhulpbronbewaring en -benutting;

(iii) Landboubemaking;

(iv) Koöperasie aangeleenthede;

(v) Veterinêre volksgesondheid;

(vi) Plant- en veeverbetering;

(vii) Registrasie van landboumiddels, vee-middels, bemestingstowwe en dierevoedsel;

(viii) Registrasie van veebrandmerke;

(ix) Landbounavorsing; en

(x) Landbouwatervoorsiening binne toebedeelde bronne.

7. Natuurbewaring

- (i) Internasionale verdrae, protokolle en konvensies;
- (ii) Beskerming van ekosisteme (biome) en terreine van nasionale en internasionale belang;
- (iii) Beheer en benutting van marine bronne; en
- (iv) Beheer en benutting van kusgebiede.

8. Omgewingsake

- (i) Internasionale verdrae, protokols en konvensies;
- (ii) Beoordeling van die impak van ontwikkelingsaktiwiteite en benutting van bronne op die omgewing en rehabilitasie (norme en standaarde);
- (iii) Omgewingsbesoedelingsbeheer en afvalbestuur;
- (iv) Storting van afval deur vreemde moondhede;
- (v) Vervoer van gevaarhoudende stowwe; en
- (vi) Weerkundige dienste.

9. Openbare werke

- (i) Verkryging, beheer en beskikking van vaste bates vir gebruik deur die sentrale regering; en
- (ii) Onteining van eiendom en regulering van die argitek-, ingenieurs-, bourekenaars- en waardeerdersberoep.

10. Polisie-dienste

Die regulering van polisiëring-dienste met betrekking tot:

- (i) Binnelandse veiligheid;
- (ii) Georganiseerde misdaad;
- (iii) Internasionale skakeling;
- (iv) Kriminele rekords ;
- (v) Forensiese laboratorium;
- (vi) Nasionale standaarde vir opleiding; en

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- (vii) Polisie wet van toepassing op 'n Nasionale Polisiemag.

11. Korrektiewe Dienste

Die regulering van korrektiewe dienste met betrekking tot:

- (i) Ratifisering van internasionale gedragskodes en standaarde oor korrektiewe aangeleenthede;
- (ii) Nasionale beleid oor gevangenes en toesiggevalle;
- (iii) Nasionale beleid oor gevangenisindustrieë; en
- (iv) Nasionale beleid oor die opleiding en sertifisering van korrektiewe beamptes.

NB: Die vermelding van SPS voor die korrektiewe dienstefunksie mag die geleentheid skep dat meer as een departement tot stand kom. Dit is totaal onwenslik en daar behoort net een korrektiewe dienste-stelsel verdeel tussen nasionale en streeksvlak - binne die grense van die RSA te bestaan.

12. Bosbou

- (i) Bestuur, beheer en bedryf van staatsbosse aangeplant vir kommersiële doeleindes asook houtverwerkingsinstallasies;
- (ii) Beheer oor bebossing; en
- (iii) Kwaliteit van hout, insluitende standaarde vir invoer en uitvoer.

13. Burgersake en migrasie

- (i) Registrasie van geboortes en sterftes;
- (ii) Voltrekking en registrasie van huwelike;
- (iii) Bevolkingsidentifikasie;
- (iv) Burgerskap;
- (v) Vreemdelingbeheer;
- (vi) Verkiesings en referendums; en
- (vii) Openbare vakansiedae.

14. Kultuur

- (i) Bevordering van nasionale eenheid op kulturele gebied; en
- (ii) Betaling van hulptoelae aan nasionale kulturele instansies, bewaringsliggame en verwante organisasies.

15. Regulering van energie

- (i) Die opwekking en gebruik van elektriese energie, natuurlike gassee en die aanwending van steenkool en ander energiehulpbronne;
- (ii) Verkryging en verspreiding van energiehulpbronne vir vervoer; en
- (iii) Verkryging en beskikking oor bronne- en spesiale kernmateriale.

16. Regspleging

- (i) Ernstige ekonomiese misdrywe;
- (ii) Amp, funksies en bevoegdhede van die Ombudsman;
- (iii) Hofstrukture, prosedures en jurisdiksie;
- (iv) Onderskepping van pos en kommunikasies en die moniteer van gesprekke;
- (v) Vervolgings, geregtelike ondersoeke en verskyning as *curator ad litem* vir sielsiekes;
- (vi) Aangeleenthede betreffende die afdelings van die Hooggeregshof; en
- (v) Boedels en die beskerming van die belange van geregtelik onbevoegde persone.

17. Landmeting en die Registrasie van Aktes

- (i) Registrasie van aktes en deeltitels;
- (ii) Registrasie van notariële-aktes; en
- (iii) Landmeting.

18. Mannekrag

- (i) Versekering teen ongevalle en beroepsiektes;
- (ii) Werkloosheidsversekering;

- (iii) Veiligheidsmaatreëls ten opsigte van die vervaardiging van plofstowwe;
- (iv) Arbeidsverhoudinge;
- (v) Minimum arbeidsvoorwaardes;
- (vi) Minimum standaard ten opsigte van die veiligheid van werkplekke en masjinerie; en
- (ii) Sertifisering van mannekragopleiding.

19. Mynbou en Minerale

- (i) Veiligheids- en gesondheidsstandaarde vir mynbouwerkzaamhede en -toerusting, met inbegrip van standaard vir bevoegdheidssertifikate t.o.v. sekere groepe mynwerkers en sekere operateurs van mynboutoerusting; en
- (ii) Standaard t.o.v. mynrehabilitasie en mynhygiëne.

20. Bevordering van Handel en Nywerheid

- (i) Ontwikkeling en beskerming van handel en nywerheid;
- (ii) Binnelandse handel;
- (iii) Nasionale meetstandaarde;
- (iv) Buitelandse handelsverhoudinge, invoer en uitvoer;
- (v) Strategiese nasionale voorraade;
- (vi) Regte op patente, handelsmerke en ontwerpe;
- (vii) Registrasie en administrasie van maatskappye, beslote korporasies en beheer oor aandeelblokke;
- (viii) Wetenskaplike en tegnologiese navorsing en ontwikkeling;
- (ix) Vestiging van nywerhede;
- (x) Beskerming van verbruikers; en
- (xi) Bevordering van toerisme.

21. Vervoerwese

- (i) Spoorwegpendelaarskorporasie;
- (ii) Padvervoer;
- (iii) Derdepartyversekering;
- (iv) Lug- en skeepsaangeleenthede;
- (v) Besoedeling van die see deur olie en skepe;
- (vi) Toepassing van internasionale soektog- en reddingsooreenkomste; en
- (vii) Beheer oor vervoeraangeleenthede.

22. Padvoorsiening

- (i) Nasionale en tolpaaië; en
- (ii) Padvekeerbeheer.

BYLAE B

Schedule 8

Function	Aspects within legislative competence of Parliament
1. Taxation for SPR purposes	None
2. Housing and Urban Development	(i) Housing strategy; (ii) Norms and standards; and (iii) Housing assistance measures.
3. Education	(1) The determination of general policy with regard to the following matters: (i) Professional registration of educators; (ii) Labour relations concerning educators; and (iii) The broad regulation of tertiary educational institutions. (2) The determination of norms and standards with regard to the following matters: (i) Education programmes; and (ii) Examinations and certification of qualifications.
4. Health services	(i) Environmental conditions that constitute a health hazard and hazardous substances; (ii) Infectious and communicable diseases; (iii) Pharmaceutical products; (iv) Human tissue; (v) Sterilisation and abortion; (vi) Medical schemes; (vii) Control bodies with regard to health professions; and (viii) Mental health.

NB: The Director-general: National Housing and Population Development informs that they support the afore-going formulation but that they foresee problems with the application thereof.

5. Social Welfare

- (i) Social intervention in the lives of people;
- (ii) Social Work Profession;
- (iii) Probation Officers;
- (iv) National Consultative Structures;
- (v) National Fund-raising;
- (vi) National disasters;
- (vii) Social security;
- (viii) Standards for statutory prescribed treatment; and
- (ix) Population Planning.

6. Agriculture

The determination of general policy and co-ordination with regard to the following matters:

- (i) Animal health;
- (ii) Agricultural resource conservation and utilization;
- (iii) Agricultural marketing;
- (iv) Co-operative affairs;
- (v) Veterinary public health;
- (vi) Plant and livestock improvement;
- (vii) Registration of agricultural remedies, stock remedies, fertilizers and animal feeds;
- (viii) Registration of livestock brands;
- (ix) Agricultural research; and
- (x) Agricultural water supply within allocated sources.

7. Nature conservation

- (i) International treaties, conventions and protocols;
- (ii) Protection of ecosystems (biomes) and areas of international and national interest;
- (iii) Control and utilization of marine resources; and
- (iv) Control and utilization of coastal areas.

3.Environment affairs

- (i) International treaties, protocols and conventions;
- (ii) Assessment of the impact of development activities and utilisation of resources on the environment and rehabilitation (norms and standards);
- (iii) Environment pollution control and waste management;
- (iv) Dumping of waste by foreign powers;
- (v) Transport of hazardous substances; and
- (vi) Meteorological services.

9.Public works

- (i) Procuring, control and disposal of fixed property for utilisation by central government; and
- (ii) Expropriation of property and regulation of the architectural, engineering, quantity surveying and valuator professions.

10.Police services

The regulation of policing services with regard to:

- (i) Internal security;
- (ii) Organised crime;
- (iii) International liaison;
- (iv) Criminal records;
- (v) Forensic laboratory work;
- (vi) National standards on training; and
- (vii) Police Act applicable to a National Police Force.

11.Correctional services

The regulation of correctional services with regard to:

- (i) Ratification of international Codes of Conduct and Standards on correctional matters;
- (ii) National policy on prisoners and probationers;
- (iii) National policy on prison industries; and

- (iv) National policy on the training and certification of correctional officials.

NB: The specific mentioning of SPR in relation to the correctional service function may create the opportunity for more than one Department to come into being. This is completely unacceptable since there should only be one correctional system in the RSA, operating at the National and Regional level.

12. Forestry

- (i) Management, control and operation of state forests cultivated for commercial purposes as well as timber processing plants;
- (ii) Control of afforestation; and
- (iii) Quality of timber including standards for import and export.

13. Civic affairs and Migration

- (i) Registration of births and deaths;
- (ii) Solemnisation and registration of marriages;
- (iii) Population identification;
- (iv) Citizenship;
- (v) Aliens control;
- (vi) Elections and referendums; and
- (vii) Public holidays.

14. Culture

- (i) Promotion of national unity in the field of culture; and
- (ii) Payments of grants-in-aid to national cultural institutions, conservation bodies and related organisations.

15. Energy Regulation

- (i) The generating and utilisation of electrical energy, natural gas and the application of coal and other energy resources;
- (ii) Acquisition and distribution of transport energy resources; and
- (iii) Acquisition, possession and disposal of source and special nuclear materials.

16. Justice Administration

- (i) Serious economic offences;
- (ii) Office, functions and powers of the Ombudsman;
- (iii) Court structures, procedures and jurisdiction;
- (iv) Interception of mail and communications and the monitoring of conversations;
- (v) Prosecutions, judicial inquiries and appearance as *curator ad litem* for the mentally ill;
- (vi) Matters concerning the divisions of the Supreme Court; and
- (vii) Estates and protection of the interests of legally incompetent persons.

17. Land Surveying and Deeds Registration

- (i) Registration of deeds and sectional titles;
- (ii) Registration of notarially executed deeds; and
- (iii) Surveying of land.

18. Manpower

- (i) Accident and occupational disease insurance;
- (ii) Unemployment insurance;
- (iii) Safety measures regarding the manufacture of explosives;
- (iv) Labour relations;
- (v) Minimum conditions of employment;
- (vi) Minimum standards in respect of safety of work places and machinery; and
- (vii) Manpower training certification.

19. Mining and Minerals

- (i) Safety and health standards for mining activities and equipment, including standards for certificates of competency in respect of certain groups of mineworkers and certain operators of mining equipment; and
- (ii) Standards in respect of mining rehabilitation and mining hygiene.

20. Trade and Industrial Promotion

- (i) Industrial and business development and protection;
- (ii) Internal trade;
- (iii) National measuring standards;
- (iv) Foreign trade relations, imports and exports;
- (v) Strategic national supplies;
- (vi) Rights and patents, trade marks and designs;
- (vii) Registration and administration of companies, closed corporations and control of share blocks;
- (viii) Scientific and technological research and development;
- (ix) Establishment of industries;
- (x) Protection of consumers; and
- (xi) Tourism promotion.

21. Transport Affairs

- (i) Rail Computer Corporation;
- (ii) Land transport;
- (iii) Third Party Insurance;
- (iv) Air and shipping matters;
- (v) Pollution of the sea by oil and ships;
- (vi) Enforcement of international search and rescue conventions; and
- (vii) Control of transport matters.

22. Provision of Roads

- (i) National and Toll Roads; and
- (ii) Road traffic management.

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- (4) The taxes and levies raised by an SPR government within its jurisdiction must be non-discriminatory for both residents and non-residents of that SPR.
- (5) An SPR shall be entitled to an equitable share of revenue collected nationally from income tax on individuals and companies as well as value added tax, where the total share of the SPRs will be specified in national legislation, based on a recommendation of the Financial and Fiscal Commission, and which in turn is based on the relative fiscal needs of national, SPR and local government to provide basic services and to execute their functions and powers, after taking into account each level's own revenue sources.

NOTE: This subsection specifies the share of each level of government of certain national taxes - eg. that SPRs will be entitled to 25% of the revenue from the abovementioned taxes. The next subsection specifies the share of each individual SPR in the total amount provided for SPRs. The next subsection also makes provision for budgetary grants to SPRs, that will be additional to the revenue sharing provided for in subsection (5).

- (6) The Financial and Fiscal Commission shall make recommendations to the Parliament regarding the equitable share of each SPR in the overall share of national revenue provided for SPRs in subsection (5), taking into account factors such as the origin of these taxes, the optimal utilization by each SPR of its own revenue sources provided for in subsections (1) and (2) and economic and fiscal disparities between the SPRs.

NOTE: This subsection (as well as (5) above) could be extended to also refer to revenue sharing to local government. It will however also depend on Chapter 10 of the Constitution.

- (7) The Financial and Fiscal Commission shall make recommendations to the Parliament regarding non-earmarked (unconditional) or block grants to SPRs in the national budget, taking into account the national interest, the fiscal capacity and need of each SPR to provide basic services and to execute its functions and powers, as well as the population and development needs, administrative responsibilities and other legitimate interests of each SPR.

PROPOSED REFORMULATION OF CLAUSE 121 OF DRAFT INTERIM CONSTITUTION

121 (1) An SPR shall be entitled -

- (a) to levy a surcharge on the central government's income tax on individuals, provided that the tax rate of such a surcharge does not exceed the maximum tax rate or is less than the minimum tax rate specified in national legislation, based on a recommendation of the Financial and Fiscal Commission established in terms of Chapter 11;

NOTE: The Financial and Fiscal Commission should perhaps be renamed to the Intergovernmental Fiscal Commission.

- (b) to levy a tax on the sale of petrol and distillate fuel for consumption within the Republic, provided that the rate of such a levy does not fall outside the maximum and/or minimum limits specified in national legislation, based on a recommendation of the Financial and Fiscal Commission;
- (c) to levy user-charges on those services where it has exclusive legislative competences, specified in section 118(1), provided that the revenue from the user-charges in respect of each service does not exceed the cost of providing each of these services.

NOTE: The second part of this last subsection is necessary to prevent taxes being levied on certain services under the pretext of it being user-charges.

- (2) An SPR government shall be competent to levy such additional taxes, levies, imposts and surcharges not provided for in subsection (1) as may be recommended by the Financial and Fiscal Commission and approved by Parliament (both the National Assembly and the Senate in terms of section 60), which approval shall not unreasonably be withheld.
- (3) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.

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- (8) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.
- (9) An SPR government shall be competent to raise loans in the domestic financial markets, provided that
- (a) it may not be utilized for current expenditure;
 - (b) it complies with the financial norms set for this purpose by the Financial and Fiscal Commission in respect of all SPRs, and which will be specifically reported on annually by the Auditor-General;
 - (c) in the case where loans by an SPR did not comply with the financial norms referred to in (b) and reported on by the Auditor-General, approval has to be obtained from the National Executive in respect of any additional loans by the SPR until such time as it again complies with the financial norms referred to in (b);
 - (d) interest payments and loan redemptions form first liabilities against the revenue of each SPR, excluding transfers from the national government that are earmarked for specific services;
 - (e) should an SPR be unable to meet its loan obligations, both in terms of interest payments and loan redemptions, the whole executive of the SPR must resign and a new executive be appointed on the basis provided for in section 113;
 - (f) should the national government provide any specific assistance to an SPR to meet its loan obligations, it will have the power to cut back the expenditures or raise the taxes of that SPR until such time as the SPR is able to meet its loan obligations.
- NOTE: This subsection, or certain elements thereof, can also be extended to include loans by local government.*
- (10) The national government may not guarantee any loans by SPR governments or local governments.