

# CONSTITUTIONAL COURT

## Certification judgments

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### *The 34 Constitutional Principles*

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- ❖ I (1)  
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 (2)  
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, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.
- ❖ III (3)  
The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.
- ❖ IV (4)  
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 (5)  
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 (6)  
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 (7)  
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 (8)  
There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.
- ❖ IX (9)  
Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.
- ❖ X (10)  
Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

- ❖ XI
(11)
- The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.
  
- ❖ XII
(12)
- 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
(13)
- 1. 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 fundamental rights contained in the Constitution and to legislation dealing specifically therewith.
- 2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution.
  
- ❖ XIV
(14)
- Provision shall be made for participation of minority political parties in legislative process in a manner consistent -with democracy.
  
- ❖ XV
(15)
- Amendments to the Constitution shall require special procedures lying special majorities.
  
- ❖ XVI
(16)
- Government shall be structured at national, provincial and local levels.
  
- ❖ XVII
(17)
- At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII.
  
- ❖ XVIII
(18)
- 1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.
- 2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution.
- 3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.
- 4. 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, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds 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.
- 5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.
  
- ❖ XIX
(19)
- The powers and functions at 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
(20)
- 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 (21)  
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 denned 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. 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 –
    - (a) for the purposes of provincial planning and development and the rendering of services; and
    - (b) in respect of aspects of government dealing with 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 government or provincial governments.
- ❖ XXII (22)  
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 (23)  
In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government 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 (24)  
A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.
- ❖ XXV (25)  
The national government 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
(26)
- 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
(27)
- A Financial and Fiscal Commission, in which each province shall be represented, shall 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
(28)
- Notwithstanding the provisions of Principle XII, 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
(29)
- The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector 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 public service.
  
- ❖ XXX
(30)
- 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 of 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 functioning of the public service, as well as the terms and 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
(31)
- Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.
  
- ❖ XXXII
(32)
- 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.
  
- ❖ XXXIII
(33)
- The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.
  
- ❖ XXXIV
(34)
- 1. This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.
- 2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination

If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new

constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.