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ARORI

DEPARTMENT OF AGRICULTURE AND  
LAND AFFAIRS

STRATEGIC MEETING



University of Fort Hare  
*Together in Excellence*

3<sup>RD</sup> & 4<sup>TH</sup> February  
Eagles Ridge, Stutterheim

SAVÈ

# UNLOCKING THE AGRICULTURAL POTENTIAL

DEPARTMENT OF AGRICULTURE AND LAND AFFAIRS

## STRATEGIC FRAMEWORK WORKSHOP

3<sup>RD</sup> - 4<sup>TH</sup> FEBRUARY 2000

**PURPOSE** TO DEVELOP A STRATEGIC FRAMEWORK WITHIN WHICH THE DEPARTMENT OF AGRICULTURE AND LAND AFFAIRS CAN FORMULATE IMPLEMENTATION STRATEGIES, BUSINESS PLANS AND PERFORMANCE AGREEMENTS, WHICH WILL ACCOMPLISH THE POLICIES AND VISION OF THE DEPARTMENT, WITHIN ITS CONSTITUTIONAL AND LEGAL OBLIGATIONS.



### AGENDA

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THURSDAY 3<sup>RD</sup> FEBRUARY 2000

14.00	INTRODUCTION AND OVERVIEW	M.E.C. HON. MAX MAMASE
15.00	PROVINCIAL PRIORITIES	MR GEBEDA
15.45	TEA	
16.00	REGULATORY FRAMEWORK	MR NOBATANA
16.45	DEPARTMENTAL CHALLENGES	MR ALLWOOD
17.00	COLLATE FRAMEWORK ISSUES	MR ALLWOOD
18.00	BREAK	
19.00	DINNER	

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FRIDAY 4<sup>TH</sup> FEBRUARY 2000

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7.00	BREAKFAST	
8.00	REVIEW FRAMEWORK ISSUES	MR ALLWOOD
8.30	SMALL GROUP DISCUSSIONS	
10.30	TEA	
10.45	REPORT BACK	
12.00	STRATEGIC FRAMEWORK RESOLUTIONS	
13.00	LUNCH	
13.45	STRATEGIC FRAMEWORK RESOLUTIONS	
15.00	CONCLUSION	M.E.C HON MAX MAMASE



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CONSTITUTION  
OF THE REPUBLIC OF  
SOUTH AFRICA

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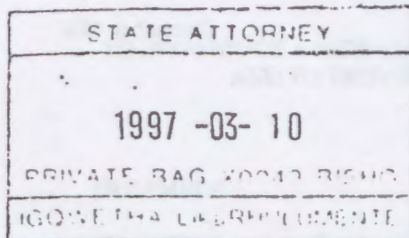


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# CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996



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**CONSTITUTIONAL ASSEMBLY**

**REPUBLIC OF SOUTH AFRICA**

**CONSTITUTION OF THE REPUBLIC  
OF SOUTH AFRICA 1996**

**AS ADOPTED BY THE CONSTITUTIONAL ASSEMBLY**

**ON 8 MAY 1996**



**AND AS AMENDED ON 11 OCTOBER**

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**ONE LAW FOR ONE NATION.**

**Explanatory Memorandum**

This text has been drafted in terms of Chapter 5 of the Constitution of the Republic of South Africa, (Act 200 of 1993). The text was adopted by the Constitutional Assembly on 8 May 1996. In terms of a judgment of the Constitutional Court, delivered on 6 September, the text was referred back to the Constitutional Assembly for reconsideration. The text has accordingly been amended to comply with the Constitutional Principles contained in Schedule 4 of the interim Constitution.

The objective in drafting this text was to ensure that the final constitution is legitimate, credible and accepted by all South Africans.

To this extent, the process of drafting this text involved many South Africans in the largest public participation programme ever carried out in South Africa. After nearly two years of intensive consultations, the political parties represented in the Constitutional Assembly negotiated the formulations contained in this text which are an integration of ideas from ordinary citizens, civil society and political parties represented in and outside of the Constitutional Assembly.

This text therefore represents the collective wisdom of the South African people and has been arrived at by general agreement.

2 *Constitution of The Republic of South Africa, 1996*

First Published

December 1996

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TO INTRODUCE A NEW CONSTITUTION FOR THE REPUBLIC OF SOUTH AFRICA  
AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO

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PREAMBLE

*We, the people of South Africa,*

*Recognise the injustices of our past;*

*Honour those who suffered for justice and freedom in our land;*

*Respect those who have worked to build and develop our country; and*

*Believe that South Africa belongs to all who live in it, united in our diversity.*

*We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to*

*Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*

*Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*

*Improve the quality of life of all citizens and free the potential of each person; and*

*Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

*May God protect our people.*

*Nkosi Sikelel'iAfrika.*

*Morena boloka setjhaba sa heso.*

*God seën Suid-Afrika.*

*God bless South Africa.*

*Mudzimu shatutshedza Afurika.*

*Hosi katekisa Afrika.*



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CHAPTER 1

FOUNDING PROVISIONS

Republic of South Africa

1. The Republic of South Africa is one sovereign democratic state founded on the following values:
  - (a) Human dignity, the achievement of equality and advancement of human rights and freedoms.
  - (b) Non-racialism and non-sexism.
  - (c) Supremacy of the constitution and the rule of law.
  - (d) Universal adult suffrage, a national common voters roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Supremacy of Constitution

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligation imposed by it must be fulfilled

Citizenship

3. (1) There is a common South African citizenship.
  - (2) All citizens are -
    - (a) equally entitled to the rights, privileges and benefits of citizenship; and
    - (b) equally subject to the duties and responsibilities of citizenship.
  - (3) National legislation must provide for the acquisition, loss and restoration of citizenship.

National anthem

4. The national anthem of the Republic is determined by the President by proclamation.

National flag

5. The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.

Languages

6. (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
  - (2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.
  - (3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.
    - (b) Municipalities must take into account the language usage and preferences of their residents.
  - (4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

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- (5) A Pan South African Language Board established by national legislation must -
- (a) promote and create conditions for the development and use of-
    - (i) all official languages;
    - (ii) the Khoi, Nama and San languages; and
    - (iii) sign language; and
  - (b) promote and ensure respect for-
    - (i) All languages, commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, and Urdu, and
    - (i) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.



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CHAPTER 2

BILL OF RIGHTS

**Rights**

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote, and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

**Application**

8. (1) The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary, and all organs of state.
- (2) A provision of the Bill of Rights binds a natural or a juristic persons if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (3) Where applying a provisions of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court-
- (a) in order to give effect to a right in the Bill, must apply, or if necessary, develop, the common law to the extent that legislation does not give effect to that right; and
- (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
- (4) A juristic persons is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and of that juristic persons.

**Equality**

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

**Human dignity**

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

**Life**

11. Everyone has the right to life.

**Freedom and security of the person**

12. (1) Everyone has the right to freedom and security of the person, which includes the right -
- (a) not to be deprived of freedom arbitrarily or without just cause;
  - (b) not to be detained without trial;
  - (c) to be free from all forms of violence from either public or private sources;
  - (d) not to be tortured in any way; and
  - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right -
- (a) to make decisions concerning reproduction;
  - (b) to security in and control over their body; and
  - (c) not to be subjected to medical or scientific experiments without their informed consent.

**Slavery, servitude and forced labour**

13. No one may be subjected to slavery, servitude or forced labour.

**Privacy**

14. Everyone has the right to privacy, which includes the right not to have -
- (a) their person or home searched;
  - (b) their property searched;
  - (c) their possessions seized; or
  - (d) the privacy of their communications infringed.

**Freedom of religion, belief and opinion**

15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that -
- (a) those observances follow rules made by the appropriate public authorities;
  - (b) they are conducted on an equitable basis; and
  - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising -
- (i) marriages concluded under any tradition or a system of religious, personal or family law; or
  - (ii) systems of personal and family law under any tradition or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

**Freedom of expression**

16. (1) Everyone has the right to freedom of expression, which includes -
- (a) freedom of the press and other media;
  - (b) freedom to receive and impart information or ideas;
  - (c) freedom of artistic creativity; and
  - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to -
- (a) propaganda for war;
  - (b) incitement of imminent violence; or
  - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

**Assembly, demonstration, picket and petition**

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket, and to present petitions.

**Freedom of association**

18. Everyone has the right to freedom of association.

**Political rights**

19. (1) Every citizen is free to make political choices, which includes the right-
- (a) to form a political party;
  - (b) to participate in the activities of, or recruit members for, a political party; and
  - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right -
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - (b) to stand for public office and if elected, to hold office.

**Citizenship**

20. No citizen may be deprived of citizenship.

**Freedom of movement and residence**

21. (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
  - (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
  - (4) Every citizen has the right to a passport.

**Freedom of trade, occupation and profession**

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

**Labour relations**

23. (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right -
- (a) to form and join a trade union;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Every employer has the right -
- (a) to form and join an employers' organisation; and
  - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right -
- (a) to determine its own administration, programmes and activities;
  - (b) to organise; and
  - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

**Environment**

24. Everyone has the right -
- (a) to an environment that is not harmful to their health or well-being, and
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (i) prevent pollution and ecological degradation;
    - (ii) promote conservation; and
    - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

**Property**

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application -
- (a) for a public purpose or in the public interest; and
  - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation, and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected, having regard to all relevant circumstances, including - interest and the interests of those affected, having regard to all relevant factors, including -
- (a) the current use of the property;
  - (b) the history of the acquisition and use of the property;
  - (c) the market value of the property;
  - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - (e) the purpose of the expropriation.
- (4) For the purposes of this section -
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
  - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

**Housing**

26. (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished,

without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

**Health care, food, water, and social security**

27. (1) Everyone has the right to have access to -
- (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

**Children**

28. (1) Every child has the right -
- (a) to a name and a nationality from birth;
  - (b) to family care or parental care, or appropriate alternative care when removed from the family environment;
  - (c) to basic nutrition, shelter, basic health care services, and social services;
  - (d) to be protected from maltreatment, neglect, abuse, or degradation;
  - (e) to be protected from exploitative labour practices;
  - (f) not to be required or permitted to perform work or provide services that -
    - (i) are inappropriate for a person of that child's age; or
    - (ii) place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development;
  - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -
    - (i) kept separately from detained persons over the age of 18 years, and
    - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
  - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
  - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section, "child" means a person under the age of 18 years.

**Education**

29. (1) Everyone has the right -
- (a) to a basic education, including adult basic education; and
  - (b) to further education, which the state, through reasonable measures must take progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -
- (a) equity;
  - (b) practicability; and
  - (c) the need to redress the results of past racially discriminatory law and

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practices.

- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -
  - (a) do not discriminate on the basis of race;
  - (b) are registered with the state; and
  - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

**Language and culture**

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

**Cultural, religious and linguistic communities**

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community -
  - (a) to enjoy their culture, practise their religion and use their language; and
  - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) This right in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

**Access to information**

32. (1) Everyone has the right of access to -
  - (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

**Just administrative action**

33. (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must -
  - (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
  - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
  - (c) promote an efficient administration.

**Access to courts**

34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal forum.

**Arrested, detained and accused persons**

35. (1) Everyone who is arrested for allegedly committing an offence has the right -
  - (a) to remain silent;
  - (b) to be informed promptly -
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;

- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (d) to be brought before a court as soon as reasonably possible, but not later than
    - (i) 48 hours after the arrest, or
    - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
  - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
  - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right-
- (a) to be informed promptly of the reason for being detained;
  - (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
  - (c) to have a legal practitioner assigned to the detained person by the state, and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly-
  - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material, and medical treatment; and
  - (f) to communicate with, and be visited by, that person's -
    - (i) spouse or partner;
    - (ii) next of kin;
    - (iii) chosen religious counsellor; and
    - (iv) chosen medical practitioner.
- (3) Every accused person has a right to a fair trial, which includes the right -
- (a) to be informed of the charge with sufficient detail to answer it;
  - (b) to have adequate time and facilities to prepare a defence;
  - (c) to a public trial before an ordinary court;
  - (d) to have their trial begin and conclude without unreasonable delay;
  - (e) to be present when being tried;
  - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
  - (g) to have a legal practitioner assigned to the accused person by the state, and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
  - (i) to adduce and challenge evidence,
  - (j) not to be compelled to give self-incriminating evidence;
  - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

- (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

#### Limitation of rights

- 36 (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including-
- (a) the nature of the right-
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

#### States of emergency

- 37 (1) A state of emergency may be declared only in terms of an Act of Parliament and only when -
- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency; and
  - (b) the declaration is necessary to restore peace and order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only -
- (a) prospectively; and
  - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with supporting vote a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
- (3) Any competent court may decide on the validity of -
- (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; or
  - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that -
- (a) the derogation is strictly required by the emergency; and
  - (b) the legislation -
    - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
    - (ii) conforms to subsection (5); and
    - (iii) is published in the national Government Gazette as soon as reasonably possible after being enacted.
- (5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise -
- (a) indemnifying the state, or any person, in respect of any unlawful act;

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- (b) any derogation from this section; or
- (c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the table.

Table of Non-Derogable Rights

1 Section Number	2 Section Title	3 Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human dignity	Entirely
11	Life	Entirely
12	Freedom and security of the person	With respect to subsections (1)(d) and (e) and (2)(c)
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: - subsection (1)(d) (1)(e); - the rights in subparagraphs (i) and (ii) of subsection (1)(g); - subsection 1(i) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to: - subsections (1) (a), (b) and (c) and (2)(d); - the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) - subsection (4); and - subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair

- (6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
  - (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
  - (b) A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
  - (c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
  - (d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
  - (e) A court must review the detention as soon as reasonably possible, but no later

than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.

- (f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
  - (g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
  - (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
- (8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of those persons.

#### Enforcement of rights

38. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:
- (a) anyone acting in their own interest;
  - (b) anyone acting on behalf of another person who cannot act in their own name;
  - (c) anyone acting as a member of, or in the interest of, a group or a class of persons;
  - (d) anyone acting in the public interest; and
  - (e) an association acting in the interest of its members.

#### Interpretation of Bill of Rights

39. (1) When interpreting the Bill of Rights, a court, tribunal or forum -
- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law, and
  - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport, and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

CHAPTER 3

CO-OPERATIVE GOVERNMENT

Government of the Republic

40. (1) In the Republic, government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated.
- (2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.

Principles of co-operative government and intergovernmental relations

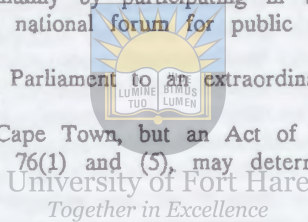
41. (1) All spheres of government and all organs of state within each sphere must -
- (a) preserve the peace, national unity and the indivisibility of the Republic;
  - (b) secure the well-being of the people of the Republic;
  - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
  - (d) be loyal to the Constitution, the Republic, and its people;
  - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
  - (f) not assume any power or function except those conferred on them in terms of the Constitution;
  - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
  - (h) co-operate with one another in mutual trust and good faith by -
    - (i) fostering friendly relations;
    - (ii) assisting and supporting one another;
    - (iii) informing one another of, and consulting one another on, matters of common interest;
    - (iv) co-ordinating their actions and legislation with one another;
    - (v) adhering to agreed procedures; and
    - (vi) avoiding legal proceedings against one another.
- (2) An Act of Parliament must
- (a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
  - (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental dispute.
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.

CHAPTER 4

PARLIAMENT

Composition of Parliament

42. (1) Parliament consists of -
- (a) the National Assembly, and
  - (b) the National Council of Provinces.
- (2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
- (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.
- (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.
- (5) The President may summon Parliament to an extraordinary sitting at any time to conduct special business.
- (6) The seat of Parliament is Cape Town, but an Act of Parliament, enacted in accordance with subsections 76(1) and (5), may determine that the seat of Parliament is elsewhere.



Legislative authority of Republic

43. In the Republic, the legislative authority-
- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
  - (b) of the provincial sphere of government is vested in the provincial legislature as set out in section 104; and
  - (c) of the local sphere of government is vested in Municipal Councils, as set out in section 156.

National legislative authority

44. (1) The national legislative authority as vested in Parliament -
- (a) confers on the National Assembly the power -
    - (i) to amend the Constitution;
    - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional areas listed in Schedule 5; and
    - (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and
  - (b) confers on the National Council of Provinces the power -
    - (i) to participate in amending the Constitution, in accordance with section 74;
    - (ii) to pass in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4, and any other matter required by the Constitution to be passed in accordance with section 76; and
    - (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.
- (2) Parliament may intervene by passing legislation, in accordance with section 76,(1) with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary -

- (a) to maintain national security;
  - (b) to maintain economic unity,
  - (c) to maintain essential national standards;
  - (d) to establish minimum standards required for the rendering of services, or
  - (e) to prevent unreasonable action taken by a province which is prejudicial to the interest of another province, or to the country as a whole.
- (3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.
- (4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

**Joint rules and orders and joint committees**

45. (1) The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders -
- (a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
  - (b) to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee;
  - (c) to establish a joint committee to review the Constitution at least annually; and
  - (d) to regulate the business of -
    - (i) the joint rules committee;
    - (ii) the Mediation Committee;
    - (iii) the constitutional review committee; and
    - (iv) any joint committees established in terms of paragraph (b).
- (2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a joint committee of the Assembly and the Council as they have before the Assembly or the Council.

**THE NATIONAL ASSEMBLY**

**Composition and election**

46. (1) The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that -
- (a) is prescribed by national legislation;
  - (b) is based on the national common voters roll;
  - (c) provides for a minimum voting age of 18 years; and
  - (d) results, in general, in proportional representation.
- (2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly.

**Membership**

47. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -
    - (i) the President, Deputy President, Ministers and Deputy Ministers; and
    - (ii) other office-bearers whose functions are compatible with the

functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;

- (b) permanent delegates to the National Council of Provinces or members of a provincial legislature or a municipal council;
  - (c) unrehabilitated insolvents;
  - (d) anyone declared to be of unsound mind by a court of the Republic; or
  - (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of the National Assembly in terms of subsection (1)(a) or (b) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of the National Assembly if that person -
- (a) ceases to be eligible; or
  - (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership.
- (4) Vacancies in the National Assembly must be filled in terms of national legislation.

#### Oath or affirmation

48. Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### Duration of National Assembly

49. (1) The National Assembly is elected for a term of five years.
- (2) If the National Assembly is dissolved in terms of section 50, or when its term expires, the President, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved, or its term expired.
- (3) If the result of an election of the National Assembly is not declared within the period established in terms of section 190 or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) The National Assembly remains competent to function from the time it is dissolved, or its term expires, until the day before the first day of polling for the next Assembly.

#### Dissolution of National Assembly before expiry of its term

50. (1) The President must dissolve the National Assembly if -
- (a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
  - (b) three years have passed since the Assembly was elected.
- (2) The Acting-President must dissolve the National Assembly if -
- (a) there is a vacancy in the office of President; and
  - (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

**Sittings and recess periods**

51. (1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.

**Speaker and Deputy Speaker**

52. (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.
- (2) The President of the Constitutional Court must preside over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.
- (5) In terms of its rules and orders, the National Assembly may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

**Decisions**

53. (1) Except where the Constitution provides otherwise -
- (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
- (b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly; and
- (c) all questions before the Assembly are decided by a majority of the votes cast.
- (2) The member of the National Assembly presiding at a meeting of the Assembly has no deliberative vote, but -
- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
- (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members.

**Rights of certain Cabinet members in National Assembly**

54. The President and any member of the Cabinet who is not a member of the National Assembly may attend, and may speak in, the Assembly, but may not vote.

**Powers of National Assembly**

55. (1) In exercising its legislative power, the National Assembly may -
- (a) consider, pass, amend or reject any legislation before the Assembly, and
- (b) initiate or prepare legislation, except money Bills.
- (2) The National Assembly must provide for mechanisms -
- (a) to ensure that all executive organs of state in the national sphere of government are accountable to it, and
- (b) to maintain oversight of -
- (i) the exercise of national executive authority, including the

- implementation of legislation; and
- (ii) any organ of state.

**Evidence or information before National Assembly**

56. The National Assembly or any of its committees may -

- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
- (b) require any person or institution to report to it;
- (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

**Internal arrangements, proceedings and procedures of National Assembly**

57. (1) The National Assembly may -

- (a) determine and control its internal arrangements, proceedings and procedures, and
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of the National Assembly must provide for -

- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
- (b) the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy;
- (c) financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively; and
- (d) the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition.

**Privilege**

58. (1) Cabinet members and members of the National Assembly -

- (a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and
- (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
  - (i) anything that they have said in, produced before, or submitted to, the Assembly or any of its committees; or
  - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to, the Assembly or any of its committees.

(2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.

(3) Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund.

**Public access to and involvement in National Assembly**

59. (1) The National Assembly must -

- (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken -
  - (i) to regulate public access, including access of the media, to the

- Assembly and its committees; and
- (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of any person.
- (2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

### NATIONAL COUNCIL OF PROVINCES

#### Composition of National Council

60. (1) The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.
- (2) The ten delegates are -
- (a) four special delegates consisting of-
- (i) the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces; and
- (ii) three other special delegates; and
- (b) six permanent delegates appointed in terms of section 61(2).
- (3) The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the Premier, heads the delegation.

#### Allocation of delegates

61. (1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3.
- (2) Within 30 days after the result of an election of a provincial legislature is declared, the legislature must-
- (a) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
- (b) appoint the permanent delegates in accordance with the nominations of the parties.
- (3) The national legislation envisaged in subsection (2)(a) must ensure the participation of minority parties in both permanent and special delegates' components of the delegation in a manner consistent with democracy.
- (4) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the province's delegation, must designate special delegates, as required from time to time, from among the members of the legislature.

#### Permanent delegates

62. (1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.
- (2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.
- (3) Permanent delegates are appointed for a term that expires immediately before the first sitting of the provincial legislature after its next election.
- (4) A person ceases to be a permanent delegate if that person -
- (a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate;
- (b) becomes a member of the Cabinet;
- (c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person;

- (d) ceases to be a member of the party that nominated that person and is recalled by that party; or
  - (e) is absent from the National Council of Provinces without permission in circumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate.
- (5) Vacancies among the permanent delegates must be filled in terms of national legislation.
- (6) Before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### Sittings of National Council

63. (1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods.
- (2) The President may summon the National Council of Provinces to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.

#### Chairperson and Deputy Chairpersons

64. (1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.
- (2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their term as a delegate expires earlier.
- (3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.
- (4) The President of the Constitutional Court must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.
- (5) The procedure set out in Part A of Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.
- (6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.
- (7) In terms of its rules and orders, the National Council of Provinces may elect from among the delegates other presiding officers to assist the Chairperson and Deputy Chairperson.

#### Decisions

65. (1) Except where the Constitution provides otherwise -
- (a) each province has one vote, which is cast on behalf of the province by the head of its delegation; and
  - (b) all questions before the National Council of Provinces are agreed when at least five provinces vote in favour of the question.
- (2) An Act of Parliament, enacted in accordance with the procedure established by either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

#### Participation by members of national executive

66. (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
- (2) The National Council of Provinces may require a Cabinet member a Deputy Minister or an official in the national executive or a provincial executive to

attend a meeting of the Council or a committee of the Council.

**Participation by local government representatives**

67. Not more than ten part-time representatives designated by organised local government, in terms of section 163, to represent different categories of municipalities, may participate when necessary in the proceedings of the National Council of Provinces, but may not vote.

**Powers of National Council**

68. In exercising its legislative power, the National Council of Provinces may-

- (a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this Chapter; and
- (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.

**Evidence or information before National Council**

69. The National Council of Provinces or any of its committees may -

- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
- (b) require any institution or person to report to it;
- (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

**Internal arrangements, proceedings and procedures of National Council**

70. (1) The National Council of Provinces may -

- (a) determine and control its internal arrangements, proceedings and procedures; and
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of the National Council of Provinces must provide for -

- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
- (b) the participation of all the provinces in its proceedings in a manner consistent with democracy; and
- (c) the participation in the proceedings of the Council and its committees of minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

**Privilege**

71. (1) Delegates to the National Council of Provinces, and the persons referred to in sections 66 and 67 -

- (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
- (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
  - (i) anything that they have said in, produced before, or submitted to, the Council or any of its committees; or
  - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to the Council or any of its committees.

- (2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67, may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to permanent members of the National Council of Provinces are a direct charge against the National Revenue Fund.

**Public access to and involvement in National Council**

72. (1) The National Council of Provinces must -
  - (a) facilitate public involvement in the legislative and other processes of the Council and its committees; and
  - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken
    - (i) to regulate public access, including access of the media, to the Council and its committees, and
    - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in open and democratic society.

**NATIONAL LEGISLATIVE PROCESS**  
*Together in Excellence*

**All Bills**

73. (1) Any Bill may be introduced in the National Assembly.
- (2) Only a Cabinet member or a Deputy Minister, or a member or committee of the Assembly, may introduce a Bill in the Assembly; but only the Cabinet member responsible for national financial matters may introduce a money Bill in the Assembly.
- (3) A Bill referred to in section 76(3), except a money Bill, introduced in the National Council of Provinces.
- (4) Only a member or committee of the National Council of Provinces may introduce a Bill in the Council.
- (5) A Bill passed by the National Assembly must be referred to the National Council of Provinces, if it must be considered by the Council. A Bill passed by the Council must be referred to the Assembly.

**Bills amending the Constitution**

74. (1) Section 1 and this subsection may be amended by a Bill passed by -
  - (a) the National Assembly with a supporting vote of at least 75 per cent of its members; and
  - (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (2) Chapter 2 may be amended by a Bill passed by-
  - (a) the National Assembly, with a supporting vote of at least two thirds of its members; and
  - (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (3) Any other provision of the Constitution may be amended by a Bill passed-
  - (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and
- (3) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment-
  - (i) relates to a matter that affects the Council;
  - (ii) alters provincial boundaries, powers, functions or institutions; or
  - (iii) amends a provision that deals specifically with a provincial matter.

- (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments.
- (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must
  - (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment;
  - (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and
  - (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.
- (6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures-
  - (a) to the Speaker for tabling in the National Assembly; and
  - (b) in respect of amendments referred to in subsection (1),(2), or (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council.
- (7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of-
  - (a) its introduction, if the Assembly is sitting when the Bill is introduced; or
  - (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced.
- (8) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

**Ordinary Bills not affecting provinces**

75. (1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
  - (a) The Council must-
    - (i) pass the Bill;
    - (ii) pass the Bill subject to amendments proposed by it; or
    - (iii) reject the Bill.
  - (b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.
  - (c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may -
    - (i) pass the Bill again, either with or without amendments; or
    - (ii) decide not to proceed with the Bill.
  - (d) A Bill passed by the in terms of paragraph (c) must be submitted to the President for assent.
- (2) When the National Council of Provinces votes on a question in terms on this section, section 65 does not apply; instead -
  - (a) each delegate in a provincial delegation has one vote,
  - (b) at least one third of the delegates must be present before a vote may be taken on the question; and

- (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

**Ordinary Bills affecting provinces**

76. (1) When the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The National Council must-
    - (i) pass the Bill;
    - (ii) pass an amended Bill; or
    - (iii) reject the Bill.
  - (b) If the National Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
  - (c) If the National Council passes an amended Bill, the amended Bill must be referred to the Assembly passes the amended Bill, it must be submitted to the President for assent.
  - (d) If the National Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on-
    - (i) the Bill as passed by the Assembly,
    - (ii) the amended Bill as passed by the Council, or
    - (iii) another version of the Bill.
  - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with supporting vote of at least two thirds of its members.
  - (f) If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if the Council passes the Bill, the Bill must be submitted to the President for assent.
  - (g) If the Mediation Committee agrees on the amended Bill as passed by the Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.
  - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Assembly and the Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.
    - (i) If a Bill referred to the in terms of paragraph (f) or (h) is not passed by the Council, the Bill lapses unless the Assembly passes the Bill with supporting vote of at least two thirds of its members.
  - (j) If a Bill referred to the Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but with supporting vote of at least two thirds of its members.
  - (k) A Bill passed by the Assembly in terms of paragraph (e),(i) or (j) must be submitted to the President for assent.
- (2) When the National Council of Provinces passes a Bill referred to subsection (3) the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:
- (a) The Assembly must-
    - (i) pass the Bill;
    - (ii) pass an amended Bill; or
    - (iii) reject the Bill.
  - (b) A Bill passed by the Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.
  - (c) If the National Assembly passes an amended Bill, the amended Bill must

be referred to the Council, and if the Council passes the amended Bill it must be submitted to the President for assent.

- (d) If the National Assembly rejects the Bill, or if the Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on-
    - (i) the Bill as passed by the Council;
    - (ii) the amended Bill as passed by the Assembly; or
    - (iii) another version of the Bill.
  - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to the Bill's referral to it, the Bill lapses.
  - (f) If the Mediation Committee agrees on the Bill as passed by the Council, the Bill must be referred to the National Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.
  - (g) If the Mediation Committee agrees on the amended Bill as passed by the Assembly, the Bill must be referred to the Council, and if it is passed by the Council, it must be submitted to the President for assent.
  - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Council and the Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.
  - (i) If a Bill referred to the Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.
- (3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:
- (a) section 65 (2);
  - (b) section 163;
  - (c) section 182;
  - (d) section 195(3) and (4);
  - (e) section 196; and
  - (f) section 197.
- (4) A Bill must be dealt with in accordance with the procedure established by subsection (1) if it provides for legislation
- (a) envisaged in section 44(2) or 220(3); or
  - (b) envisaged in Chapter 13, and which affects the financial interests of the provincial sphere of government.
- (5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established by subsection (1), except that-
- (a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it; and
  - (b) if the Bill is referred to the Mediation Committee, the following rules apply:
    - (i) If the National Assembly considers a Bill envisaged in subsection (1) (g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.
    - (ii) If the National Assembly considers or reconsiders a Bill envisaged in subsection (1) (e), (i) or (j), that Bill may be passed only if at least two thirds of the members of the Assembly vote in favour of it.
- (6) This section does not apply to money Bills.

#### Money Bills

77. (1) (a) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money, or the

imposition of taxes, levies, or duties.

- (2) All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament

#### Mediation Committee

78. (1) The Mediation Committee consists of -
- (a) nine members of the National Assembly elected by the Assembly in accordance with procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly; and
  - (b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation.
- (2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of a question, is supported by -
- (a) at least five of the representatives of the National Assembly; and
  - (b) at least five of the representatives of the National Council of Provinces.

#### Assent to Bills

79. (1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.
- (2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.
- (3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if -
- (a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or
  - (b) section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill.
- (4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill, if not, the President must either -
- (a) assent to and sign the Bill; or
  - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

#### Application by members of National Assembly to Constitutional Court

80. (1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.
- (2) An application -
- (a) must be supported by at least one third of the members of the Assembly; and
  - (b) must be made within 30 days of the date on which the President assented to and signed the Act.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if -
- (a) the interest of justice requires this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success the Constitutional Court may order the applicants to pay costs.

#### Publication of Acts

81. A Bill assented to and signed by the President becomes an Act of Parliament, must

be published promptly, and takes effect when published or on a date determined in terms of the Act.

**Safekeeping of Acts of Parliament**

82. The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.



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CHAPTER 5

THE PRESIDENT AND NATIONAL EXECUTIVE

The President

83. The President -

- (a) is the Head of State and head of the national executive;
- (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
- (c) promotes the unity of the nation and that which will advance the Republic.

Powers and functions of President

84. (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for-
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality;
  - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
  - (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
  - (f) appointing commissions of enquiry;
  - (g) calling a national referendum in terms of an Act of Parliament;
  - (h) receiving and recognising foreign diplomatic and consular representatives;
  - (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;
  - (j) pardoning or reprieving offenders and remitting any fines, penalties or forfeitures; and
  - (k) conferring honours.

Executive authority of the Republic

85. (1) The executive authority of the Republic is vested in the President.
- (2) The President exercises the executive authority, together with the other members of the Cabinet, by-
- (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
  - (b) developing and implementing national policy;
  - (c) co-ordinating the functions of state departments and administrations;
  - (d) preparing and initiating legislation; and
  - (e) performing any other executive function provided for in the Constitution or in national legislation.

Election of President

86. (1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.
- (2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President.
- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional Court, but not more than 30 days after the vacancy occurs.

**Assumption of office by President**

87. When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

**Term of office of President**

88. (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.  
 (2) No person may hold office as President for more than two terms; but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

**Removal of President**

89. (1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of -  
 (a) a serious violation of the Constitution or the law;  
 (b) serious misconduct, or  
 (c) inability to perform the functions of office.  
 (2) Anyone who has been removed from the office of President in terms of subsection (1)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

**Acting President**

90. (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President:  
 (a) The Deputy President.  
 (b) A Minister designated by the President.  
 (c) A Minister designated by the other members of the Cabinet.  
 (d) The Speaker, until the National Assembly designates one of its other members.  
 (2) An Acting-President has the responsibilities, powers and functions of the President.  
 (3) Before assuming the responsibilities, powers and functions of the President, the Acting-President must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

**Cabinet**

91. (1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.  
 (2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.  
 (3) The President -  
 (a) must select the Deputy President from among the members of the National Assembly;  
 (b) may select any number of Ministers from among the members of the Assembly; and  
 (c) may select no more than two Ministers from outside the Assembly.  
 (4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.  
 (5) The Deputy President must assist the President in the execution of the functions of government.

**Accountability and Responsibilities**

92. (1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.
- (2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and performance of their functions.
- (3) Members of the Cabinet must -
- (a) act in accordance with the Constitution; and
  - (b) provide Parliament with full and regular reports concerning matters under their control.

**Deputy Ministers**

93. The President may appoint Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them.

**Continuation of Cabinet after elections**

94. When an election of the National Assembly is held, the Cabinet, the Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

**Oath or affirmation**

95. Before the Deputy President, Ministers and any Deputy Ministers begin to perform their office, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

**Conduct of Cabinet members and Deputy Ministers**

96. (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not-
- (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

**Transfer of functions**

97. The President by proclamation may transfer to a member of the Cabinet -
- (a) the administration of any legislation entrusted to another member; or
  - (b) any power or function entrusted by legislation to another member.

**Temporary assignment of functions**

98. The President may assign to a Cabinet member any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

**Assignment of functions**

99. A Cabinet member may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. An assignment -
- (a) must be in terms of an agreement between the relevant Cabinet member and the Executive Council member or Municipal Council,
  - (b) must be consistent with the Act of Parliament in terms of which the relevant power or function is exercised or performed; and
  - (c) takes effect upon proclamation by the President.

**National supervision of provincial administration**

- 100 (1) When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -
- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the relevant obligation in that province to the extent necessary to -
    - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
    - (ii) maintain economic unity-
    - (iii) maintain national security; or
    - (iv) prevent that province from taking unreasonable action that is prejudicial to the interest of another province or to the country as a whole.
- (2) If the national executive intervenes in a province in terms of subsection (1)(b)-
- (a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began;
  - (b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
  - (c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive.
- (3) National legislation may regulate the process established by this section.

**Executive decisions**

- 101 (1) A decision by the President must be in writing if it-
- (a) is taken in terms of legislation; or
  - (b) has legal consequences.
- (2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member.
- (3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be -
- (a) tabled in Parliament; and
  - (b) approved by Parliament.

**Motions of no confidence**

- 102 (1) If the National Assembly, by a vote supported by the majority of its members, passes a motion of no-confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
- (2) If the National Assembly, by a vote supported by the majority of its members, passes a motion of no-confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.

CHAPTER 6

PROVINCES

Provinces

103. (1) The Republic has the following provinces:
- (a) Eastern Cape
  - (b) Free State
  - (c) Gauteng
  - (d) KwaZulu-Natal
  - (e) Mpumalanga
  - (f) Northern Cape
  - (g) Northern Province
  - (h) North West
  - (i) Western Cape.
- (2) The boundaries of the provinces are those that existed when the Constitution took effect.

PROVINCIAL LEGISLATURES

Legislative authority of provinces

- 104 (1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power -
- (a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143;
  - (b) to pass legislation for its province with regard to-
    - (i) any matter within a functional area listed in Schedule 4;
    - (ii) any matter within a functional area listed in Schedule 5;
    - (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
  - (c) to assign any of its legislative powers to a Municipal Council in that province.
- (2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.
- (3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.
- (4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4.
- (5) A provincial legislature may recommend to the National Assembly, legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

Composition and election of provincial legislatures

- 105 (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that -
- (a) is prescribed by national legislation;
  - (b) is based on that province's segment of the national common voters roll;
  - (c) provides for a minimum voting age of 18 years; and
  - (d) results, in general, in proportional representation.
- (2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms

of a formula prescribed by national legislation.

**Membership**

- 106 (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except-
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -
    - (i) the Premier and other members of the Executive Council of a province; and
    - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
  - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;
  - (c) unrehabilitated insolvents;
  - (d) anyone declared to be of unsound mind by a court of the Republic; or
  - (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of a provincial legislature in terms of subsection (1)(a) or (b) may be a candidate for the legislature, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of a provincial legislature if that person -
- (a) ceases to be eligible; or
  - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership.
- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

**Oath or affirmation**

107. Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

**Duration of provincial legislatures**

- 108 (1) A provincial legislature is elected for a term of five years.
- (2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved, or its term expired.
- (3) If the result of an election of a provincial legislature is not declared within the period referred to in section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature.

**Dissolution of provincial legislatures before expiry of term**

- 109 (1) The Premier of a province must dissolve the provincial legislature if-
- (a) the legislature has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
  - (b) three years have passed since the legislature was elected.
- (2) An Acting-Premier must dissolve the provincial legislature if-
- (a) there is a vacancy in the office of Premier, and
  - (b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred.

**Sittings and recess periods**

- 110 (1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.
- (2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.
- (3) A provincial legislature may determine where it ordinarily will sit.

**Speakers and Deputy Speakers**

- 111 (1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.
- (2) A judge designated by the President of the Constitutional Court must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Part A of Schedule 3 applies to the election of Speakers and Deputy Speakers.
- (4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.
- (5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and Deputy Speaker.

**Decisions**

- 112 (1) Except where the Constitution provides otherwise -
- (a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill,
  - (b) at least one third of the members must be present before a vote may be taken on any other question before the legislature; and
  - (c) all questions before a provincial legislature are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of a provincial legislature has no deliberative vote, but-
- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
  - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the legislature.

**Permanent delegates' rights in provincial legislatures**

- 113 A province's permanent delegates to the National Council of Provinces may attend, and may speak in, their provincial legislature and its committees, but may not vote. The legislature may require a permanent delegate to attend the legislature or its committees.

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**Powers of provincial legislatures**

- 114 (1) In exercising its legislative power, a provincial legislature may-
- (a) consider, pass, amend or reject any Bill before the legislature, and
  - (b) initiate or prepare legislation, except money Bills.
- (2) A provincial legislature must provide for mechanisms-
- (a) to ensure that all provincial executive organs of state in the province are accountable to it; and
  - (b) to maintain oversight of -
    - (i) the exercise of provincial executive authority in the province, including the implementation of legislation; and
    - (ii) any provincial organ of state.

**Evidence or information before provincial legislatures**

- 115 A provincial legislature or any of its committees may-
- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
  - (b) require any person or provincial institution to report to it;
  - (c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
  - (d) receive petitions, representations or submissions from any interested persons or institutions.

**Internal arrangements, proceedings and procedures of provincial legislatures**

116. (1) A provincial legislature may-
- (a) determine and control its internal arrangements, proceedings and procedures; and
  - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of a provincial legislature must provide for-
- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
  - (b) the participation in the proceedings of the legislature and its committees of minority parties represented in the legislature, in a manner consistent with democracy;
  - (c) financial and administrative assistance to each party represented in the legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the legislature effectively; and
  - (d) the recognition of the leader of the largest opposition party in the legislature, as the Leader of the Opposition.

**Privilege**

- 117 (1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces
- (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and
  - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
    - (i) anything that they have said in, produced before, or submitted to, the legislature or any of its committees; or
    - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to, the legislature or any of its committees.
- (2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.

- (3) Salaries, allowances and benefits payable to members of a provincial legislature are a direct charge against the Provincial Revenue Fund.

#### Public access to and involvement in provincial legislatures

118 A provincial legislature must-

- (a) facilitate public involvement in the legislative and other processes of the legislature and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public; but reasonable measures may be taken
  - (i) to regulate public access, including access of the media, to the legislature and its committees, and
  - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to or the removal of, any person.

#### Introduction of Bills

119 Only members of the Executive Council of a province or a committee or member of a provincial legislature may introduce a Bill in the legislature; but only the member of the Executive Council who is responsible for financial matters in the province, may introduce a money Bill in the legislature.

#### Money Bills

- 120 (1) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies, or duties.
- (2) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.

#### Assent to Bills

- 121 (1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature in terms of this Chapter or, if the Premier has reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.
- (2) If, after reconsideration, a Bill fully accommodates the Premier's reservations, the Premier must assent to and sign the Bill; if not, the Premier must either-
- (a) assent to and sign the Bill; or
  - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it.

#### Application by members to Constitutional Court

- 122 (1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.
- (2) An application -
- (a) must be supported by at least 20 per cent of the members of the legislature; and
  - (b) must be made within 30 days of the date on which the Premier assented to and signed the Act.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application, if -
- (a) the interest of justice requires this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

**Publication of provincial Acts**

123 A Bill assented to and signed by the Premier of a province becomes a provincial Act, must be published promptly and takes effect when published or on a date determined in terms of the Act.

**Safekeeping of provincial Acts**

124 The signed copy of a provincial Act is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.

**PROVINCIAL EXECUTIVES**

**Executive authority of provinces**

- 125 (1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by-
- (a) implementing provincial legislation in the province,
  - (b) implementing national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
  - (c) administering in the province national legislation outside the functional areas listed in Schedule 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament;
  - (d) developing and implementing provincial policy;
  - (e) co-ordinating the functions of the provincial administration and its departments;
  - (f) preparing and initiating provincial legislation; and
  - (g) performing any other function assigned to the provincial executive in terms of the Constitution or an Act of Parliament.
- (3) A province has executive authority in terms of subsection (2) (d) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2).
- (4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the reference to the Council.
- (5) Subject to section 100, the implementation of provincial legislation in a province is an exclusive provincial executive power.
- (6) The provincial executive must act in accordance with -
- (a) the Constitution; and
  - (b) the provincial constitution, if a constitution has been passed for the province.

**Assignment of functions**

- 126 A member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament, or a provincial Act, to a Municipal Council. An assignment -
- (a) must be in terms of an agreement between the relevant Executive Council member and the Municipal Council;
  - (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
  - (c) takes effect upon proclamation by the Premier.

#### Powers Functions of Premiers

- 127 (1) The Premier of a province has the powers and functions entrusted to that office by the Constitution and any legislation.
- (2) The Premier of a province is responsible for-
- assenting to and signing Bills;
  - referring a Bill back to the provincial legislature for reconsideration of the Bill's constitutionality;
  - referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - summoning the legislature to an extraordinary sitting to conduct special business;
  - appointing commissions of inquiry; and
  - calling a referendum in the province in accordance with national legislation.

#### Election of Premiers

- 128 (1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province.
- (2) A judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in A Part of Schedule 3 applies to the election of the Premier.
- (3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the President of the Constitutional Court, but not later than 30 days after the vacancy occurs.

#### Assumption of office by Premiers

- 129 A Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### Term of office and removal of Premiers

- 130 (1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.
- (3) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of-
- a serious violation of the Constitution or the law;
  - serious misconduct; or
  - inability to perform the functions of office.
- (4) Anyone who has been removed from the office of Premier in terms of subsection (3)(a) or (b) may not receive any benefit of that office, and may not serve in any public office.

#### Acting-Premiers

- 131 (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier:
- A member of the Executive Council designated by the Premier.
  - A member of the Executive Council designated by the other members of the Council.
  - The Speaker, until the legislature designates one of its other members.

- (2) An Acting-Premier has the responsibilities, powers and functions of the Premier.
- (3) Before assuming the responsibilities, powers and functions of the Premier, the Acting-Premier must swear or affirm faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2.

#### Executive Councils

- 132 (1) The Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature.
- (2) The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

#### Accountability and responsibilities

- 133 (1) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier.
- (2) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions.
- (3) Members of the Executive Council of a province must -
- (a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution; and
  - (b) provide the legislature with full and regular reports concerning matters under their control.

#### Continuation of Executive Councils after elections

- 134 When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office.

#### Oath or affirmation

- 135 Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### Conduct of members of Executive Councils

- 136 (1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Executive Council of a province may not -
- (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

#### Transfer of functions

- 137 The Premier by proclamation may transfer to a member of the Executive Council -
- (a) the administration of any legislation entrusted to another member; or
  - (b) any power or function entrusted by legislation to another member.

#### Temporary assignment of functions

- 138 The Premier of a province may assign to a member of the Executive Council any powers or functions of another member who is absent from office or is unable to exercise that power or perform that function.

**Provincial supervision of local government**

- 139 (1) When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary -
    - (i) to maintain essential national standards or meet establish minimum standards for the rendering of a service;
    - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interest of another municipality or to the province as a whole; or
    - (iii) to maintain economic unity.
- (2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b) -
- (a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention;
  - (b) notice of the intervention must be tabled in the provincial legislature and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began;
  - (c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
  - (d) the Council must review the intervention regularly and make any appropriate recommendations to the provincial executive.
- (3) National legislation may regulate the process established in this section.

**Executive decisions**

- 140 (1) A decision by the Premier of a province must be in writing if it-
- (a) is taken in terms of legislation, or
  - (b) has legal consequences.
- (2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member.
- (3) Proclamations, regulations and other instruments of subordinate legislation of a province must be accessible to the public.
- (3) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be -
- (a) tabled in the provincial legislature; and
  - (b) approved by the provincial legislature.

**Motions of no-confidence**

- 141 (1) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no-confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.
- (2) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no-confidence in the Premier, the Premier and the other members of the Executive Council must resign.

**PROVINCIAL CONSTITUTIONS**

**Adoption of provincial constitutions**

- 142 A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in

favour of the Bill.

#### Contents of provincial constitutions

- 143 (1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution but may provide for -
- (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
  - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) or (b) of subsection (1) -
- (a) must comply with the values in section 1 and with Chapter 3; and
  - (b) may not confer on the province any power or function that falls-
    - (i) outside the area of provincial competence in terms of Schedules 4 and 5; or
    - (ii) outside the powers and functions conferred on the province by the other sections of the Constitution.

#### Certification of provincial constitutions

- 144 (1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution or constitutional amendment to the Constitutional Court for certification.
- (2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified -
- (a) that the text has been passed in accordance with section 142; and
  - (b) that the whole text complies with section 143.

#### Signing, publication and safekeeping of provincial constitutions

- 145 (1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.
- (2) The text assented to and signed by the Premier must be published in the national Government Gazette and takes effect on publication or on a later date determined in terms of that constitution or amendment.
- (3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping.

### CONFLICTING LAWS

#### Conflicts between national and provincial legislation

- 146 (1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4.
- (2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
- (a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
  - (b) The National legislation deals with a matter that, to be dealt with effectively, require uniformity across the nation, and the national legislation provides that uniformity by establishing -
    - (i) norms and standards;
    - (ii) frameworks; or
    - (iii) national policies.
  - (c) The national legislation is necessary for -
    - (i) the maintenance of national security;

- (ii) the maintenance of economic unity;
  - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
  - (iv) the promotion of economic activities across provincial boundaries;
  - (v) the promotion of equal opportunity or equal access to government services; or
  - (vi) the protection of the environment.
- (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that-
- (a) is prejudicial to the economic, health or security interest of another province or the country as a whole; or
  - (b) impedes the implementation of national economic policy
- (4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in subsection (2)(c) and that dispute comes before a court for resolution, the court have due regard to the approval or the rejection of the legislation by the National Council of Provinces.
- (5) Provincial legislation prevails over the national legislation if subsection (2) or (3) does not apply.
- (6) A law made in terms of an Act of Parliament or a provincial Act prevail only if that law has been approved by the National Council of Provinces.
- (7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council.
- (8) If the National Council of Provinces does not approve a law referred to in subsection (6), it must, within 30 days of its decision, forward reason for not approving the law to the authority that referred the law to it.

#### **Other conflicts**

- 147 (1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to-
- (a) a matter, concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution;
  - (b) national legislative intervention in terms of section 44(2), the national legislation prevails over the provision of the provincial constitution; or
  - (c) a matter within the functional areas listed in Schedule 4, section 146 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.
- (2) National legislation referred to in section 44(2) prevails over provincial legislation in respect of matters within the functional areas listed in 5.

#### **Conflicts that cannot be resolved**

- 148 If a dispute concerning a conflict can not be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution.

#### **Status of legislation that does not prevail**

- 149 A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.

#### **Interpretation of conflicts**

- 150 When considering an apparent conflict between national and provincial legislation, or between national legislation and a provincial constitution, every court must prefer any reasonable interpretation of the legislation or constitution that avoids a conflict, over any alternative interpretation that results in a conflict.

CHAPTER 7

LOCAL GOVERNMENT

Status of municipalities

- 151 (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) National and provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Objects of local government

- 152 (1) The objects of local government are -
- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.
- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Developmental duties of municipalities

- 153 A municipality must -
- (a) structure and manage its administration, budgeting, and planning processes, to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.

Municipalities in co-operative government

- 154 (1) The national governments and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- (2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in a Parliament or a provincial legislature, in a manner that allows organised local government, municipalities, and other interested persons an opportunity to make representations with regard to the draft legislation.

Establishment of municipalities

- 155 (1) There are the following categories of municipality:
- (a) **Category A:** A municipality that has exclusive municipal executive and legislative authority in its area
- (b) **Category B:** A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.
- (c) **Category C:** A municipality that has municipal executive and legislative in an area that includes more than one municipality.
- (2) National legislation must define the different types of municipality that may be established within each category.

- (3) National legislation must-
  - (a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C;
  - (b) establish criteria and procedures for the determination of municipal boundaries by an independent authority; and
  - (c) subject to section 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality.
- (4) The legislation referred to in subsection (3) must take into account the need to provide municipal services in an equitable and sustainable manner.
- (5) Provincial legislation must determine the different types of municipality to be established in the province.
- (6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must-
  - (a) provide for the monitoring and support of local government in the province; and
  - (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.
- (7) The national government, subject to section 44, and the provincial government have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matter listed in schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred in section 156(1).

#### Powers and functions of municipalities

- 156 (1) A municipality has executive authority in respect of, and has the right to administer-
- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
  - (b) any other matter assigned to it by national or provincial legislation.
- (2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.
- (3) Subject to section 151 (4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
- (4) The national and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if -
- (a) that matter would most effectively be administered locally- and
  - (b) the municipality has the capacity to administer it.
- (5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

#### Composition and election of Municipal Councils

- 157 (1) A Municipal Council consists of-
- (a) members elected in accordance with subsections (2), (3), (4) and (5); or
  - (b) if provided for by national legislation -

- (i) members appointed by other Municipal Councils to represent those other Councils; or
  - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph
- (2) The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system -
- (a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
  - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voters roll.
- (3) An electoral system in terms of subsection (2) must ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties.
- (4) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.
- (5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voters roll.
- (6) The national legislation referred to in section 157(1)(b) must establish a system that allows for parties and interests reflected within the Municipal Council making the appointment, to be fairly represented in the Municipal Council to which the appointment is made.

#### Membership of Municipal Councils

- 158 (1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except -
- (a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
  - (b) anyone who is appointed by, or is in the service of, the state in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of the Council in terms of national legislation;
  - (c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 47 (1) (c), (d) or (e) from being a member of the Assembly;
  - (d) a member of the National Assembly, a delegate to the National Council of Provinces or a member of a provincial legislature; but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council; or
  - (e) a member of another Municipal Council; but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category
- (2) A person who is not eligible to be a member of a Municipal Council in terms of subsection (1) (a), (b), (d), or (e) may be a candidate for the Council, subject to any limits or conditions established by national legislation.

#### Terms of Municipal Councils

- 159 The term of a Municipal Council may be no more than four years, as determined by national legislation.

**Internal procedures**

- 160 (1) A Municipal Council-
- (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
  - (b) must elect its chairperson;
  - (c) may elect an executive committee and other committees, subject to national legislation; and
  - (d) may employ personnel that are necessary for the effective performance of its functions.
- (2) The following functions may not be delegated by a Municipal Council:
- (a) The passing of by-laws;
  - (b) the approval of budgets;
  - (c) the imposition of rates and other taxes, levies and duties; and
  - (d) the raising of loans.
- (3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.
- (b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.
- (c) All other questions before a Municipal Council are decided by a majority of the votes cast.
- (4) No by-law may be passed by a Municipal Council unless-
- (a) all the members of the council have been given reasonable notice; and
  - (b) the proposed by-law has been published for public comment.
- (5) National legislation may provide criteria for determining-
- (a) the size of a Municipal Council;
  - (b) whether Municipal Councils may elect an executive or any other committee; or
  - (c) the size of the executive committee or any other committee of a Municipal Council;
- (6) A Municipal Council may make by-law which prescribe rules and orders for-
- (a) its internal arrangements;
  - (b) its business and proceedings; and
  - (c) the establishment, composition, procedure, powers and functions of its committees.
- (7) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.
- (8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-
- (a) allows parties and interests reflected within the Council to be fairly represented;
  - (b) is consistent with democracy; and
  - (c) may be regulated by national legislation.

**Privilege**

161 Provincial legislation within the framework of national legislation may provide for privileges and immunities of Municipal Councils and their members.

**Publication of municipal by-laws**

- 162 (1) A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.
- (2) A provincial official gazette must publish a municipal by-law upon request by the municipality.
  - (3) Municipal by-laws must be accessible to the public.

**Organised local government**

163 An Act of Parliament enacted in accordance with the procedure established by section 76 must -

- (a) provide for the recognition of national and provincial organisations representing municipalities; and
- (b) determine procedures by which local government may -
  - (i) consult with national or a provincial government;
  - (ii) designate representatives to participate in the National Council of Provinces; and
  - (iii) nominate persons to the Financial and Fiscal Commission.

**Other matters**

164 All matters concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.



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CHAPTER 8

COURTS AND ADMINISTRATION OF JUSTICE

**Judicial authority**

- 165 (1) The judicial authority of the Republic is vested in the courts.
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (5) An order or decision issued by a court binds all persons and organs of state to which it applies.

**Judicial system**

166 The courts are -

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognized in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.



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**Constitutional Court**

- 167 (1) The Constitutional Court consists of a President, a Deputy President and nine other judges.
- (2) A matter before the Constitutional Court must be heard by at least eight judges.
- (3) The Constitutional Court -
- (a) is the highest court in all constitutional matters;
- (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and
- (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.
- (4) Only the Constitutional Court may -
- (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 or 121;
- (c) decide applications envisaged in section 80 or 122;
- (d) decide on the constitutionality of any amendment to the Constitution.
- (e) decide that Parliament or the President has failed to fulfil with a constitutional obligation; or
- (f) certify a provincial constitution in terms of section 144.
- (5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force.
- (6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interest of justice and with leave of the Constitutional Court -
- (a) to bring a matter directly to the Constitutional Court; or
- (b) to appeal directly to the Constitutional Court from any other court.

- (7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

**Supreme Court of Appeal**

- 168 (1) The Supreme Court of Appeal consists of a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament.
- (2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament.
- (3) The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only -
- (a) appeals;
  - (b) issues connected with appeals; and
  - (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

**High Courts**

- 169 A High Court may decide -
- (a) any constitutional matter except a matter that -
    - (i) only the Constitutional Court may decide; or
    - (ii) is assigned by an Act of Parliament to another court of a status similar to a High Court; and
  - (b) any other matter not assigned to another court by an Act of Parliament.

**Magistrates' Courts and other courts**

- 170 Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a High Court may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

**Court procedures**

- 171 All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation.

**Powers of courts in constitutional matters**

- 172 (1) When deciding a constitutional matter within its power, a court -
- (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
  - (b) may make any order that is just and equitable, including -
    - (i) an order limiting the retrospective effect of the declaration of invalidity; and
    - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.
- (2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a Provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.
- (b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.
- (c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court.

- (d) Any person or organ of state with a sufficient interest may appeal, or apply directly, to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

**Inherent power**

173 The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

**Appointment of judicial officers**

- 174 (1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.
- (2) The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.
- (3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court; and, after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice. (4) The other judges of the Constitutional Court are appointed by the President as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure:
- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
- (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.
- (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.
- (5) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court.
- (6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.
- (7) Other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.
- (8) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 2, that they will uphold and protect the Constitution.

**Acting judges**

- 175 (1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the President of the Constitutional Court and the Chief Justice.
- (2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consultation with the senior judge of the court on which the acting judge will serve.

**Terms of office and remuneration**

- 176 (1) A Constitutional Court judge is appointed for a non-renewable term of 12 years, but must retire by the age of 70.
- (2) Other judges hold office until they are discharged from active service in terms of an Act of Parliament.
- (3) The salaries, allowances and benefits of judges may not be reduced.

**Removal**

- 177 (1) A judge may be removed from office only if-
- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent, or is guilty of gross misconduct; and
- (b) the National Assembly calls for that judge to be removed, by a resolution adopted by with a supporting vote of at least two thirds of its members.
- (2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.
- (3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of subsection (1).

**Judicial Service Commission**

- 178 (1) There is a Judicial Service Commission, consisting of-
- (a) the Chief Justice, who presides at meetings of the Commission,-
- (b) the President of the Constitutional Court;
- (c) one Judge President designated by the Judges President;
- (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;
- (e) two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President;
- (f) two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President;
- (g) one teacher of law designated by teachers of law at South African universities,
- (h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;
- (i) four permanent delegates to the National Council of Provinces designated together by the Council, supported by a vote of at least six provinces;
- (j) four persons designated by the President as head of the national executive; after consulting with the leaders of all the parties in the National Assembly; and,
- (k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier, of the province concerned.
- (2) If the number of persons nominated from within the advocates' or attorneys' profession in terms of subsection (1) (e) or (f) equals the number of vacancies to be filled, the President must appoint them. If the number of persons nominated exceeds the number of vacancies to be filled, the President, after consulting the relevant profession, must appoint sufficient of the nominees to fill the vacancies, taking into account the need to ensure that those appointed represent the profession as a whole.
- (3) Members of the Commission designated by the National Council of Provinces serve until they are replaced together, or until any vacancy occurs in their number. Other members who were designated or nominated to the Commission serve until they are replaced by those who designated or nominated them.
- (4) The Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation.

- (5) The Judicial Service Commission may advise the national government on any matter relating to the judiciary or the administration of justice; but, when it considers any matter except the appointment of a judge, it must sit without the members appointed in terms of subsection (1) (h) and (i).
- (6) The Judicial Service Commission may determine its own procedure, but decisions of the Commission must be supported by a majority of its members.

**Prosecuting Authority**

- 179 (1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of -
- (a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President as head of the national executive; and
  - (b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.
- (2) The prosecuting authority has the power to institute criminal proceedings, on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.
- (3) National legislation must ensure that the Directors of Public Prosecutions -
- (a) are appropriately qualified; and
  - (b) are responsible for prosecutions in specific jurisdictions, subject to subsection (5).
- (4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.
- (5) The National Director of Public Prosecutions -
- (a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy which must be observed in the prosecution process;
  - (b) must issue policy directives which must be observed in the prosecution process;
  - (c) may intervene in the prosecution process when policy directives are not complied with;
  - (d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:
    - (i) The accused person.
    - (ii) The complainant.
    - (iii) Any other person or party whom the National Director considers to be relevant.
- (6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.
- (7) All other matters concerning the prosecuting authority must be determined by national legislation.

**Other matters concerning administration of justice**

- 180 National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including -
- (a) training programmes for judicial officers;
  - (b) procedures for dealing with complaints about judicial officers; and
  - (c) the participation of people other than judicial officers in court decisions.

CHAPTER 9

STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

Establishment and governing principles

- 181 (1) The following state institutions strengthen constitutional democracy in the Republic:
- (a) The Public Protector.
  - (b) The Human Rights Commission.
  - (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
  - (d) The Commission for Gender Equality.
  - (e) The Auditor-General.
  - (f) The Electoral Commission.
- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of state may interfere with the functioning of these institutions.
- (5) These institutions are accountable to the National Assembly, and must report on their activities and functions to the Assembly at least once a year.

PUBLIC PROTECTOR

Functions of Public Protector

- 182 (1) The Public Protector has the power, as regulated by national legislation-
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
  - (b) to report on that conduct; and
  - (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) Any report issued by the Public Protector must be open to the public, unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

Tenure

- 183 The Public Protector is appointed for a non-renewable period of seven years.

HUMAN RIGHTS COMMISSION

Functions of Human Rights Commission

- 184 (1) The Human Rights Commission must -
- (a) promote respect for human rights and a culture of human rights;
  - (b) promote the protection, development and attainment of human rights; and
  - (c) monitor and assess the observance of human rights in the Republic.
- (2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power -
- (a) to investigate and to report on the observance of human rights;

- (b) to take steps to secure appropriate redress where human rights have been violated;
  - (c) to carry out research; and
  - (d) to educate.
- (3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education, and the environment.
- (4) The Human Rights Commission has the additional powers and functions prescribed by national legislation.

#### COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES.

##### Functions of Commission

- 185 (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are -
- (a) to promote respect for the rights of cultural, religious and linguistic communities;
  - (b) to promote and develop peace, friendship, humanity, tolerance and national unity amongst cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
  - (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.
- (3) The Commission may report any matter which falls within its powers and functions to the Human Rights Commission for investigation.
- (4) The Commission has the additional powers and functions prescribed by national legislation.

##### Composition of Commission

- 186 (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.
- (2) The composition of the Commission must-
- (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
  - (b) broadly reflect the gender composition of South Africa.

#### COMMISSION FOR GENDER EQUALITY

##### Functions of Commission for Gender Equality

- 187 (1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.
- (2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
- (3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.

### AUDITOR-GENERAL

#### Functions of Auditor-General

- 188 (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -
- (a) all national and provincial state departments and administrations;
  - (b) all municipalities; and
  - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.
- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of -
- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality, or
  - (b) any institution that is authorised in terms of any law to receive money for a public purpose.
- (3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by national legislation.

#### Tenure

- 189 The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

### ELECTORAL COMMISSION

#### Functions of Electoral Commission

- 190 (1) The Electoral Commission must -
- (a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
  - (b) ensure that those elections are free and fair; and
  - (c) declare the results of those elections within a period that must be prescribed by national legislation and which is as short as reasonably possible.
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

#### Composition of Electoral Commission

- 191 The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

### INDEPENDENT AUTHORITY TO REGULATE BROADCASTING

#### Broadcasting Authority

- 192 National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

GENERAL PROVISIONS

Appointments

- 193 (1) The Public Protector and members of any Commission established by this Chapter must be women or men who
- (a) are South African citizens;
  - (b) are fit and proper persons to hold the particular office; and
  - (c) comply with any other requirements prescribed by national legislation.
- (2) The need for a Commission established by this chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.
- (3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.
- (4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and members of -
- (a) the Human Rights Commission;
  - (b) the Commission for Gender Equality; and
  - (c) the Electoral Commission.
- (5) The National Assembly must recommend persons -
- (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
  - (b) approved by the Assembly by a resolution adopted by a supporting vote-
    - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or
    - (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.
- (6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a).

Removal from office

- 194 (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on -
- (a) the grounds of misconduct, incapacity or incompetence-
  - (b) a finding to that effect by a committee of the National Assembly; and
  - (c) the adoption by the Assembly of a resolution calling for that person's removal from office.
- (2) A resolution of the National Assembly concerning the removal from office of-
- (a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two-thirds of the members of the Assembly; or
  - (b) a member of a commission must be adopted with a supporting vote of a majority of the members of the Assembly.
- (3) The President -
- (a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and
  - (b) must remove a person from office upon adoption by the Assembly of a resolution calling for that person's removal.

## CHAPTER 10

## PUBLIC ADMINISTRATION

**Basic values and principles governing public administration**

- 195 (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
  - (b) Efficient, economic and effective use of resources must be promoted.
  - (c) Public administration must be development oriented.
  - (d) Services must be provided impartially, fairly, equitably and without bias.
  - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
  - (f) Public administration must be accountable.
  - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
  - (h) Good human resource management and career-development practices, to maximize human potential, must be cultivated.
  - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The above principles must apply to -
- (a) the administration in every sphere of government;
  - (b) organs of state; and
  - (c) public enterprises.
- (3) National legislation must ensure the promotion of the values and principles listed in subsection(1).
- (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
- (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.
- (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.

**Public Service Commission**

- 196 (1) There is a single Public Service Commission for the Republic.
- (2) The Commission is independent and must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The commission must be regulated by National legislation.
- (3) Other organs of state, through legislative and other measures, must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of state may interfere with the functioning of the Commission.
- (4) The powers and functions of the Commission are:
- (a) To promote the values and principles set out in section 195, throughout the public service;
  - (b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
  - (c) to propose measures to ensure effective and efficient performance within the public service;

- (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;
- (e) to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with; and
- (f) either of its own accord or on receipt of any complaint -
  - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
  - (ii) to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
  - (iii) to monitor and investigate adherence to applicable procedures in the public service;
  - (iv) to advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service.
- (5) The Commission is accountable to the National Assembly.
- (6) The Commission must report at least once a year in terms of subsection (4)(e)
  - (a) to the National Assembly; and
  - (b) in respect of its activities in a province, to the legislature of that province.
- (7) The Commission has the Following 14 commissioners appointed by the President:
  - (a) Five commissioners approved by the National Assembly in accordance with subsection (8)(a); and
  - (b) One commissioner for each province nominated by the Premier of the province in accordance with subsection (8)(b).
- (8) (a) A Commissioner appointed in terms of subsection (7)(a) must be -
  - (i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly; and
  - (ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.
- (b) A commissioner nominated by the Premier of a province must be -
  - (i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature; and
  - (ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members.
- (9) An Act of Parliament must regulate the procedure for the appointment of commissioners.
- (10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or man who is -
  - (a) a South African citizen; and
  - (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.
- (11) A commissioner may be removed from office only on -
  - (a) the ground of misconduct, incapacity or incompetence;
  - (b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province; and

- (c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.
- (12) The President must remove the relevant commissioner from office upon
  - (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
  - (b) written notification by the Premier that the Provincial legislature has adopted a resolution calling for that commissioner's removal.
- (13) Commissioners referred to in subsection (7)(b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation.

**Public Service**

- 197 (1) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.
- (2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.
  - (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.
  - (4) Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service.

CHAPTER 11

SECURITY SERVICES

**Governing Principles**

198 The following principles govern national security in the Republic:

- (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life.
- (b) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
- (c) National security must be pursued in compliance with the law, including international law.
- (d) National security is subject to the authority of Parliament and the national executive.

**Establishment, structuring and conduct of security services**

- 199 (1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.
- (2) The defence force is the only lawful military force in the Republic.
  - (3) Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.
  - (4) The security services must be structured and regulated by national legislation.
  - (5) The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.
  - (6) No member of any security service may obey a manifestly illegal order.
  - (7) Neither the security services, nor any of their members, may, in the performance of their functions -
    - (a) prejudice a political party interest that is legitimate in terms of the Constitution; or
    - (b) further, in a partisan manner, any interest of a political party.
  - (8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

DEFENCE

**Defence force**

- 200 (1) The defence force must be structured and managed as a disciplined military force.
- (2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people, in accordance with the Constitution and the principles of international law regulating the use of force.

**Political responsibility**

- 201 (1) A member of the Cabinet must be responsible for defence.
- (2) Only the President, as head of the national executive, may authorise the employment of the defence force-
    - (a) in co-operation with the police service;
    - (b) in defence of the Republic; or

- (c) in fulfilment of an international obligation.
- (3) When the defence force is employed for any purpose mentioned in subsection (2), the President must inform Parliament, promptly and in appropriate detail, of -
  - (a) the reasons for the employment of the defence force;
  - (b) any place where the force is being used;
  - (c) the number of people involved; and
  - (d) the period for which the force is expected to be employed.
- (4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in subsection (2), the President must provide the information required in subsection (3) to the appropriate oversight committee.

**Command of defence force**

- 202 (1) The President as head of the national executive is Commander-in- Chief of the defence force, and must appoint the Military Command of the defence force.
- (2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence, under the authority of the President.

**State of national defence**

- 203 (1) The President as head of the national executive may declare a state of national defence, and must inform Parliament promptly and in appropriate detail of -
  - (a) the reasons for the declaration;
  - (b) any place where the defence force is being employed; and
  - (c) the number of people involved.
- (2) If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to a extraordinary sitting within seven days of the declaration.
- (3) A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.

**Defence civilian secretariat**

- 204 A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence.

**POLICE**

**Police service**

- 205 (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

**Political responsibility**

- 206 (1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.

- (2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.
- (3) Each province is entitled -
  - (a) to monitor police conduct;
  - (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
  - (c) to promote good relations between the police and the community;
  - (d) to assess the effectiveness of visible policing; and
  - (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.
- (4) A Provincial executive is responsible for policing functions-
  - (a) vested in it by this Chapter;
  - (b) assigned to it in terms of national legislation; and
  - (c) allocated to it in the national policing policy.
- (5) In order to perform the functions set out in subsection (3), a province -
  - (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
  - (b) must make recommendations to the Cabinet member responsible for policing.
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.
- (7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
- (8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government.
- (9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.

**Control of police service**

- 207
- (1) The President as head of the national executive must appoint a woman or a man as National Commissioner of the police service, to control and manage the police service.
  - (2) The National Commissioner must exercise control over and manage the police service in accordance with national policing policy and the directions of the Cabinet member responsible for policing.
  - (3) The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.
  - (4) The provincial commissioners are responsible for policing in their respective provinces-
    - (a) as prescribed by national legislation; and
    - (b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).
  - (5) The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.
  - (6) If the provincial commissioner has lost the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal

or transfer of, or disciplinary action against, that Commissioner, in accordance with national legislation.

**Police civilian secretariat**

208 A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing.

**INTELLIGENCE**

**Establishment and control of intelligence services**

- 209 (1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.
- (2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

**Powers, functions and monitoring**

- 210 National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for -
- (a) co-ordination of all intelligence services; and
  - (b) civilian monitoring of the activities of those services by an inspector appointed by the President as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.

**CHAPTER 12**

**TRADITIONAL LEADERS**

**Recognition**

- 211 (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
- (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

**Role of traditional leaders**

- 212 (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law -
- (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and
  - (b) national legislation may establish a council of traditional leaders.

CHAPTER 13

FINANCE

GENERAL FINANCIAL MATTERS

**National Revenue Fund**

- 213 (1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by Act of Parliament.
- (2) Money may be withdrawn from the National Revenue Fund only -
- (a) in terms of an appropriation by an Act of Parliament; or
  - (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.
- (3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

**Equitable shares and allocations of revenue**

- 214 (1) An Act of Parliament must provide for -
- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
  - (b) the determination of each province's equitable share of the provincial share of the revenue; and
  - (c) any other allocations to provinces, local government or municipalities from the national government's share of the revenue, and any conditions on which those allocations may be made.
- (2) The Act referred to in subsection (1) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered; and must take into account -
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;
  - (c) the needs and interests of the national government, determined by objective criteria;
  - (d) the need to ensure that the provinces and municipalities are able to provide basic services and exercise the functions allocated to them;
  - (e) the fiscal capacity and efficiency of the provinces and municipalities;
  - (f) developmental and other needs of provinces, local government and municipalities;
  - (g) economic disparities within and among the provinces;
  - (h) obligations of the provinces and municipalities in terms of national legislation;
  - (i) the desirability of stable and predictable allocations of revenue shares; and
  - (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

**National, provincial and municipal budgets**

- 215 (1) National, provincial and municipal budgets and budgetary processes must promote transparency, accountability, and the effective financial management of the economy, debt and the public sector.
- (2) National legislation must prescribe -
- (a) the form of national, provincial and municipal budgets;
  - (b) when national and provincial budgets must be tabled; and

- (c) that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.
- (3) Budgets in each sphere of government must contain -
  - (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

#### Treasury control

- 216 (1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing -
- (a) generally recognised accounting practice;
  - (b) uniform expenditure classifications; and
  - (c) uniform treasury norms and standards.
- (2) The national treasury, with the concurrence of the Cabinet member responsible for national financial matters, may stop the transfer of funds to an organ of state only for serious or persistent material breach of the measures established in terms of subsection (1).
- (3) A decision to stop the transfer of funds to a province may be taken only in terms of subsection (2), and -
- (a) may not stop the transfer of funds for more than 120 days; and
  - (b) may be enforced immediately but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 76(1) and prescribed by the joint rules and orders. This process must be completed within 30 days of the decision by the treasury.
- (4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of subsection (3).
- (5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province -
- (a) the Auditor-General must report to Parliament; and
  - (b) the province must be given an opportunity to answer the allegations against it and to state its case before a committee.

#### Procurement

- 217 (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection implementing a procurement policy providing for -
- (a) categories of preference in the allocation of contracts; and
  - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

#### Government guarantees

- 218 (1) The national government, a province or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.

- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.
- (3) Each year, every government must publish a report on the guarantees it has granted.

#### Remuneration of persons holding public office

- 219 (1) An Act of Parliament must establish a framework for determining-
- (a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders; and
  - (b) the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of municipal councils of different categories.
- (2) National legislation must establish an independent commission to make recommendations concerning the salaries, allowances and benefits referred to in subsection (1).
  - (3) Parliament may pass the legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).
  - (4) The national executive, a provincial executive, a municipality or any other relevant authority may implement the national legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).
  - (5) National legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General, and members of any commission provided for in the Constitution, including the broadcasting authority referred to in s 192.

### FINANCIAL AND FISCAL COMMISSION

#### Establishment and functions

- 220 (1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.
- (2) The Commission is independent and subject only to the Constitution and the law, and must be impartial.
  - (3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors including those listed in section 214(2).

#### Appointment and tenure of members

- 221 (1) The Commission consists of the following women and men appointed by the President as head of the national executive:
- (a) A chairperson and a deputy chairperson who are full-time members;
  - (b) nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person;
  - (c) two persons nominated by organised local government in terms of section 163; and
  - (d) nine other persons.
- (2) Members of the Commission must have appropriate expertise.
  - (3) Members serve for a term established in terms of national legislation. The President may remove a member from office on grounds of misconduct, incapacity or incompetence.

**Reports**

- 222 The Commission must report regularly both to Parliament and to provincial legislatures.

**CENTRAL BANK**

**Establishment**

- 223 The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.

**Primary object**

- 224 (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
- (2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice; but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

**Powers and functions**

- 225 The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.

**PROVINCIAL AND LOCAL FINANCIAL MATTERS**

**Provincial Revenue Funds**

- 226 (1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Provincial Revenue Fund only -
- (a) in terms of an appropriation by a provincial Act; or
  - (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in the Constitution or a provincial Act.
- (3) Revenue allocated through a province to local government in that province in terms of section 214(1), is a direct charge against that province's Revenue Fund.

**National sources of provincial and local government funding**

- 227 (1) Local government and each province -
- (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and exercise the functions allocated to it; and
  - (b) may receive other allocations from national revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.
- (3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 216.
- (4) A province must provide for itself any resources that it requires, in terms of a

provision of its provincial constitution, that are additional to its requirements envisaged in the Constitution.

**Provincial taxes**

- 228 (1) A provincial legislature may impose -
- (a) taxes, levies, or duties other than income tax, value-added tax, general sales tax, rates on property, or customs duties; and
  - (b) flat-rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax, rates on property, or customs duties.
- (2) The power of a provincial legislature to impose taxes, levies, duties and surcharges -
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries or the national mobility of goods, services, capital or labour; and
  - (b) must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

**Municipal rates and taxes**

- 229 (1) Subject to subsections (2) (3) and (4), a municipality may impose -
- (a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
  - (b) if authorised by national legislation, other taxes, levies or duties, appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax, surcharge or customs duty.
- (2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties -
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
  - (b) may be regulated by national legislation.
- (3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:
- (a) The need to comply with sound principles of taxation;
  - (b) the powers and functions performed by each municipality;
  - (c) the fiscal capacity of each municipality;
  - (d) the effectiveness and efficiency of raising taxes, levies and duties; and
  - (e) equity.
- (4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.
- (5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

**Provincial and municipal loans**

- 230(1) A province or a municipality may raise loans for capital or current expenditure in accordance with reasonable conditions determined by national legislation, but loans for current expenditure-

- (a) may be raised only when necessary for bridging purposes during a fiscal year; and
  - (b) must be repaid within twelve months.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.



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CHAPTER 14

INTERNATIONAL LAW

**International agreements**

- 231(1) The negotiating and signing of all international agreements is the responsibility of the national executive.
- (2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).
- (3) An international agreement of a technical, administrative or executive nature, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
- (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.
- (5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

**Customary international law**

- 232 Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

**Application of international law**

- 233 When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

OTHER MATTERS

**Charters of Rights**

- 234 In order to deepen the culture of democracy established by this Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.

**Self-determination**

- 235 The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

**Funding for political parties**

- 236 To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.

**Diligent performance of obligations**

- 237 All constitutional obligations must be performed diligently and without delay.

**Agency and delegation**

- 238 An executive organ of state in any sphere of government may -

- (a) delegate any function that is to be performed in terms of legislation to any other executive organ of state, provided that the delegation is consistent with the legislation in terms of which the function is performed; or
- (b) exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.

**Definitions**

239(1) In the Constitution, unless the context indicates otherwise,

"national legislation" includes-

- (a) subordinate legislation made in terms of an Act of Parliament; and
- (b) legislation that was in force when the Constitution took effect and that is administered by the national government;

"organ of state" means -

- (a) any department of state or administration in the national, provincial or local sphere of government; and
- (b) any other functionary or institution -
  - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation.

but does not include a court or a judicial officer.

"provincial legislation" includes -

- (a) subordinate legislation made in terms of a provincial Act; and
- (b) legislation that was in force when the constitution took effect and that is administered by a provincial government.

**Inconsistencies between different texts**

240 In the event of an inconsistency between different texts of the Constitution, the English text prevails.

**Transitional arrangements**

241 Schedule 6 applies to the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition.

**Repeal of laws**

242 The laws mentioned in Schedule 7 are repealed, subject to section 243 and Schedule 6.

**Short title and commencement**

- 243 (1) This Act is called the Constitution of the Republic of South Africa, 1996, and comes into effect as soon as possible on a date set by the President by proclamation, which may not be later than 1 July 1997.
- (2) The President may set different dates before the date mentioned in subsection (1) in respect of different provisions of the Constitution.
- (3) Unless the context otherwise indicates, a reference in a provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect.
- (4) If a different date is fixed for any particular provision of the Constitution in terms of subsection (2), any corresponding provision of the Constitution of the Republic of South Africa, 1993 mentioned in the proclamation, is repealed with effect from the same date.
- (5) Sections 213, 214, 215, 216, 218, 226, 227, 228, 229 and 230 come into effect on 1 January 1998, but this does not preclude the enactment in terms of this constitution of legislation envisaged in any of these provisions before that date. Until that date any corresponding and incidental provisions of the Constitution of the Republic of South Africa, 1993 remain in force.

Schedule 2

OATHS OR SOLEMN AFFIRMATIONS

**Oath or solemn affirmation of President and Acting-President**

1. The President or Acting-President, before the President of the Constitutional Court, must swear/affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as President of the Republic of South Africa, I, A.B. swear/solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always -

- \* promote that which will advance, and oppose all that may harm, the Republic;
- \* protect and promote the rights of all South Africans;
- \* discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- \* do justice to all; and
- \* devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

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**Oath or solemn affirmation of Deputy President**

2. The Deputy President, before the President of the Constitutional Court, must swear/affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as Deputy President of the Republic of South Africa, I, A.B. swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always -

- \* promote that which will advance, and oppose all that may harm, the Republic;
- \* be a true and faithful counsellor;
- \* discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- \* do justice to all; and
- \* devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

**Oath or solemn affirmation of Ministers and Deputy Ministers**

3. Each Minister and Deputy Minister, before the President of the Constitutional Court or another judge designated by the President of the Constitutional Court, must swear/affirm as follows: I, A.B. swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister/Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me- and to perform the duties of my office conscientiously and to the best of my ability.

(In the case of an oath: So help me God.)

**Oath or solemn affirmation of Members of the National Assembly, Permanent Delegates to the National Council of Provinces and members of provincial legislatures**

- 4(1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the President of the

Constitutional Court or a judge designated by the President of the Constitutional Court, must swear or affirm as follows:

I, A.B. swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I solemnly promise to perform my functions as a member of the National Assembly/ permanent delegate to the National Council of Provinces/member of the legislature of the province of C.D. to the best of my ability.  
(In the case of an oath: So help me God.)

- (2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of sub-item (1) before the presiding officer of the Assembly, Council or legislature, as the case may be.

**Oath or solemn affirmation of Premiers and members of Provincial Executive Councils**

5. The Premier of a province, and each member of the Executive Council of a province, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear/ affirm as follows:

I, A.B. swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Premier/member of the Executive Council of the province of CD with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the duties of my office conscientiously and to the best of my ability.

(In the case of an oath: So help me God.)

**Oath or solemn affirmation of judicial Officers**

6. (1) Each judge or acting judge, before the Chief Justice of the Supreme Court of Appeal or another judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B. swear/solemnly affirm that, as a judge of the Constitutional Court/Supreme Court of Appeal/High Court of E.F/G.H. Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution; and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.

(In the case of an oath: So help me God.)

- (2) A person appointed to the office of Chief Justice of the Supreme Court of Appeal who is not already a judge at the time of that appointment must swear or affirm before the President of the Constitutional Court.
- (3) Judicial officers, and acting judicial officers, other than judges, must swear/affirm in terms of national legislation.

Schedule 3

ELECTION PROCEDURES

Part A - Election Procedures for Constitutional Office-Bearers

Application

1. The procedure set out in this Schedule applies whenever -
  - (a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly;
  - (b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or
  - (c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

Nominations

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

Formal requirements

3. (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.
  - (2) The form on which a nomination is made must be signed -
    - (a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected;
    - (b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected; or
    - (c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected.
  - (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

Single candidate

5. If only one candidate is nominated, the person presiding must declare that candidate elected.

Election procedure

6. If more than one candidate is nominated -
  - (a) a vote must be taken at the meeting by secret ballot;
  - (b) each member present, or if it is a meeting of the National Council of Provinces, each province represented, at the meeting may cast one vote; and
  - (c) the person presiding must declare elected the candidate who receives a majority of the votes.

Elimination procedure

7. (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

- (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

**Further meetings**

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
- (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

**Rules**

9. (1) The President of the Constitutional Court must make rules prescribing -
  - (a) the procedure for meetings to which this Schedule applies;
  - (b) the duties of any person presiding at a meeting, and any person assisting the person presiding;
  - (c) the form on which nominations must be submitted; and
  - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the President of the Constitutional Court determines.

**Part B - Formula to Determine Party Participation in Provincial Delegations to the National Council of Provinces**

1. The delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.
2. If a calculation in terms of item 1 yields a surplus not absorbed by the delegates allocated to a party in terms of that item, the surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.

Schedule 4

**FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE**

**Part A**

Administration of indigenous forests  
Agriculture  
Airports other than international and national  
Animal control and diseases  
Casinos, racing, gambling and wagering, excluding lotteries and sports pools  
Consumer protection  
Cultural matters  
Disaster management  
Education at all levels, excluding tertiary education  
Environment  
Health services  
Housing  
Indigenous law and customary law subject to Chapter 12 of the Constitution  
Industrial promotion  
Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislature legislative competence  
Nature conservation, excluding national parks, national botanical gardens and marine resources  
Media service directly controlled or provided by the provincial government subject to section 192  
Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislature legislative competence  
Pollution control  
Population development  
Property transfer fees  
Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5  
Public transport  
Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law  
Regional planning and development  
Road traffic regulation  
Soil conservation  
Tourism  
Trade  
Traditional leadership subject to Chapter 12 of the Constitution  
Urban and rural development  
Vehicle licensing  
Welfare services

**Part B** The following local government matters to the extent set out in section 155(3):

Air pollution  
Building regulations  
Child care facilities  
Electricity and gas reticulation  
Firefighting services  
Local tourism  
Municipal airports

Municipal planning  
Municipal health services  
Municipal public transport  
Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law  
Pontoons, ferries, jetties, piers and harbours excluding the regulation of international and national shipping and matters related thereto  
Stormwater management systems in built up areas  
Trading regulations  
Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Schedule 5

FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

Part A

Abattoirs  
Ambulance services  
Archives other than national archives  
Libraries other than national libraries  
Liquor licences  
Museums other than national museums  
Provincial planning  
Provincial cultural matters  
Provincial recreation and amenities  
Provincial sport  
Provincial roads and traffic  
Veterinary services excluding regulation of the profession



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Part B

The following local government matters to the extent set out in section 155 (3):  
Beaches and amusement facilities  
Billboards and the display of advertisements in public places  
Cemeteries, funeral parlours, crematoria  
Cleansing  
Control of public nuisances  
Control of undertakings that sell liquor to the public  
Facilities for the accommodation, care and burial of animals  
Fencing and fences  
Licensing of dogs  
Licensing and control of undertakings that sell food to the public  
Local amenities  
Local sport facilities  
Markets  
Municipal abattoirs  
Municipal parks and recreation  
Municipal roads  
Noise pollution  
Pounds  
Public places  
Refuse removal, refuse dumps and solid waste disposal  
Street trading  
Street lighting  
Traffic and parking

## Schedule 6

## TRANSITIONAL ARRANGEMENTS

**Definitions**

1. In this Schedule, unless inconsistent with the context - "homeland" means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory; "new Constitution" means the Constitution of the Republic of South Africa, 1996; "old order legislation" means legislation enacted before the previous Constitution took effect; "previous Constitution" means the Constitution of the Republic of South Africa, 1993, (Act 200 of 1993).

**Continuation of existing law**

2. (1) All law which was in force when the new Constitution took effect, continues in force, subject to -
- (a) any amendment or repeal, and
  - (b) consistency with the new Constitution.
- (2) Old order legislation which continues in force in terms of subitem (1) -
- (a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
  - (b) continues to be administered by the authorities which administered it when the new Constitution took effect, subject to the new Constitution.

**Interpretation of existing legislation**

3. (1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation which existed when the new Constitution took effect -
- (a) to the Republic of South Africa or a homeland (except when it refers to a territorial area), must be construed as a reference to the Republic of South Africa under the new Constitution;
  - (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
  - (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to item 9 of this Schedule;
  - (d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces;
  - (e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to item 12 of this Schedule; or
  - (f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution.
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation -
- (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or of a homeland, must be construed as a reference to -
    - (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or

- (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive; or
- (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or of a homeland, must be construed as a reference to -
  - (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
  - (ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive.

#### National Assembly

4. (1) Anyone who was a member or office-bearer of the National Assembly when the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.
- (2) The National Assembly as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) The National Assembly consists of 400 members for the duration of its term that expires on 30 April 1999, subject to section 49 (4) of the new Constitution.
- (4) The rules and orders of the National Assembly in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

#### Unfinished business before Parliament

5. (1) Any unfinished business before the National Assembly when the new Constitution takes effect must be proceeded with in terms of the new Constitution.
- (2) Any unfinished business before the Senate when the new Constitution takes effect must be referred to the National Council of Provinces, and the Council must proceed with that business in terms of the new Constitution.

#### Elections of National Assembly

6. (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 50(2) after a motion of no-confidence in the President in terms of section 102(2) of the new Constitution.
- (2) Section 50(1) of the new Constitution is suspended until 30 April 1999.
- (3) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies -
- (a) to the first election of the National Assembly under the new Constitution;
  - (b) to the loss of membership of the Assembly in circumstances other than those provided for in section 47 (3) of the new Constitution; and
  - (c) to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution.
- (4) Section 47 (4) of the new Constitution is suspended until the second election of the National Assembly under the new Constitution.

#### National Council of Provinces

7. (1) For the period which ends immediately before the first sitting of a provincial legislature held after its first election under the new Constitution -
- (a) the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution; and
- (b) the allocation of permanent delegates and special delegates to the parties represented in the provincial legislature, is as follows:

PROVINCE	PERMANENT DELEGATES	SPECIAL DELEGATES
1. Eastern Cape	ANC 5 NP 1	ANC 4
2. Free State	ANC 4 FF 1 NP 1	ANC 4
3. Gauteng	ANC 3 DP 1 FF 1 NP 1	ANC 3 NP 1
4. KwaZulu-Natal	ANC 1 DP 1 IFP 3 NP 1	ANC 2 IFP 2
5. Mpumalanga	ANC 4 FF 1 NP 1	ANC 4
6. Northern Cape	ANC 3 FF 1 NP 2	ANC 2 NP 2
7. Northern Province	ANC 6	ANC 4
8. North West	ANC 4 FF 1 NP 1	ANC 4
9. Western Cape	ANC 2 DP 1 NP 3	ANC 1 NP 3

- (2) A party represented in a provincial legislature -
- (a) must nominate its permanent delegates from among the persons who were senators when the new Constitution took effect and are available to serve as permanent delegates; and
- (b) may nominate other persons as permanent delegates only if none or an insufficient number of its former senators are available.
- (3) A provincial legislature must appoint its permanent delegates in accordance with the nominations of the parties.

- (4) Subitems (2) and (3) apply only to the first appointment of permanent delegates to the National Council.
- (5) Section 62(1) of the new Constitution does not apply to the nomination and appointment of former senators as permanent delegates in terms of this item.
- (6) The rules and orders of the Senate in force when the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal.

**Former senators**

8. (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces is entitled to become a full voting member of the legislature of the province from which that person was nominated as a senator in terms of section 48 of the previous Constitution.
- (2) If a former senator elects not to become a member of a provincial legislature that person is regarded as having resigned as a senator the day before the new Constitution took effect.
- (3) The salary, allowances and benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

**National executive**

9. (1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister under the previous Constitution when the new Constitution took effect, continues in and holds that office in terms of the new Constitution, but subject to subitem (2).
- (2) Until 30 April 1999, sections 84, 89, 90, 91, 93 and 96 of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.
- (3) Subitem (2) does not prevent a Minister who was a senator when the new Constitution took effect, from continuing as a Minister referred to in section 91 (1) (a) of the new Constitution, as that section reads in Annexure B.

**Provincial legislatures**

- 10 (1) Anyone who was a member or office-bearer of a province's legislature when the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.
- (2) A provincial legislature as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) For the duration of its term that expires on 30 April 1999, and subject to section 108(4), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of item 8 of this Schedule.
- (4) The rules and orders of a provincial legislature in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

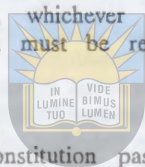
**Elections of provincial legislatures**

- 11 (1) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies -
  - (a) to the first election of a provincial legislature under the new Constitution;
  - (b) to the loss of membership of a legislature in circumstances other than those provided for in section 106(3) of the new Constitution; and

- (c) to the filling of vacancies in a legislature, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the legislature under the new Constitution.
- (2) Section 106(4) of the new Constitution is suspended in respect of a provincial legislature until the second election of the legislature under the new Constitution.

**Provincial executives**

- 12 (1) Anyone who was the Premier or a member of the Executive Council of a province when the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subitem (2).
- (2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, ~~whichever~~ occurs first, sections 132 and 136 of the new Constitution ~~must be~~ regarded to read as set out in Annexure C to this Schedule.



**Provincial constitutions**

- 13 A provincial constitution passed before the new Constitution took effect must comply with section 143 of the new Constitution.

**Assignment of legislation to provinces**

- 14 (1) Legislation with regard to a matter within a functional area listed in Schedule 4 or 5 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Executive Council of the province.
- (2) To the extent that it is necessary for an assignment of legislation under subitem (1) to be effectively carried out, the President, by proclamation, may -
  - (a) amend or adapt the legislation to regulate its interpretation or application;
  - (b) where the assignment does not apply to the whole of any piece of legislation, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those provisions to which the assignment applies or to the extent that the assignment applies to them; or
  - (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial executive or any department of state, administration, security service or other institution.
- (3) (a) A copy of each proclamation issued in terms of subitem (1) or (2) must be submitted to the National Assembly and the National Council of Provinces within 10 days of the publication of the proclamation.
- (b) If both the National Assembly and the National Council by resolution disapprove the proclamation or any provision of it, the proclamation or provision lapses, but without affecting -
  - (i) the validity of anything done in terms of the proclamation or provision before it lapsed; or
  - (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.
- (4) When legislation is assigned under subitem (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.

- (5) Any assignment of legislation under section 235(8) of the previous Constitution, including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is regarded as having been done under this item.

**Existing legislation outside Parliament's legislative power**

- 15 (1) An authority within the national executive which administers any legislation falling outside Parliament's legislative power when the new Constitution takes effect, remains competent to administer that legislation until it is assigned to an authority within a provincial executive in terms of item 14 of this Schedule.
- (2) Subitem (1) lapses two years after the new Constitution took effect.

**Courts**

- 16 (1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation; and
- (b) consistency with the new Constitution.
- (2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.
- (b) Anyone holding office as the President, the Deputy President or a judge of the Constitutional Court when the new Constitution took effect, becomes the President, the Deputy President or a judge of the Constitutional Court under the new Constitution, and continues in office for the unexpired portion of their term as fixed by section 176(1) of the new Constitution.
- (3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.
- (b) Anyone holding office as the Chief Justice, the Deputy Chief justice or a judge of the Appellate Division when the new Constitution took effect, becomes the Chief Justice, the Deputy Chief justice or a judge of the Supreme Court of Appeal under the new Constitution.
- (4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in subitem (6).
- (b) Anyone holding office or deemed to hold office as the judge President, the Deputy judge President or a judge of a court referred to in paragraph (a) when the new Constitution took effect, becomes the judge President, the Deputy judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subitem (6).
- (5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to -
- (a) the Constitutional Court under the previous Constitution must be construed as a reference to the Constitutional Court under the new Constitution;
- (b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and
- (c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.

- (6) (a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.
- (b) The Cabinet member responsible for the administration of justice, acting after consultation with the judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).

**Cases pending before courts**

- 17 All proceedings which were pending before a court when the new Constitution took effect, must be disposed of as if the new Constitution had not been enacted, unless the interest of justice requires otherwise.

**Prosecuting authority**

- 18 (1) Section 108 of the previous Constitution continues in force until the Act of Parliament envisaged in section 179 of the new Constitution takes effect. This subitem does not affect the appointment of the National Director of Public Prosecutions in terms of section 179.
- (2) An attorney-general holding office when the new Constitution took effect, continues to function in terms of the legislation applicable to that office, subject to subitem (1).

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**Oaths and affirmations**

- 19 A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the previous Constitution, is not obliged to repeat the oath of office or solemn affirmation under the new Constitution.

**Other constitutional institutions**

- 20 (1) In this section "constitutional institution" means -
- (a) the Public Protector;
  - (b) the Human Rights Commission;
  - (c) the Commission on Gender Equality;
  - (d) the Auditor-General;
  - (e) the South African Reserve Bank;
  - (f) the Financial and Fiscal Commission;
  - (g) the Judicial Service Commission; or
  - (h) the Pan South African Language Board.
- (2) A constitutional institution established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank or the Pan South African Language Board, the Public Protector or the Auditor-General when the new Constitution took effect, continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation; and
  - (b) consistency with the new Constitution.
- (3) Sections 199(1), 200(1), (3) and (5) to (1) and 201 to 206 of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.
- (4) The members of the Judicial Service Commission referred to in section 105 (1)(h) of the previous Constitution cease to be members of the Commission when the members referred to in section 178(1)(i) of the new Constitution are appointed.
- (5) (a) The Volkstaat Council established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a member of the Council when the new

Constitution took effect, continues to hold office in terms of the legislation applicable to that office, subject to -

- (i) any amendment or repeal of that legislation; and
  - (ii) consistency with the new Constitution.
- (b) Sections 184A and 184B (1) (a), (b) and (d) of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.

**Enactment of legislation required by new Constitution**

- 21 (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect.
- (2) Section 198(b) of the new Constitution may not be enforced until the legislation envisaged in that section has been enacted.
- (3) Section 199(3) (a) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged in that section has been enacted.
- (4) National legislation envisaged in section 217(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect, but the absence of this legislation during this period does not prevent the implementation of the policy referred to in section 217(2).
- (5) Until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.
- (6) Until the legislation envisaged in section 229(1)(b) of the new Constitution is enacted, a municipality remains competent to impose any tax, levy or duty which it was authorised to impose when the constitution took effect.

**National unity and reconciliation**

- 22 Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of the National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity.

**Bill of Rights**

- 23 (1) National legislation envisaged in sections 9 (4), 32(2) and 33(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.
- (2) Until the legislation envisaged in sections 32(2) and 33(3) of the new Constitution is enacted -
- (a) section 32(1) must be regarded to read as follows: "(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights."; and
  - (b) section 33(1) and (2) must be regarded to read as follows: "Every person has the right to-
    - (a) lawful administrative action where any of their rights or interests is affected or threatened;
    - (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
    - (c) to be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and

- (d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened."
- (3) Sections 32(2) and 33(3) of the new Constitution lapse if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect.

**Public administration and security services**

- 24 (1) Sections 82 (4)(b), 215, 218(1), 219(1), 224 to 228, 236(1), (2), (3), (6), (7) (b) and (8), 237(1) and (2) (a) and 239 (4) and (5) of the previous Constitution continue in force as if the previous Constitution had not been repealed, subject to -
- (a) the amendments to those sections as set out in Annexure D,
  - (b) any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the new Constitution; and
  - (c) consistency with the new Constitution.
- (2) The Public Service Commission and the provincial service commissions referred to in Chapter 13 of the previous Constitution continue to function in terms of that Chapter and the legislation applicable to it as if that Chapter had not been repealed, until the Commission and the provincial service commissions are abolished by an Act of Parliament passed in terms of section 75 of the new Constitution.
- (3) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3), of the previous Constitution and any such proclamation continues in force, subject to -
- (a) any amendment or repeal; and
  - (b) consistency with the new Constitution.

**Additional disqualification for legislatures**

- 25 (1) Anyone who, when the new Constitution took effect, was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.
- (2) The disqualification of a person in terms of subitem (1) -
- (a) lapses if the conviction is set aside on appeal, or the sentence is reduced on appeal to a sentence that does not disqualify that person; and
  - (b) ends five years after the sentence has been completed.

**Local Government**

- 26 (1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the New Constitution -
- (a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force until 30 April 1999, or until repealed, whichever is sooner; and
  - (b) a traditional leader of a community observing a system of indigeneous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is ex officio entitled to be a member of that council until 30 April 1999 or until an Act of Parliament provides otherwise.
- (2) Section 245(4) of the previous Constitution continues in force until the application of that section lapses. Section 16(5) and (6) of the Local Government Transition Act, 1993, may not be repealed before 30 April 1999.

**Safekeeping of Acts of Parliament and Provincial Acts**

27. Sections 82 and 124 of the new Constitution do not affect the safekeeping of Acts of Parliament or Provincial Acts passed before the new Constitution took effect.

**Registration of immovable property owned by the State**

28(1) On the production of a certificate by a competent authority that immovable property owned by the State is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

(2) No duty, fee or other charge is payable in respect of a registration in terms of subitem (1)



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ANNEXURE A

Amendments to Schedule 2 to the previous Constitution

1. The replacement of item 1 with the following item:  
"1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation."
2. The replacement of item 2 with the following item:  
"2. The seats in the National Assembly as determined in terms of section 46 of the new Constitution, shall be filled as follows:  
(a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.  
(b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted."
3. The replacement of item 3 with the following item:  
"3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine."
4. The amendment of item 5 by replacing the words preceding paragraph (a) with the following words  
"5. The seats referred to in item 2 (a) shall be allocated per region to the parties contesting an election, as follows:"
5. The amendment of item 6 -  
(a) by replacing the words preceding paragraph (a) with the following words:  
"6. The seats referred to in item 2(b) shall be allocated to the parties contesting an election, as follows: "I and  
(b) by replacing paragraph (a) with the following paragraph:  
"(a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat."
6. The amendment of item 7(3) by replacing paragraph (b) with the following paragraph:  
"(b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a)."
7. The replacement of item 10 with the following item:  
"10. The number of seats in each provincial legislature shall be as determined in terms of section 105 of the new Constitution."
8. The replacement of item 11 with the following item:  
"11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation."
9. The replacement of item 16 with the following item:  
**"Designation of representatives**  
16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section

190 of the new Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.

- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature Z's held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.
- (3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures."

10. The amendment of item 18 by replacing paragraph (b) with the following paragraph:

"(b) a representative is appointed as a permanent delegate to the National Council of Provinces;"

11. The replacement of item 19 with the following item:

"19. Lists of candidates of a party referred to in item 16(1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list."

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12. The replacement of item 23 with the following item:

**"Vacancies**

- "23 (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person -
- (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
  - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item 23A (1), the seats in question shall be allocated to the remaining parties mutatis mutandis as if such seats were forfeited seats in terms of item 7 or 14, as the case may be."

13. The insertion of the following item after item 23:

"Additional ground for loss of membership of legislatures

- 23A (1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.
- (2) Despite subitem (1) any existing political party may at any time change its name.
  - (3) An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature.
  - (4) An Act of Parliament referred to in subitem (3) may also provide for -
    - (a) any existing party to merge with another party; or
    - (b) any party to subdivide into more than one party."

14. The deletion of item 24.

15. The amendment of item 25 -

- (a) by replacing the definition of "Commission" with the following definition: "Commission" means the Electoral Commission referred to in section 190 of the new Constitution"; and
- (b) by inserting the following definition after the definition of "national list": "new Constitution" means the Constitution of the Republic of South Africa, 1996".

16. The deletion of item 26.

ANNEXURE B

Government of National Unity: National Sphere

1. Section 84 of the new Constitution is deemed to contain the following additional subsection:  
"(3) The President must consult the Executive Deputy Presidents -  
(a) in the development and execution of the policies of the national government;  
(b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;  
(c) in the assignment of functions to the Executive Deputy Presidents;  
(d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives;  
(e) before appointing commissions of enquiry;  
(f) before calling a referendum  
(g) before signing any international agreements; and  
(h) before pardoning or relieving offenders."
2. Section 89 of the new Constitution is deemed to contain the following additional subsection:  
"(3) Subsections (1) and (2) apply also to an Executive Deputy President."
3. Paragraph (a) of section 90(1) of the new Constitution is deemed to read as follows:  
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(a) an Executive Deputy President designated by the President;"
4. Section 91 of the new Constitution is deemed to read as follows:

"Cabinet

91. (1) The Cabinet consists of the President, the Executive Deputy Presidents and -
  - (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
  - (b) not more than one Minister who is not a member of the National Assembly and appointed in terms of subsection (1) 3), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties, deems the appointment of such a Minister expedient.
- (2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.
- (3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.
- (4) On being designated, an Executive Deputy President may elect to remain or cease to be a member of the Assembly.
- (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President.
- (6) An Executive Deputy President holds office -
  - (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of subsections (2) and (3); or
  - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.
- (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
- (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection (1)(a) are to be

appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating Parties.

- (9) Cabinet portfolios must be allocated to the respective Participating parties in accordance with the following formula:
- (a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held Jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1) (a) are to be appointed, plus one.
  - (b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.
  - (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
  - (d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.
  - (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must -
- (a) determine the specific portfolios to be allocated to the respective participating Parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
  - (b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio;
  - (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (9);
  - (d) terminate any appointment under paragraph (b) -
    - (i) if the President is requested to do so by the leader of the party of which the Minister in question is a member; or
    - (ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
  - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on -
- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the President's decision prevails;
  - (b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and
  - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.
- (12) If any determination of portfolio allocations is varied under subsection (10)(c), the affected Ministers must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President -
- (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must -
    - (i) determine a specific portfolio for a Minister referred to in subsection (1) (b) should it become necessary pursuant to a decision of the President under that subsection;
    - (ii) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio;

- (iii) fill, if necessary, a vacancy in respect of that portfolio; or
  - (b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government."

5. Section 93 of the new Constitution is deemed to read as follows:

**Appointment of Deputy Ministers**

93. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.
- (3) The provisions of section 91 (10) to (12) apply, with the necessary changes, in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.
- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister -
- (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
  - (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
- (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific Power or function."
- (6) Section 96 of the new Constitution is deemed to contain the following additional subsections:
- "(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.
- (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
- (5) If a Minister fails to administer the portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the Minister concerned fails to comply with a requirement of the President under subsection (5), the President may remove the Minister from office -
- (a) if it is a Minister referred to in section 91(1)(a), after consultation with the Minister and, if the Minister is not a member of the President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party; or
  - (b) if it is a Minister referred to in section 91 (1) (b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."

ANNEXURE C

Government of National Unity: Provincial Sphere

1. Section 132 of the new Constitution is deemed to read as follows:

"Executive Councils

- 132 (1) The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.
- (2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties
- (3) Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 91 (9), and in applying that formula a reference in that section to -
- the Cabinet, must be read as a reference to an Executive Council;
  - a Minister, must be read as a reference to a member of an Executive Council; and
  - the National Assembly, must be read as a reference to the provincial legislature.
- (4) The Premier of a province after consultation with the leaders of the participating parties must-
- determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);
  - appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;
  - if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (3);
  - terminate any appointment under paragraph (b) -
    - if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member; or
    - if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
  - fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council.
- (5) Subsection (4) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times; Provided that if consensus cannot be achieved on -
- the exercise of a power referred to in paragraph (a), (c) or (d)
    - of that subsection, the Premier's decision prevails;
  - the exercise of a power referred to in paragraph (b), (d) (i) or (e) of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails; and
  - the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the Premier's party, the Premier's decision prevails.
- (6) If any determination of portfolio allocations is varied under subsection (4) (c), the affected members must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (7) Meetings of an Executive Council must be presided over by the Premier of the province.
- (8) An Executive Council must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government."

(2) Section 136 of the new Constitution is deemed to contain the following additional subsections:

- (3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies.
- (4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council.
- (5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the member concerned fails to comply with a requirement of the Premier under subsection (5), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party."

#### ANNEXURE D

##### Public administration and security services: Amendments to sections of the previous Constitution

1. The amendment of section 218 of the previous Constitution -
  - (a) by replacing in subsection (1) the words preceding paragraph (a) with the following words:
    - (1) Subject to the directions of the Minister of Safety and Security, the National Commissioner shall be responsible for -
  - (a) by replacing paragraph (b) of subsection (1) with the following paragraph:
    - (b) the appointment of provincial commissioners;"
  - (c) by replacing paragraph (d) of subsection (1) with the following paragraph:
    - (d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills;"
  - (e) by replacing paragraph (k) of subsection (1) with the following paragraph:
    - "(k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner".
2. The amendment of section 219 of the previous Constitution by replacing in subsection (1) the words preceding paragraph (a) with the following words:
  - "(1) Subject to section 218(1), a Provincial Commissioner shall be responsible for - "
3. The amendment of section 224 of the previous Constitution by replacing the proviso to subsection (2) with the following proviso:

"Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council and did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution."
4. The amendment of section 227 of the previous Constitution by replacing subsection (2) with the following subsection:
  - "(2) The National Defence Force shall exercise its powers and perform its functions solely in the national interest in terms of Chapter 11 of the Constitution of the Republic of South Africa, 1996."
5. The amendment of section 236 of the previous Constitution -
  - (a) by replacing subsection (1) with the following subsection:
    - "(1) A public service, department of state, administration or security service which immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as "the new Constitution ", performed governmental functions,

continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution."

(b) by replacing subsection (6) with the following subsection:

6. (a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2) or any class of such persons.
- (b) The commission may reverse or alter a contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case."; and
- (c) by replacing "this Constitution", wherever this occurs in section 236, with "the new Constitution".

6. The amendment of section 237 of the previous Constitution -

(a) by replacing paragraph (a) of subsection (1) with the following paragraph:

"(a) The rationalisation of all institutions referred to in section 236(1), excluding military forces referred to in section 224 (2), shall after the commencement of the Constitution of the Republic of South Africa, 1996, continue, with a view to establishing -

- (i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere; and
- (ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government.";

and

(b) by replacing subparagraph (i) of subsection (2) (a) with the following subparagraph:

"(i) institutions referred to in section 236(1), excluding military forces, shall rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments;"

7. The amendment of section 239 of the previous Constitution by replacing subsection (4) with the following subsection:

"(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in section 224 (2) shall devolve upon the National Defence Force in accordance with the directions of the Minister of Defence."

#### Schedule 7

#### LAWS REPEALED

NUMBER AND YEAR OF LAW	TITLE
Act 200 of 1993	Constitution of the Republic of South Africa, 1993
Act 2 of 1994	Constitution of the Republic of South Africa Amendment Act, 1994
Act 3 of 1994	Constitution of the Republic of South Africa Second Amendment Act, 1994
Act 13 of 1994	Constitution of the Republic of South Africa Third Amendment Act, 1994
Act 14 of 1994	Constitution of the Republic of South Africa Fourth Amendment Act, 1994
Act 24 of 1994	Constitution of the Republic of South Africa Sixth Amendment Act, 1994
Act 29 of 1994	Constitution of the Republic of South Africa Fifth Amendment Act, 1994
Act 20 of 1995	Constitution of the Republic of South Africa Amendment Act, 1995
Act 44 of 1995	Constitution of the Republic of South Africa Second Amendment Act, 1995
Act 7 of 1996	Constitution of the Republic of South Africa Amendment Act, 1996
Act 26 of 1996	Constitution of the Republic of South Africa Third Amendment Act, 1996

# AGRICULTURAL DEVELOPMENT ACT, 1999 EASTERN CAPE



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# PROVINCE OF THE EASTERN CAPE

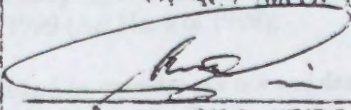
ACT

## AGRICULTURAL DEVELOPMENT ACT, 1999 (EASTERN CAPE)



University of Fort Hare  
*Together in Excellence*

Act No 8 of 1999

<p><b>BILL</b></p> <p><b>PROVINCE OF THE EASTERN CAPE</b></p> <p>ASSENTED TO IN TERMS OF SECTION 127 R.W. SECTIONS 123, 124 AND 127 OF ACT 108 OF 1996</p> <p></p> <p>SIGNATURE</p> <p><u>24/11/2000</u></p> <p>DATE</p> <p><u>M.A. STOFFLE</u></p> <p>FULL NAMES</p> <p>TITLE: PREMIER/ACTING PREMIER (Where which ever is applicable)</p> <p>(NOTE: IN CASE THEREOF, ENGLISH IS THE ONLY OFFICIAL LANGUAGE OF THE PROVINCE)</p>
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# ACT

To promote, support and facilitate agricultural development in the Eastern Cape Province, by providing for the introduction of programmes and schemes for providing agricultural assistance and disaster relief to farmers and for improving agricultural standards and the efficiency and competitiveness of the agricultural sector; to provide for the creation of an agricultural development fund; and to provide for matters connected therewith.

## Definitions

1. In this Act, unless the context indicates otherwise-

**"agriculture"** means any farming activity, regardless of whether or not such activity is undertaken for profit, and 'agricultural' has a corresponding meaning;

**"agricultural development programme"** means an agricultural development programme established in terms of section 4, and includes an agricultural finance programme;

**"agricultural finance programme"** means an agricultural development programme in terms of which financial assistance is rendered to farmers;

**"Department"** means the Department of Agriculture and Land Affairs in the provincial government;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

**"Executive Council"** means the Executive Council of the Province;

**"farmer"** means any person who engages in agriculture in the Province;

**"financial institution"** means-

- (a) any institution incorporated or deemed to have been incorporated under -
  - (i) the Banks Act, 1990 (Act No. 94 of 1990);
  - (ii) the Mutual Banks Act, 1993 (Act No. 124 of 1993);
  - (iii) the Mutual Building Societies Act, 1965 (Act No.24 of 1965);
  - (iv) the Co-operatives Act, 1981 (Act No.91 of 1981);
- (b) the Eastern Cape Rural Development Finance Corporation Limited, established by the Eastern Cape Rural Finance Corporation Act, 1999 (Act No. 9 of 1999);
- (c) any other institution established by or under any law and designated a financial institution by the MEC, after consultation with the MEC for Finance, by Proclamation in the Gazette;

**"Fund"** means, the Provincial Agricultural Development Fund established by section 9;

**"Gazette"** means the Provincial Gazette of the Eastern Cape Province;

**"government"** means the provincial government;

**"institution"** means any juristic person or association of persons whose objects are consistent with the objects of this

Act:

**"Legislature"** means the provincial legislature established in terms of Section 104 of the Constitution;

**"MEC"** means the Member of the Executive Council of the Province responsible for agriculture and land affairs;

**"MEC for Finance"** means the member of the Executive Council of the Province responsible for financial affairs;

**"Permanent Secretary"** means the Permanent Secretary of the Department;

**"Province"** means the Province of the Eastern Cape as defined in Section 103 of the Constitution and "provincial" has a corresponding meaning;

**"scheme"** means a scheme established in terms of section 5.

### Functions and powers of the MEC in connection with agricultural development and assistance

2. The MEC has the power to-

- (1) determine provincial norms and standards for agricultural development and assistance to farmers;
- (2) determine provincial policy relating to agricultural development and assistance to farmers;
- (3) establish a provincial framework for the purpose of broadening access to agriculture for farmers from previously disadvantaged communities;
- (4) establish agricultural development programmes and schemes in accordance with the provisions of this Act;
- (5) administer, or cause to be administered, the implementation of any agricultural development programme or scheme, prescribe the requirements of such programme or scheme and ensure compliance with such requirements;
- (6) monitor and evaluate the implementation of any agricultural development programme or scheme established in terms of this Act;
- (7) perform such other functions relating to agricultural development and the provision of agricultural assistance to farmers as are necessary in order to achieve the objects of this Act.

### Advisory committees

3. (1) The MEC has the power to establish advisory committees to advise him or her on any matter connected with the exercise of his or her powers, functions and duties in terms of this Act.
- (2) When establishing any advisory committee, the MEC must determine its composition, functions, duration and membership and the conditions of office of its members and the MEC may amend these from time to time, or dissolve any committee so established.
- (3) In appointing the members of an advisory committee, the MEC must have due regard for the demographic composition of the Province and the knowledge and experience required for purposes of the committee concerned.
- (4) When the MEC establishes an advisory committee, he or she must first, by notice in the Gazette and at least two newspapers circulating in the Province, give notice of his or her intention to establish such a committee, its intended purpose, composition, functions and duration and the procedure he

or she intends to adopt with regard to the selection and appointment of its members and must provide in such notice for a reasonable period within which members of the public may make representations to him or her in that regard.

- (5) After their appointment, the MEC must publish the names of the members of an advisory committee in the Gazette and at least two newspapers circulating in the Province.

#### **Powers of the MEC in connection with agricultural development programmes**

4. (1) The MEC has the power to establish programmes, by notice in the Gazette, for the purpose of providing financial and other forms of assistance for the following objectives-
- (a) assisting farmers from previously disadvantaged communities to participate more fully in productive agricultural activity;
  - (b) assisting small-scale farmers to organise themselves into groups, associations and juristic entities, in order to improve their access to markets, funding, or services;
  - (c) fostering a re-orientation from subsistence farming to agri-business and agro- industry and generally promoting the growth and development of agri-business and agro-industry in the Province;
  - (d) improving standards of agriculture and promoting and enhancing the efficiency and competitiveness of the Province's agricultural sector;
  - (e) facilitating the marketing of agricultural products;
  - (f) promoting the conduct of research into any of the foregoing matters and the provision of bursaries for related fields of study;
  - (g) promoting, encouraging and facilitating the growth and development of the Province's agricultural sector generally.
- (2) The MEC must determine and specify the objectives and requirements of any agricultural development programme so established and the criteria for participation in such programme.
- (3) Different agricultural development programmes may be established in respect of different areas, or different classes or groups of farmers and the provisions of different programmes may differ in such respects as the MEC thinks desirable in order to achieve the objectives of this Act.

#### **Powers of the MEC in connection with schemes for rendering disaster assistance and the payment of subsidies, incentives and financial assistance for agricultural development**

5. (1) If any natural event occurs which causes or is likely to cause loss or damage to any farmer, the MEC, having regard for the nature and extent of the damage or loss involved, has the power to establish a scheme or schemes, by notice in the Gazette, for purposes of rendering disaster assistance to any farmer affected thereby.
- (2) If he or she considers it necessary or desirable to achieve the objects of any legislation in connection with any matter listed in the Schedule to this Act, so as to improve agricultural standards or enhance the competitiveness of the Province's agricultural sector, the MEC has the power to establish schemes, by notice in the Gazette, for the payment of incentives, subsidies, or other forms of financial assistance-
- (a) to any farmer or other land user affected by such legislation;

- (b) for purposes of funding research into any such matter.
- (3) If he or she considers it necessary or desirable to achieve the objects of any programme aimed at facilitating the marketing of agricultural products, the MEC has the power to establish schemes, by notice in the Gazette, for the payment of incentives, subsidies, or other forms of financial assistance-
- (a) to any farmer, or any association or group of farmers for that purpose;
- (b) for purposes of funding the establishment of markets, farm stalls, abattoirs and other forms of physical infrastructure.
- (4) In establishing any scheme in terms of this section, the MEC must have due regard for the financial position of the fund.
- (5) The MEC must determine and specify the objectives and requirements for any scheme established in terms this section and the criteria for participation in such scheme.
- (6) Different schemes may be established in respect of different areas, or different classes or groups of farmers and the provisions of different schemes may differ in such respects as the MEC thinks desirable in order to achieve the objectives of this Act.

#### Establishment of programmes and schemes generally



- 6.. (1) When the MEC establishes any programme or scheme in terms of sections 4 or 5, he must specify in the relevant notice -
- (a) the name and objectives of the programme or scheme;
- (b) the area or areas in which the programme or scheme will apply;
- (c) the categories of farmers or other land users to which the programme or scheme will apply;
- (d) the requirements for participation in the programme or scheme and the criteria for gaining access to any funds or services offered in terms of the programme or scheme;
- (e) the manner in which farmers or other land users are required to apply for admission to participate in the programme or scheme;
- (f) the norms and standards for the selection of applicants for participation in the programme or scheme;
- (g) the circumstances, if any, under which participation in the programme or scheme shall lapse;
- (h) the information to be recorded or kept by participants in the programme or scheme;
- (i) the facilities which participants in the programme or scheme must themselves provide;
- (j) the department or institution appointed to administer, implement, or assist with the implementation of the programme or scheme;
- (k) the procedure for administering and accounting for any funds allocated to or expended in respect of the programme or scheme;
- (l) the procedure for monitoring and evaluating the programme or scheme; and
- (m) any other matter which the MEC considers necessary or desirable to achieve the objectives

of the programme or scheme.

- (2) If the MEC considers it necessary or desirable for the better administration of this Act, he or she may make regulations of uniform application to all or any specified type of programme or scheme provided for by this Act, any matter connected with the administration or implementation of any such programme or scheme and any matter connected with the payment of monies from the Fund for purposes of any such programme or scheme.

#### **Establishment of Provincial Agricultural Development Fund**

7. (1) There is hereby established a fund to be known as the Provincial Agricultural Development Fund.
- (2) There shall be paid into the Fund-
  - (a) any money appropriated by the Legislature to finance the Fund;
  - (b) any money advanced by the national government of the Republic of South Africa or any related government institution;
  - (c) any money donated by any foreign government, or any local or foreign institution for purposes of providing financial assistance to farmers; and
  - (d) any money which may accrue to the Fund from any other source.
- (3) The money paid into the Fund is to be used for the following purposes only-
  - (a) providing financial assistance in accordance with an agricultural finance programme, or a scheme established under section 5;
  - (b) paying administrative fees due and payable to an institution appointed in terms of section 8; and
  - (c) paying such other necessary expenses incurred in connection with an agricultural development programme as may be determined in advance by the MEC, after consultation with the MEC for Finance.
- (4) Separate accounts must be maintained within the Fund for each agricultural finance programme and each scheme established in terms of section 5.
- (5) The Permanent Secretary -
  - (a) is the accounting officer of the Fund for the purposes of the Provincial Exchequer Act, 1994 (Eastern Cape Act No. 1 of 1994);
  - (b) must keep proper records of all monies received by and expended from the Fund;
  - (c) is authorised to open such accounts as he or she deems necessary, into which he or she, subject the provisions of subsection (7), must pay the monies referred to in subsection (2).
- (6) The Fund must be audited annually by the Auditor-General of the Republic of South Africa, or his authorised representative in the Province.
- (7) Any money standing to the credit of the Fund, which is not required for immediate use or as a reasonable working balance, must be invested with the Corporation for Public Deposits established under section 2 of the Corporation for Public Deposits Act, 1984 (Act No.46 of 1984).

**Administration of programmes and schemes**

8. (1) Subject to the provisions of sub-section (2), the MEC, after consultation with the MEC for Finance, may enter into an agreement with an institution active in the Province, in terms of which such institution is appointed to administer, implement, or assist with the implementation of any agricultural development programme, or any scheme established in terms of sections 5, on such terms and conditions as may be agreed upon.
- (2) Only a financial institution may be appointed to administer or implement an agricultural finance programme, or a scheme referred to in section 5, utilising monies received from the Fund.
- (3) An institution appointed in terms of subsection (1) must report to the MEC on its activities and results and, where applicable, must render an audited account of its utilisation of all monies received from the Fund, at such intervals and in such manner as the MEC determines, after consultation with the MEC for Finance.
- (4) An agreement concluded in terms of subsection (1) must be recorded in writing and must include the further matters provided for in subsection (3).

**Abolition and winding-up of programmes and schemes**

9. (1) The MEC has the power to abolish any programme or scheme established in terms of this Act by notice in the Gazette and may further provide in such proclamation for-
- (a) the reduction or withdrawal of assistance to any existing participant in the programme or scheme, pending its abolition;
  - (b) the manner of winding-up of the accounts of the programme or scheme;
  - (c) any other matter necessary for or incidental to the abolition of the programme or scheme and, in the event that the programme or scheme is to be replaced by any other programme or scheme, any matter necessary for or incidental to the transition from the existing programme or scheme to the new programme or scheme.
- (2) No programme or scheme established in terms of this Act may be abolished until the MEC has, by notice in the Gazette and at least two newspapers circulating in the Province, given notice of his or her intention to abolish such programme or scheme, with reasons, and has provided therein for a reasonable period within which participants in the programme or scheme may make representations to him or her in that regard.

**Repeal of laws**

10. The Agricultural Development Act, 1966 (Transkei) and the Agricultural Development Act, No.14 of 1989 (Ciskei) are hereby repealed.

**Short title and commencement**

11. (1) This Act shall be called the Agricultural Development Act, 1999, and shall come into effect upon a date to be fixed by the Premier by Proclamation in the Gazette.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

SCHEDULE

Matters in connection with which the MEC may establish schemes in terms of Section 6

1. Soil conservation;
2. The protection or conservation of veld or grazing land;
3. The protection or better utilisation of water resources;
4. The prevention or control of fires;
5. The eradication or control of weeds and invader plants;
6. The use of herbicides and pesticides;
7. The improvement of the quality of crops and livestock.



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CERTIFIED AS CORRECT AS PASSED BY THE PROVINCIAL  
LEGISLATURE

SECRETARY TO PROVINCIAL LEGISLATURE

# EASTERN CAPE RURAL FINANCE CORPORATION ACT, 1999



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# PROVINCE OF THE EASTERN CAPE

ACT

To provide for the establishment of the Eastern Cape Rural Finance Corporation Limited, with the object of promoting, supporting and facilitating rural development in the Eastern Cape Province in an appropriate and sustainable manner; to make provision for the abolition of the Agricultural Bank of Transkei and the Transkei Agricultural Bank Limited; and to provide for matters connected therewith.

Be it enacted by the Legislature of the Province of the Eastern Cape, as follows:

## EASTERN CAPE RURAL FINANCE CORPORATION ACT, 1999

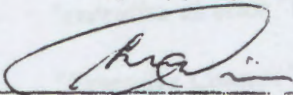
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Act No 9 of 1999

BILL

PROVINCE OF THE EASTERN CAPE

ASSENTED TO IN TERMS OF SECTION  
121 R.W. SECTIONS 123, 124 AND 127  
OF ACT 108 OF 1996



SIGNATURE

24/11/2000  
DATE

M.A. STOFILC

PRINTED NAMES

TITLE: PREMIER/ACTING PREMIER  
(Delete whichever is inapplicable)

NOTE: IN DATE AND FOR ENGLISH  
ONLY OFFICIAL LANGUAGE OF THE PROVINCE

# ACT

To provide for the establishment of the Eastern Cape Rural Finance Corporation Limited, with the object of promoting, supporting and facilitating rural development in the Eastern Cape Province in an appropriate and sustainable manner; to make provision for the abolition of the Agricultural Bank of Transkei and the Ciskeian Agricultural Bank Limited; and to provide for matters connected therewith.

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape, as follows :-

## Definitions

1. In this Act unless the context indicates otherwise -
  - "**auditor**" means corporation's external auditor referred to in section 21;
  - "**board**" means the board of directors of the corporation referred to in section 8;
  - "**chairperson**" and "**deputy chairperson**" mean the chairperson and deputy chairperson of the board, respectively, referred to in section 12;
  - "**Companies Act**" means the Companies Act, 1973 (Act No.61 of 1973);
  - "**Constitution**" means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
  - "**corporation**" means the Eastern Cape Rural Finance Corporation Limited referred to in subsection 2(1);
  - "**director**" means a director of the board referred to in section 8;
  - "**executive director**" means the executive director of the corporation referred to in section 13;
  - "**Executive Council**" means the Executive Council of the Province;
  - "**Gazette**" means the Provincial Gazette of the Eastern Cape Province;
  - "**government**" means the government of the Province;
  - "**Legislature**" means the Provincial Legislature;
  - "**Member of the Executive Council**" means the Member of the Executive Council whose portfolio includes the administration of this Act;
  - "**non-executive director**" means a director other than the executive director and

includes the chairperson and deputy chairperson:

"*Office of the Auditor-General*" means the Auditor-General of the Republic of South Africa, or his authorised representative in the Province;

"*ordinary director*" means a director other than the chairperson, deputy chairperson, or executive director;

"*person*" includes a juristic person and an association of persons;

"*prescribe*" means prescribe by regulation;

"*Premier*" means the Premier of the Province;

"*Province*" means the Province of the Eastern Cape as defined in the Constitution and "provincial" has the corresponding meaning;

"*regulation*" means a regulation made in terms of **this Act**;

"*shares*" means the shares of the Eastern Cape Rural Finance Corporation Limited referred to in section 7; and "shareholder" and "share holding" have corresponding meanings;

"*this Act*" includes the regulations.



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### Establishment of the Eastern Cape Rural Finance Corporation Limited

2. (1) There is hereby established a statutory body to be known as the Eastern Cape Rural Finance Corporation Limited, with the objects, powers, functions, and duties assigned to it in this Act.
- (2) The corporation referred to in subsection (1) is a juristic person with limited liability and perpetual succession, capable of suing and being sued in its own name.

### Objects of corporation

3. The objects of the corporation are to promote, support and facilitate rural development in the Province by -
  - (1) mobilising financial resources and providing financial and supportive services to persons domiciled, ordinarily resident or carrying on business within the Province;
  - (2) promoting and encouraging private sector investment in the Province and the participation of the private sector in contributing to economic growth;
  - (3) promoting, assisting and encouraging the development of the Province's human resources and financial infrastructure, in association with other institutions having similar or related objects;
  - (4) acting as the government's agent for performing any development-related tasks and responsibilities that the government considers may be more efficiently or effectively

performed by a corporate entity.

#### Powers of the corporation

4. For the purpose of attaining its objects, the corporation has the power to -
- (1) raise funds and other resources from the public and private sectors by-
    - (a) raising loans, soliciting and receiving grants and donations, and issuing shares, debentures and debenture stock on such conditions as may be agreed upon; and
    - (b) accepting, holding and investing deposits offered by any person for investment in accordance with the requirements of any law governing the acceptance, holding and investment of deposits;
  - (2) lend or advance money, with or without security, on such conditions as it thinks fit, take such security as it thinks fit in connection therewith, including mortgage bonds, notarial bonds, pledges, cessions, liens, hypothecs, guarantees, deeds of surety-ship, or any other form of cover or security and take such steps as it thinks necessary for the recovery of any debt and the protection and enforcement of any right in connection therewith;
  - (3) guarantee, underwrite, or stand surety for the debts or contractual obligations of any person, indemnify any person against any loss, damage, or costs arising from the debts or other obligations of any other person and, for that purpose, furnish any required form of security;
  - (4) acquire, hold, develop, improve, manage, deal with or in, hire, let sell, transfer, donate, cede, hypothecate otherwise encumber or alienate movable or immovable property, whether corporeal or incorporeal;
  - (5) establish juristic persons or associations of persons capable of carrying out any object power, function, or duty that the corporation may carry out in terms of this Act, acquire an interest in any such juristic person and alienate any such interest, or subscribe to membership of any such association and terminate such membership;
  - (6) accept appointment and act as director, trustee, administrator, manager, executor, judicial manager, liquidator, agent representative, or secretary of any person, public body, estate, or business and, in that connection, designate one or more representatives to act for such purpose on its behalf;
  - (7) charge and accept remuneration for any service rendered to or on behalf of any person, including the government;
  - (8) pay all expenses in connection with its administration, open, operate and close banking accounts, overdraw such accounts, make, draw, accept, or endorse negotiable instruments, invest funds not immediately required for its affairs, create reserve funds, and generally do all things necessary for the management and administration of its financial affairs;
  - (9) take all such steps as it thinks necessary for and pay all expenses in connection with the protection, preservation and maintenance of its rights and assets, whether corporeal or

incorporeal, or for the recovery of any liability, or the enforcement of any obligation owing to it by any person, including the institution of such legal proceedings as it thinks fit;

(10) employ, discharge, or suspend officers or employees, remunerate them, train them, house them, provide them with pension, sick or other benefits of employment and generally do all things necessary to develop and maintain an adequate staff complement;

(11) have an official seal and use such seal for any purpose in the Republic of South Africa;

(12) generally, do all things necessary for the attainment of its objects, the exercise of its powers, or the management and administration of its affairs, whether or not expressly provided for in this section.

#### Method and area of operations of corporation

5. (1) As far as is possible and consistent with good business practice, the corporation must conduct its activities in such a way as to

(a) raise and apply its funds and other resources in a responsible manner and in such a way that the corporation's activities are sustainable;

(b) support the government's agricultural, land reform and rural development strategies;

(c) maximise and spread the developmental impact of such activities;

(d) develop synergistic relationships with other agencies for the delivery of development in the Province and avoid duplicating functions and resources;

(e) promote and encourage private sector participation in economic growth and employment creation;

(f) reinforce and promote values consistent with the Constitution.

(2) The corporation may operate throughout the Province and its activities need not be confined to rural areas.

(3) If it considers it necessary for the attainment of its objects, the corporation may become involved in projects and programmes and enter into transactions with persons outside the Province.

#### Policy directives

6. (1) After consultation with the board, the Member of the Executive Council may set broad guidelines for the attainment of the corporation's objects, by issuing policy directives to the board and the Member of the Executive Council may similarly withdraw or amend any policy directive so issued.

(2) The Member of the Executive Council must not issue any policy directive in-consistent with the provisions of this Act or any other law binding on the corporation.

- (3) A policy directive must be -
- (a) in writing;
  - (b) signed by the Member of the Executive Council; and
  - (c) addressed to the chairperson.
- (4) The board must ensure that a record is kept of all current policy directives and members of the public have the right of access to this record.
- (5) The board must report to the Member of the Executive Council on the extent of its compliance or non-compliance with all existing policy directives under cover of its annual report.

### Shares, share capital and share holding

7. (1) The initial authorised share capital of the corporation shall be an amount of ten million rand, which shall be divided into one thousand ordinary shares having a par value of ten thousand rand each.
- (2) The government shall subscribe to the authorised share capital at such times and in such amounts as the board and the Member of the Executive Council agree.
- (3) Any share issued to the government must be paid for by the government out of funds duly appropriated by the Legislature for that purpose and such payment must be made at such times and in such amounts as the board agrees.
- (4) Subject to such conditions as the Member of the Executive Council may prescribe, the government may transfer all or part of the issued shares to any juristic person, association of persons, or public or private sector body, whose objects are consistent with those of the corporation and, by agreement with any such shareholder, may re-acquire all or any such shares: Provided that individual natural persons may not hold shares in the corporation.
- (5) Any share in the corporation may be issued with such preferred, defamed or other special rights, or subject to such restrictions as the board may decide, whether in regard to dividends, voting, return of share capital, or otherwise; and, in the case of preference shares, the board may decide that the shareholders are not entitled to vote and /or that such shares are, or are at the option of the board, liable to be redeemed.
- (6) From time to time, the board, with the approval of the shareholders in general meeting, may increase the corporation's share capital to the extent it thinks expedient, by the creation and issue of ordinary or preference shares, or shares of any other type or class it may decide.
- (7) From time to time, the board, on the recommendation of the auditor and with the approval of the shareholders in general meeting, may reduce the corporation's issued share capital, by repaying any paid-up share capital which exceeds the corporation's needs, or by cancelling any paid-up share capital which is not represented by available assets: Provided that the rights of the corporation's creditors must not be prejudiced by such a reduction.

(8) Whilst the government is the sole shareholder, any matter requiring the decision, or approval of the shareholders in general meeting or otherwise may be decided, or approved by the Member of the Executive Council and his or her written decision or approval will constitute necessary resolution.

#### Board of directors

8. (1) The affairs of the corporation must be governed by a board of directors, in whom all powers of the corporation vest.
- (2) The board must keep a proper record of its proceedings and resolutions.
- (3) The board must consist of so many directors as the Member of the Executive Council prescribes, but directors in total must not number less than seven or more than thirteen.
- (4) If the number of appointed directors at any time falls below the prescribed number, the remaining directors are empowered to manage the affairs of the corporation until the vacancy or vacancies are filled.
- (5) No resolution of the board or act performed under the authority of the board will be invalid merely by reason of the existence of a vacancy on the board, or by reason of the fact that a person who was not entitled to hold office as a director, sat as a director when the resolution was passed or such act was authorised: Provided that such resolution was passed or such act was authorised by a majority of the directors present who were entitled to hold office.

#### Duties of directors, prohibitions and penalties

9. (1) Directors have a fiduciary duty towards the corporation and must display reasonable skill and care in performing their functions.
- (2) The provisions of sections 423, 424, 425 and 426 of the Companies Act apply to the corporation's directors.
- (3) Except for matters relating to his or her conditions of appointment no director may directly or indirectly have a material interest in any contract or proposed contract with the corporation, whether in the ordinary course of business or otherwise; nor may any director be a member, director, trustee or agent of a juristic person or association of persons who has or proposes to acquire such an interest whether directly or indirectly.
- (4) The provisions of Section 225 and 227 of the Companies Act apply to the corporation and its directors.

#### Appointment and qualifications of directors

10. (1) The Member of the Executive Council has the power to select and appoint the directors in the prescribed manner: Provided that, if there are shareholders other than the government, then such shareholders may select and nominate a portion of the prescribed number of directors, in proportion to their respective share holding, for appointment by the Member of the Executive Council.

(2) Directors must be selected for their ability and experience in relation to banking, the provision of rural financial services, rural and agricultural development, or some area of professional or managerial expertise necessary for the good governance of the corporation.

(3) A person who is disqualified from being a director of a company in terms of the Companies Act may not be a director of the corporation.

(4) A member of the national Parliament, or of any Provincial Legislature, or of any elected local government body in the Province may not be a director during the period whilst he or she is such a member, nor for a period of one year from the date on which he or she ceases to be such a member.

(5) Except for the executive director and one other ordinary director approved by the Member of the Executive Council, no person in the full-time employment of the corporation may be a director.

#### Tenure and conditions of office of non-executive directors

11. (1) Non-executive directors may be appointed by the Member of the Executive Council to hold office for a maximum of three years at any one time, but are thereafter eligible for re-appointment on such conditions as the Member of the Executive Council may prescribe.

(2) A non-executive director who becomes disqualified from being a director during his or her term of office in terms of subsections 10(3), (4) or (5) will automatically cease to be a director with immediate effect.

(3) If a non-executive director fails to attend at least half of the ordinary board meetings in any financial year and if the board recommends it, the Member of the Executive Council must remove that director from office.

(4) Except as provided for in subsections (2) and (3), or for other good and sufficient reason, a non-executive director may not be removed from office before the expiry of the period for which he or she has been appointed.

(5) Non-executive directors are entitled to reasonable remuneration by the corporation for their services and reimbursement for their expenses incurred in performance of their duties, in such manner and on such basis as the Member of the Executive Council prescribes.

#### Chairperson and deputy chairperson

12. (1) The Member of the Executive Council must appoint one director to be chairperson, and another to be deputy chairperson of the board: Provided that-

(a) if the Member of the Executive Council does not make such an appointment or appointments within a reasonable time after a vacancy arises; or

(b) if shareholders other than the government either solely or jointly hold the majority of shares, the board must elect one of their number to be chairperson and another to be deputy chairperson of the board.

- (2) The executive director may not also hold office as chairperson or deputy chairperson.

### Executive director

13. (1) The affairs of the corporation must be managed by an executive director in the full-time employment of the corporation.
- (2) The executive director must be a person qualified to hold office as a director in terms of this Act.
- (3) Whenever a vacancy arises for the position of executive director, it is the board's responsibility to recruit a suitable executive director for the corporation and recommend his or her appointment to the Member of the Executive Council.
- (4) The Member of the Executive Council has the power to appoint the executive director: Provided that -
- (a) if the Member of the Executive Council does not make such an appointment within a reasonable time after a vacancy arises; or
- (b) if shareholders other than the government either solely or jointly hold the majority of shares, the board has the power to appoint the executive director.
- (5) An executive director must be appointed to hold office for a definite period not exceeding five years, but on expiry of any such period of office, he or she may be reappointed for a further period of office.

### Board Committees

14. (1) The board may establish board committees to assist in discharging its responsibilities.
- (2) The membership of a board committee need not be limited to directors.
- (3) The board has the power to determine the mandate, composition, powers, functions and duration of any board committee and may amend these from time to time, or dis-establish any such committee.
- (4) Board committees are accountable to the board and must keep records of their proceedings and resolutions in the same manner as the board.

### Delegation of powers

15. (1) The board is empowered to delegate any of its powers, duties or functions to any board committee, chairperson, deputy chairperson, or executive director, all of whom may, with the approval of the board, further delegate any such power, duty or function to any committee or person approved by the board.
- (2) In delegating its powers, duties or functions, the board may impose such conditions as it thinks fit.

(3) A delegation of powers, duties or functions contemplated in subsection (1) may be made either to an identified individual, or to the incumbent of an identified office or post by virtue of such office or post.

### Keeping of accounts

16. The board must cause the corporation to keep proper accounting records, in accordance with section 284 of the Companies Act.

### Annual reporting

17. (1) The Member of the Executive Council must prescribe the corporation's financial year.

(2) Not more than six months after the end of each financial year of the corporation, or such longer period as the Member of the Executive Council in consultation with the Office of the Auditor-General authorises in writing, the board must submit an annual report to the Member of the Executive Council, consisting of the corporation's audited annual financial statements as contemplated in section 18, a report by the auditor as contemplated in section 22 and any other matter prescribed by the Member of the Executive Council.

(3) The Member of the Executive Council must lay a copy of the corporation's annual report on the table of the Legislature not more than 14 days after receipt if the Legislature is in ordinary session at that time, or, if the Legislature is not in ordinary session at that time, then not more than 14 days after the commencement of the next ordinary session of the Legislature.

### Annual financial statements

18. (1) The board must ensure that annual financial statements are made out for each financial year of the corporation.

(2) The corporation's annual financial statements must comprise -

- (a) a balance sheet;
- (b) an income statement;
- (c) a cash flow statement;
- (d) notes to the financial statements;
- (e) a director's report as contemplated in section 19;
- (f) group annual financial statements if applicable; and
- (g) any other reports or statements prescribed by the Member of the Executive Council.

(3) The corporation's annual financial statements must comply with sections 286, 289, 290 and 291 of the Companies Act, except that it is not necessary for them to be laid before a general

meeting whilst the government is the sole shareholder.

(4) The corporation's annual financial statements must disclose the accounting and disclosure policies applied by the corporation.

(5) The corporation's annual financial statements must be approved by the board and signed by two directors authorised for that purpose by the board.

#### Directors' report

19. (1) The corporation's annual financial statements must include a report by its directors with respect to its state of affairs, business and financial position and the degree to which its objects have been attained.

(2) To the extent that the relevant matters are not dealt with elsewhere in the corporation's annual report the directors' report must further:

(a) set out the corporation's statutory objects and functions, as well as its objectives as determined by the board;

(b) state the extent to which the corporation has achieved its objectives for the financial year concerned;

(c) contain relevant performance information regarding the economic, efficient and effective application of resources;

(d) indicate the amount of money, if any, received from the government or any other organ of the state and any financial commitment furnished by the government or any other organ of the state;

(e) deal with the matters provided for in Sections 295, 296 and 297 of S chedule 4 of the Companies Act;

(f) contain a summary of all policy directives issued by the Member of the Executive Council in terms of section 6 during the year under review;

(g) indicate the extent to which the corporation has complied with all current policy directives and, in the event of non- or only partial compliance, indicate the reasons therefore;

(h) deal with any other matter prescribed by the Member of the Executive Council.

#### Audit

20. (1) The corporation's accounting records and financial statements must be audited annually by the corporation's auditor.

(2) The functions and duties of the auditor are as set out in section 300 of the Companies Act.

### Appointment of Auditor

21. (1) The Member of the Executive Council must appoint the corporation's auditor annually, on the recommendation of the board and after consultation with the Office of the Auditor-General.
- (2) Only practising public accountants and auditors registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No.80 of 1991) qualify to be appointed as the corporation's auditor.
- (3) An auditor must not be discharged before the expiry of his or her term of appointment, except by the Member of the Executive Council, acting after consultation with the board and the Office of the Auditor-General.
- (4) In performing his or her duties, the auditor has the right of access at all reasonable times to all the corporation's accounting records and all its books, vouchers, documents and property and may require from any director any information and explanations that he or she thinks are necessary.



### Auditor's report

22. (1) After completing the corporation's audit, the auditor must submit a written report to the Member of the Executive Council in accordance with section 301 of the Companies Act and providing for the further matters set out in subsections (2) and (3).
- (2) The auditor must state separately, in respect of each of the following matters, whether in the auditor's opinion -
- the annual financial statements fairly represent the corporation's financial position and results, in accordance with generally accepted accounting practice, applied on a basis consistent with that of the preceding year;
  - the information furnished in the annual financial statements and directors' report is fair in all material respects and, where applicable, on a basis consistent with that of the preceding year;
  - the corporation's transactions that came to the auditors notice in the course of his or her examination were made in accordance with the applicable laws and directives and were in all material respects in accordance with the corporation's statutory objects, powers and functions.
- (3) The auditor must draw attention to any matter which, in the auditors opinion, should in the public interest be brought to the notice of the Member of the Executive Council or of the Legislature, including, without limiting the generality of this provision, any matter contemplated in section 5 of the Auditor-General Act 1995 (Act No. 12 of 1995).

### Audit committee

23. (1) The board must establish an audit committee for the purpose of assisting the board in discharging its responsibility for safeguarding the corporation's assets, maintaining proper accounts and records and developing and maintaining proper internal control systems.

- (2) The audit committee must consist of at least three members, the majority of whom must be persons other than employees of the corporation, or of any subsidiary of the corporation.
- (3) The audit committee must be chaired by a non-executive director other than the chairperson.
- (4) The audit committee must keep a record of its proceedings and resolutions in the same manner as any other board committee.
- (5) The auditor has the right to attend meetings of the audit committee and has the right of access to its records.
- (6) The composition and membership of the audit committee must be disclosed in the corporation's annual report.

#### Head office

24. (1) The Member of the Executive Council must prescribe an office of the corporation to be its head office.
- (2) The head office of the corporation is the office at which the corporation must keep all records required by law and at which it may validly be served with any notice or process of the court.



#### Use of name of corporation

25. (1) No person other than the corporation may carry on business in the Province under the same name as the corporation, or under a name so similar as to be likely to mislead the public.
- (2) Upon the commencement of this Act, the Registrar of Companies must be notified of the corporation's name and requested to enter it in the register kept in terms of the Companies Act.

#### Prohibition on distribution of profits and disposal of major assets

26. (1) Whilst the government is the sole shareholder, the corporation must use its funds solely for the furtherance of its objects or for investment and must not distribute any of its profits or gains to any person.
- (2) The corporation must not dispose of the whole or substantially the whole of its undertakings, or the whole or the greater part of its assets unless the shareholders in general meeting approve or ratify the transaction in specific terms.

#### Dissolution of corporation

27. The corporation may only be dissolved by an Act of the Legislature.

#### Duty not to furnish false or misleading information

28. The provisions of sections 248, 249, 250 and 251 inclusive of the Companies Act apply to the

directors, auditors, officials and employees of the corporation.

### Offences and penalties

29. (1) Any person who knowingly commits any act that is prohibited by this Act or who is knowingly a party to the commission of such an act, will be guilty of an offence.
- (2) Any person who commits an offence in terms of this Act will be liable, upon conviction, to be sentenced to a fine, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

### Regulations

30. (1) The Member of the Executive Council may make regulations concerning -
- (a) the issuing of, transfer of and payment for shares;
  - (b) the voting rights of shareholders;
  - (c) the holding of and procedure at shareholders' meetings and the taking of decisions by shareholders without holding a meeting;
  - (d) the number and composition of the board of directors;
  - (e) the selection, election, nomination, appointment, reappointment, removal, conditions of office, remuneration and duties of directors;
  - (f) the powers and duties of the chairperson, deputy chairperson and executive director;
  - (g) the holding of, the quorum for, and procedure at board meetings;
  - (h) the keeping of registers and records by the board;
  - (i) the form and contents of the corporation's annual report;
  - (j) the composition, powers and duties of the audit committee;
  - (k) the location of the corporation's head office;
  - (l) the giving and receiving of notices by the corporation;
  - (m) any other matter necessary for the proper implementation or administration of this Act.
- (2) If shareholders other than the government hold shares, the Member of the Executive Council must consult with such shareholders before issuing, amending, or withdrawing any regulation.

**Abolition of existing provincial rural finance institutions and repeal of laws**

31. (1) Decree No. 3 of 1990 (Transkei) shall be repealed upon a date to be fixed by the Premier by Proclamation in the Gazette : Provided that such date must not be earlier than the date upon which the Agricultural Bank of Transkei, established by the said decree, is abolished.
- (2) The Member of the Executive Council is empowered to -
- (a) cause the said Agricultural Bank of Transkei and the Ciskeian Agricultural Bank Limited, established under Section 5 of the Ciskeian Corporations Act, No.16 of 1981 (Ciskei), or either of them, to be wound up;
  - (b) provide by Proclamation for the method of winding-up of the said bank or banks, including the manner of settlement of its or their obligations and liabilities and the transfer of its or their remaining rights and assets, if any, to the corporation, or to a subsidiary of the corporation;
  - (c) provide in like manner for the abolition of the said bank or banks pursuant to their winding-up;
  - (d) provide in the said Proclamation for any associated matter.

**Short title and commencement**

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32. (1) This Act will be called the Eastern Cape Rural Finance Corporation Act, 1999, and will come into effect upon a date fixed by the Premier by Proclamation in the Gazette.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

CERTIFIED AS CORRECT AS PASSED BY THE PROVINCIAL  
LEGISLATURE

SECRETARY TO PROVINCIAL LEGISLATURE

# INTEGRATED LIVESTOCK & CROP PRODUCTION STRATEGY



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# INTEGRATED LIVESTOCK & CROP DEVELOPMENT FOR THE EASTERN CAPE: A COMMUNITY DEVELOPMENT LAND CARE PROJECT

PROGRESS 1999/2000

Community Based



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Rural livelihoods Community Development



Land Care



Livestock Improvement



# Integrated Livestock & Crop Development EASTERN CAPE

## A Community Development Land Care Project



- \* ENTRENCH LANDCARE FOR SUSTAINABLE RESOURCE USE**
- \* ESTABLISH LANDCARE AS A FOUNDATION FOR IMPROVING RURAL LIVELIHOODS**
- \* RENAISSANCE OF AGRICULTURE AS AN INCOME GENERATOR IN DISADVANTAGED RURAL AREAS**
- \* ENTRENCH A VISION AND STRATEGY FOR ECONOMIC UPLIFTMENT IN COMMUNITIES**
- \* REDUCE DEPENDANCE ON OUTSIDE INCOME AND WELFARE**
- \* MOTIVATION AND TRAINING OF SERVICE PROVIDERS AND COMMUNITIES**



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**DYNAMIC AGRICULTURE  
SOCIO-ECONOMIC GROWTH**

**POVERTY  
RELIEF**

**LAND  
CARE**

**HOUSEHOLD  
FOOD SECURITY**



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**NERPO**  
(New Emerging Red  
Meat Producers Organisation)

**ARC**  
(Agricultural Research Council)

- RFI
- GCRI
- ITSF

**NWGA**  
(National Wool  
Growers Association)

**NDA**  
(National Department  
of Agriculture)

**NAMPO**  
(National Maize Producers  
Organisation)

**ECDALA**  
(Eastern Cape Department of  
Agriculture & Land Affairs)

- Research
- Extension
- Veterinary Services
- Engineering
- Land Use Planning

**RURAL COMMUNITIES**

**LEGEND:**

- Agricultural Development Institutes
- Agricultural Development Centres
- Research Stations
- Extension Offices
- Veterinary Offices
- Sub Regional Offices
- Regional Offices
- Engineering Division
- East Cape Capital
- National Roads
- Main Roads
- Proposed Farmer Support Centres

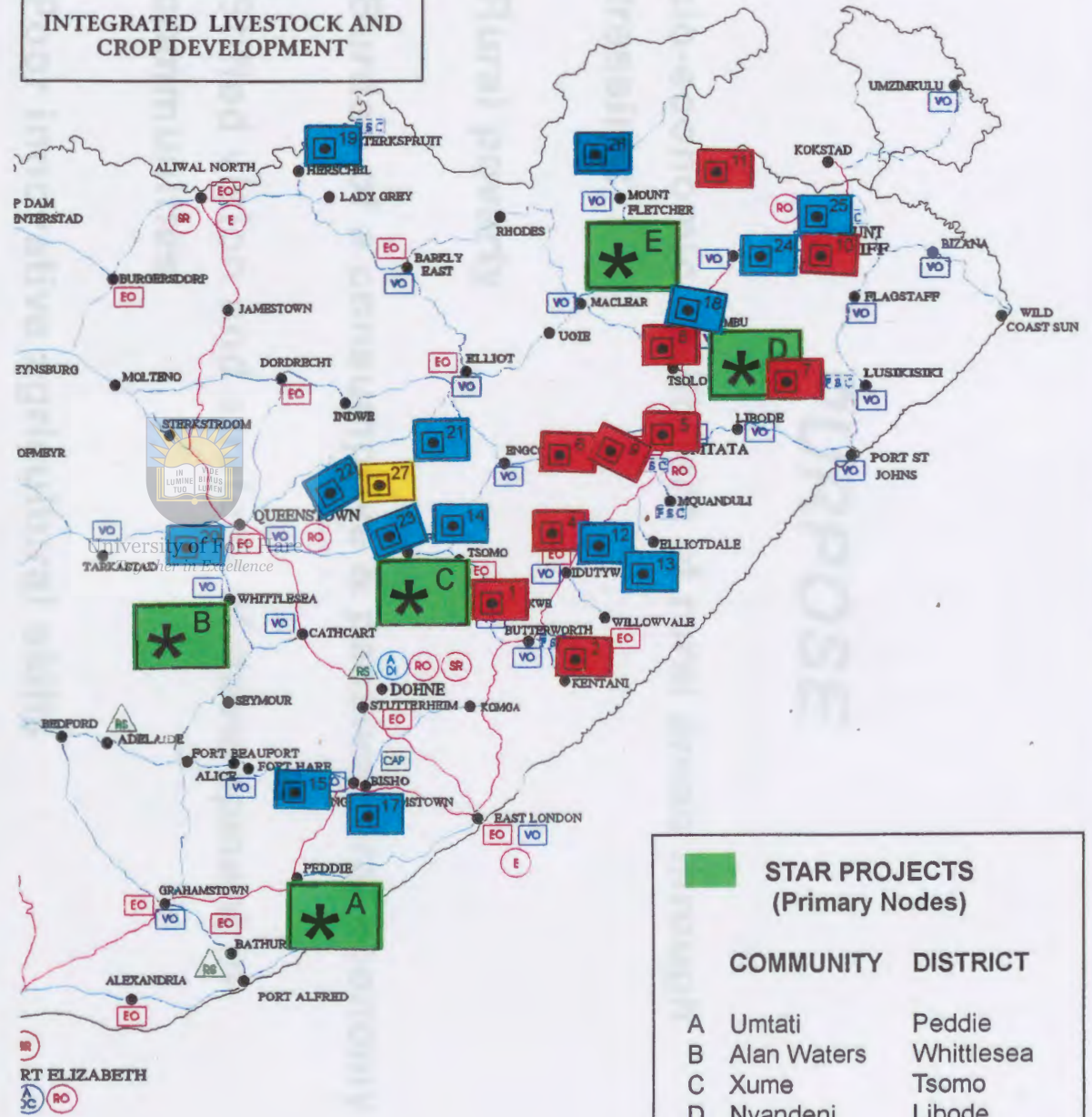
**ADDITIONAL COMMUNITIES  
(Secondary Nodes)**

98/99    99/00

COMMUNITY	DISTRICT	
1	Dudumashe	Namakwe
2	Macibi	Kentani
3	Maduma	Namakwe
4	Siqumeni	Idutywa
5	Tabase	Umtata
6	Ngquqha	Engcobo
7	Mtywa	Libode
8	Kambi	Tsolo
9	Mhlopekazi	Engcobo
10	Pepeni	Mt Ayliff
11	Luyengweni	Mt Frere
12	Old Idutywa	Idutywa
13	Cheizele	Idutywa
14	Qombolo	Tsomo
15	Zihlahleni	Middledrift
16	Gage	Alice
17	Godidi	King Williams Town
18	Lutecweni	Tsolo
19	Herschell/Wittebergen	Sterkspruit
20	Masizakhe	Thornhill
21	Delville	Cala
22	Lower Ndonga	Lady Frere
23	Kyamandi	Cofimvaba
24	Ngwetsheni	Mt Frere
25	Mhluzini	Mt Ayliff
26	Lapakoenge	Mt Fletcher
27	Lubisi	Cofimvaba

**EASTERN CAPE PROVINCE**

**INTEGRATED LIVESTOCK AND CROP DEVELOPMENT**



**STAR PROJECTS  
(Primary Nodes)**

COMMUNITY	DISTRICT	
A	Umtati	Peddie
B	Alan Waters	Whittlesea
C	Xume	Tsomo
D	Nyandeni	Libode
E	Luzi	Mt Fletcher

# PURPOSE

**Socio-economic upliftment of rural areas through addressing:**

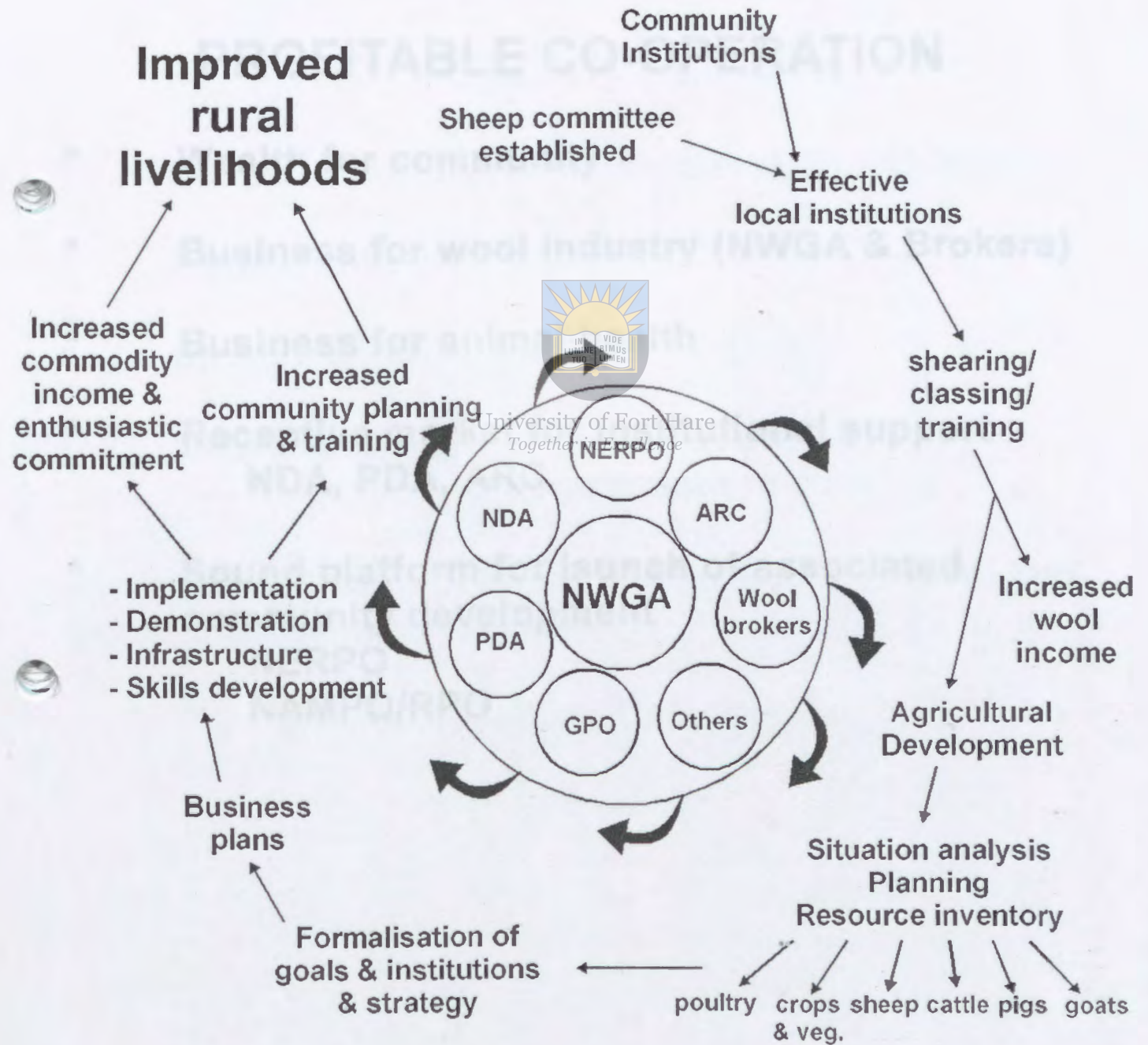
- \* **Rural poverty**
- \* **Burden of a consumptive & passive rural economy**
- \* **Stifled vision and strategy of development in communities**
- \* **Poor innovative agricultural skills**
- \* **Insufficient agricultural practices**
- \* **Little or no value adding and marketing**
- \* **Poor and non-sustainable resource use**



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# STRATEGY

## Integrated Livestock/Crop Development



# **INNOVATION**

## **PROFITABLE CO-OPERATION**

- \* **Wealth for community**
- \* **Business for wool industry (NWGA & Brokers)**
- \* **Business for animal health**
- \* **Receptive market for institutional support**  
**NDA, PDA, ARC**
- \* **Sound platform for launch of associated**  
**community development**  
**NERPO**  
**NAMPO/RPO**

EFFICIENCY

MAXIMUM COMP **INNOVATION** UNIT INPUT

## THE GOLDEN FLEECE

- \* Sheep culturally most commercially exploitable
- \* Natural resource adapted
- \* Income without loss/sale of animal
- \* Wealth creation - value adding  
- efficient marketing



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Use woolled sheep to demonstrate, enthuse and introduce commercialisation

Market/Advertise Development

ECONOMIC

ENVIRONMENTAL

Income  
Job creation  
Wealth  
Skills

Nat. Resources status  
Run-off erosion  
Productivity  
Water supply/quality

# **EFFICIENCY**

**MAXIMUM COMPOUND RETURN PER UNIT INPUT**

**SOCIAL**



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**Community structure**  
**Community skills**  
**Number of beneficiaries**  
**Food security**

**ECONOMIC**

**Income**  
**Job creation**  
**Wealth**  
**Skills**

**ENVIRONMENTAL**

**Nat. Resources status**  
**Run-off erosion**  
**Productivity**  
**Water supply/quality**

# PHOTO ESSAY

## **REPLICATION**

- \* **Vast scope for duplication**
- \* **Demonstration-seeing is believing**
- \* **Wool "vehicle" throughout region**
- \* **Immediate economic benefits  
wool value adding & marketing**
- \* **Desperate need for poverty relief**
- \* **Nodal development strategy**
- \* **Support structures**
  - good depth
  - good geographical representation

**NO ALTERNATIVE BUT SUCCESS**



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# PHOTO ESSAY



**Reviving agricultural infrastructure**



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**Integrated livestock development**



**Crop development**





**33 COMMUNITY MANAGEMENT  
INSTITUTIONS FUNCTIONING  
EFFECTIVELY**



**13 PLANNING COMMITTEES ESTABLISHED AND FUNCTIONAL**

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**13 SHEARING SHEDS BUILT AND UPGRADED DURING 1998/99**



**A 300% INCREASE IN HOUSEHOLD INCOME FROM WOOL PRODUCTION**



**TRAINING IN WOOL CLASSING AND ANIMAL HEALTH**



**54 INFORMATION DAYS PRESENTED (6000 FARMERS)**



**15 COURSES ORGANISED  
(ATTENDANCE 450)**



**75 LECTURES PRESENTED (TRAINING)**



**THE DIRECT INVOLVEMENT OF  
TWELVE EXTENDED COMMUNITIES  
SERVING AT LEAST FIFTY  
VILLAGES EACH**



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**AT NGQUNCE THE FARMERS HAVE  
STARTED THEIR OWN RAM  
BREEDING PROJECT**



**MORE THAN 3000 SMALL FARMERS ARE NOW ACTIVE NWGA  
MEMBERS & PARTICIPATE IN FARMER DEVELOPMENT PROGRAMMES**



**AN AWARENESS OF THE VALUE OF EFFECTIVE GRAZING AND CROP USE REALISED BY FARMERS IS EVIDENT FROM THEIR REQUESTING TRAINING**



**PARTICIPATING COMMUNITIES CASTRATED THEIR RAM LAMS & BOUGHT GOOD QUALITY RAMS. THIS WILL LEAD TO GENETIC IMPROVEMENT OF THE FLOCKS**

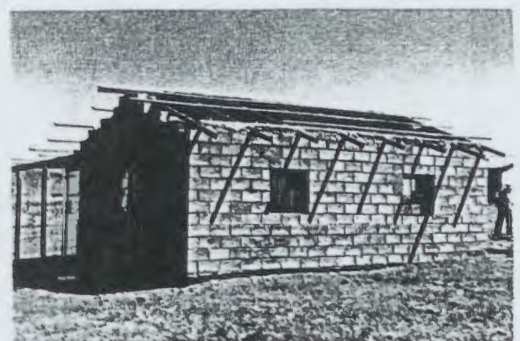


**OPENING OF DIP TANKS, IDUTYWA DISTRICT**



**AT ROXENI A SUCCESSFUL CLASSING PROGRAMME, RESULTING IN INCREASED WEANING PERCENTAGES, HAS BEEN IMPLEMENTED**

**14 SHEARING SHEDS UNDER CONSTRUCTION 1999/2000**



# EASTERN CAPE MEAT PRODUCTION AND MARKETING STRATEGY



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# REASONS FOR CREATING AN EASTERN CAPE MEAT PRODUCTION AND MARKETING STRATEGY

## PROBLEM STATEMENT

No co-ordinated marketing in the Province.

There is a big gap between the producer and the marketer.

There is no incentive for meat production in the rural areas.

The current animal produced does not meet the market requirements.

There is inadequate expertise in meat production, especially in the rural areas.

Bad logistics.

Formal banking institutions are unable to service the rural farmer.

Eastern Cape cattle farmers are under extreme pressure from other market suppliers together with increased costs and old marketing tendencies .

Farmers in the Eastern Cape generally believe the best way to sell their animals is through the old system of auctions . This system creates a certain amount of uncertainty, making it difficult for farmers to carry out effective budgeting together with effective business principles. This is not to say that farmers are not good businessmen, but, if you cannot determine your effective output on a continuous basis, it is often difficult to create any sort of long term plan or herd predictions.

One of the systems currently in place is that farmers are doing away with breeding stock and buying in young animals and fattening them for a year, thereby making short term profits based on weight , or alternatively, maintaining breeding stock and selling the production at a young age . The reason for this is partly due to cash flow, not allowing farmers to maintain stock for any period of time. Those farmers who have the ability, have the uncertainty of the market .

## OBJECTIVE

To create an environment where farmers have a reliable market at competitive prices, while at the same time providing a continuous supply to the South African market. Thereby uplifting our emerging farmers. This will allow the Eastern Cape Province to compete on an equal footing with products supplied by importers and our neighbouring SADEC countries.

## AIM

To create an Eastern Cape marketing strategy to benefit the producer , production house and consumer.

To create a product which is maintained at the highest hygiene requirements.

Presenting a product which is of a standard which can be supplied at competitive prices to the lower income consumer.

To create stable employment for the unskilled worker who is often employed on the basis of market tendencies.

To create a stable trading environment for all producers in the Eastern Cape

To provide services to producers, enabling them to apply the latest production techniques and improved production methods

To create a program of:

- 1) Education
- 2) Financing
- 3) Stock management
- 4) Infrastructure
- 5) Genetic Improvement
- 6) Stable markets



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To create market confidence in times of drought.

## TIME FRAMES

**1999** Presentation of working document to all rollplayers for discussion and appointment of working committee incorporating rollplayers from the commercial, future commercial, govt & industry for planning & implementation.

**2000/2002** implementation of scheme together with establishment of markets

**JULY 2002**

To have sufficient product available , to takeup a market share that should become available with the expected increase in the pricing of imported product due to the EU's withdrawel of subsidies . This would prevent this market from falling into our neighbouring states hands namely Namibia , Botswana & Zimbabwe

**2002 +** the growth of the industry into one of South Africa's major suppliers



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## CURRENT MARKET UNDERSTANDING FOR EMERGING FARMERS

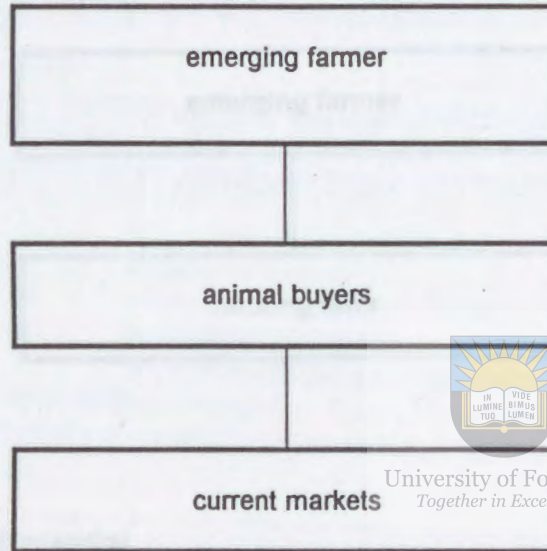
### OBJECT OF THIS UNDERSTANDING

It is important that we understand the current situation to enable us to plan a marketing structure for the future

We propose that to achieve an overall marketing strategy, a number of objectives need to be achieved . It is not possible to export to Europe without preparing our cattle to a point that the quality is acceptable to the European markets

The plan is to establish a system to enable us to assist the emerging farmer to the point that his product reaches the quality required by the current market . This must be achieved before a second phase can be considered This being the understanding of the various aspects of the local market namely :-

- 1 local butcheries & supermarkets
- 2 the S A markets as a whole



A current understanding of the present market trends open to emerging farmers is that emerging farmers are exploited by various animal buyers.

An animal buyer purchases animals from emerging farmers at well below current market values and, depending on the state of the animals concerned , prepares them for the current markets

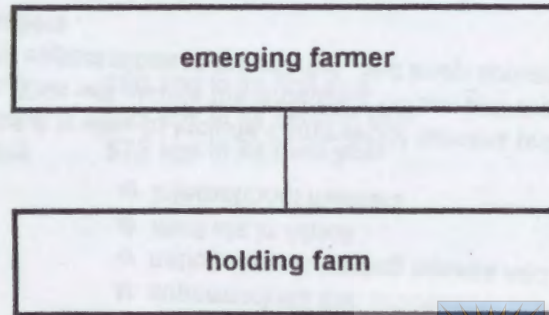
An animal buyer is able to take advantage of these farmers for a number of reasons, namely :-

- 1 availability of transport
- 2 availability of quality grazing & feeds
- 3 understanding of market trends
- 4 finance

## PHASE 1 : ESTABLISHING PRODUCT TO MARKET ACCEPTABLE CONDITION

In phase 1 the idea is to establish a holding farm which will accept animals from the emerging farmer . The reason for the establishment of this facility is three fold namely :-

- 1 to create a facility that will prepare animals to an acceptable quality to compete on the local markets by the use of feeds and commercial farmer expertise
- 2 To use the facility as a training facility with regard to the use of available technology and understanding of current market requirements
- 3 Government to carry out tests for various diseases and assist in treating these diseases



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### PHASE 1

The emerging farmer to supply cattle to the holding farm at a price above that currently paid by the speculator but below that of the current market price. The emerging farmer will be paid for these animals on receipt of these animals on the holding farm . (the holding farm to provide transport )

The holding farmer will carry out tests for health reasons

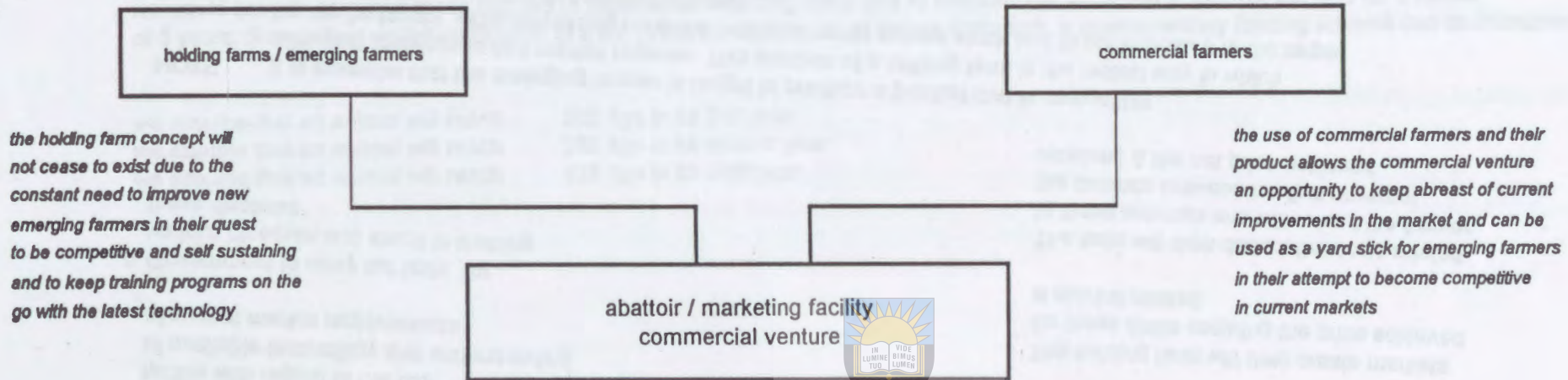
It will assess the state of the cattle and what feeds are necessary to get this animal into market required quality

The holding farm will then create markets for these cattle assuring the price achieved is market related

The farm will then deduct the costs related to these services and will refund the farmer the balance between his first payment received & the net price achieved

**NOTE :** It is essential that the emerging farmer is taught to produce a product that is compatible with what the various end market requires. This process of a holding farm is the fastest way in which he can be taught, while increasing his price received for his current stock and to get exposure to the larger market with the protection of commercial input

## PHASE 2 : ESTABLISHING A SINGULAR MARKETING PLATFORM



### NOTES

- 1 Once the process of teaching and handling of product is established a marketing company can be formed to control all aspects of marketing to the various markets namely:
- local butcheries and supermarkets
  - supermarkets and processing plants on a regional base
  - national meat trading houses and processing plants
  - markets in Africa
  - international markets
- 2 At this point it is wise to include commercial farmers products to be included into our processing and marketing company . This will enable the emerging farmer and the marketing companies to learn of the latest techniques and quality expectations in the market, and keep abreast of issues as they occur, enabling us to become market leaders .
- 3 The marketing company and processing plant should not be owned by any individual or association. This would enable it to trade as an independent, realizing its own profits and enabling it to make marketing and processing decisions for the betterment of its cause



If we were to consider that animals are to be kept on the land for a period of 3 years or 500kg , with the expectation of creating a B2, we would have to convince those farmers to reintroduce breeding cattle and to maintain the stock that is bred on the land for a period of 3 years, thus setting up the production of a B2 . With the assistance of Dohne Research, a supplementary feeding scheme can be introduced.

we assume that an animal will reach	200 kgs in its first year
we assume that an animal will reach	395 kgs in its second year
we assume that an animal will reach	575 kgs in its third year



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Taking into account the following assumptions and weight achievements, the current scenario for farmers is as follows:

1 to sell an animal at year 1 for 4.30 kg

the current situation is as follows

weight	200 kgs
unit price	4.30
total	R <u>860.00</u>

2 to buy an animal at year 1 for 4.30 kg  
to sell an animal at year 2 for 4.00 kg

the current situation is as follows

purchase	
weight	200
unit price	4.30
total	R <u>860.00</u>

sele	
weight	395
unit price	4.00
total	R <u>1580.00</u>

net	R <u>720.00</u>
-----	-----------------



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If we were to create a holding company to take equity in stock at the first year, and again at year 2, together with creating a stock loan system, this would ensure that the farmer does not suffer the short term cash flow he currently enjoys from his current method of trading . This will enable him to create a constant supply of product at a market constant price and ensures him of a market for the product he can produce, once it reaches the required standard . The excess product a farmer produces can be sold onto other farmers and emerging farmers, bringing them into the system of constant marketing year round .

A constant supply of products year round is important to take on imports and suppliers from other countries in our customs union, together with other provincial suppliers in the South African market and, on a larger scale, the rest of Africa and Middle East .

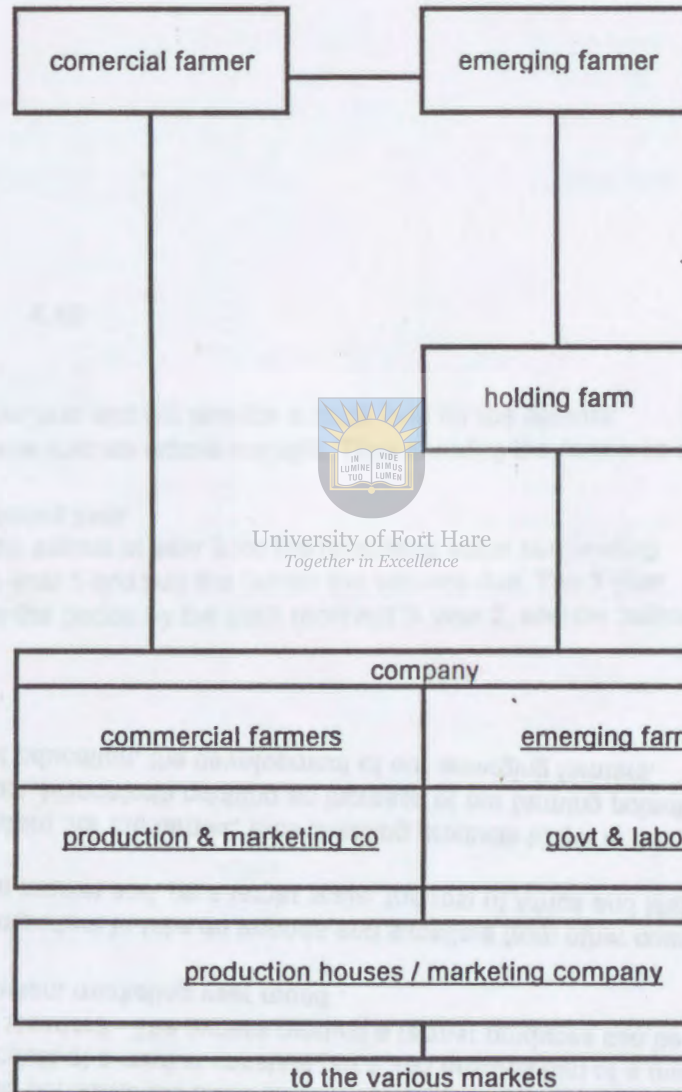
This can only be attained if we produce a system for the farmer, thus enabling products to get to our producers and enabling them to take on these markets with a quality product. Henceforth creating an increase of our farming potential and increasing job opportunity through commercial farmers, and on a larger scale of education, the development of our emerging farmers.



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**the model**



**note 1**

supply of excess stock produced by commercial farmers to emerging farmers this while a process of education on over grazing and farming methods together with planning the establishment of better stock herds in the hands of the emerging farmer

**note 2**

a system of holding farms to be created to educate emerging farmers on stock breeding and enhancement of quality produced by emerging farmers . This to be assisted by comercial farmers and Dohne

**note 4**

in time this company will employ its own vets and advisers advising farmers what needs to be done to create the correct product enabling the farmer to benefit from the experts enabling him to concentrate on what he does best - farm

**note 3**

a company to create a single eastern cape agriculture iniative the shareholding of this company to be held by all partisipants this company is the tool to purchase animals and trade with the market through the production houses

assuming a farmer produces 50 cattle per year

assumptions :-

**1**

cattle weights

year 1	200
year 2	395
year 3	575

agreed price at year 1 4.30

agreed price at year 3 4.40

**2**

the company will buy a 25% interest in the first year and will provide a stock loan for the balance the farmer would have received should he have sold his animal outright. Thus enabling the farmer to maintain his cash flow .

the company will buy a 25% interest in the second year

the company will purchase the final 50% of the animal at year 3 for the remaining value outstanding

the company will recover the stock loan from year 1 and pay the farmer the balance due. The 3 year plan giving the farmer a better cash flow over the period by the cash received in year 2, and the balance of year 3



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model based on 50 cattle per year

	year 1	year 2	year 3	nett
farmers model				
1st year				
number of cattle	50	50	50	
weight	200	200	200	
total weight	10000	10000	10000	
agreed price	4.30	4.30	4.30	
total due	<u>43000</u>	<u>43000</u>	<u>43000</u>	<u>129000</u>

company model		
1st year		
number of cattle	50	
weight	<u>200</u>	
total weight	10000	
company part	0.25	<u>1.08</u>
		10750.00
total weight	10000	
stock loan	0.75	<u>3.23</u>
		32250.00
net to farmer		<u><u>43000.00</u></u>



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loan detail	year 1	year 2	year 3
1st loan	32250.00		
interest	0.10		
total due	<u>32250.00</u>		

2nd year

	year 1	year 2	year 3	nett	loan detail	year 1	year 2	year 3
number of cattle	50	50			1st loan	32250.00	32250.00	
weight	200	395			interest	0.10	3225.00	
total weight	<u>10000</u>	<u>19750</u>			due	<u>32250.00</u>	<u>35475.00</u>	
company part	0.25	1.08	0.25	1.08				
	<u>10750.00</u>	<u>21231.25</u>			total due			67725.00
total weight	10000							
stock loan	0.75	3.23						
	<u>32250.00</u>							
net to farmer	<u><u>43000.00</u></u>	<u><u>21231.25</u></u>		<u><u>64231.25</u></u>				



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3rd year

	%	year 1	%	year 2	%	year 3	nett	loan detail	%	year 1	year 2	year 3
number of cattle		50		50		50		1st loan		32250.00	32250.00	35475.00
weight		200		395		575		interest	0.10		3225.00	3547.50
total weight		10000		19750		28750		due		32250.00	35475.00	39022.50
company part	0.25	1.08	0.25	1.08	0.50	2.20		total due				67725.00
		10750.00		21231.25		63250.00	95231.25					
total weight stock loan	0.75	3.23				39022.50						
		32250.00										
net to farmer		43000.00		21231.25		24227.50	88458.75					

income for animals

cattle		50
average income		1769.18
supply weight	28750	
slaughter %	0.47	
slaughter weight	13512.5	
average per animal	270.3	
carcass income	95231.25	
weight per kg	R 7.048	



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COMPANY 3 YEAR FORCAST

YEAR 1

	1	2	3	4	5	6	7	8	9	10	11	12
days	22	22	22	22	22	22	22	22	22	22	22	22
current production	50	50	50	50	50	50	50	50	50	50	50	50
total animals	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
average weight	200	200	200	200	200	200	200	200	200	200	200	200
average cost	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30
cost per animal	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00
cost per month	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000
company equity	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500
loan portion	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500
running total	236500	473000	709500	946000	1182500	1419000	1655500	1892000	2128500	2365000	2601500	2838000



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YEAR 2

	13	14	15	16	17	18	19	20	21	22	23	24
days	22	22	22	22	22	22	22	22	22	22	22	22
current productior	50	50	50	50	50	50	50	50	50	50	50	50
total animals	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
average weight	200	200	200	200	200	200	200	200	200	200	200	200
average cost	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30
cost per animal	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00
cost per month	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000
company equity	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500
loan portion	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500
previous year	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
expected weight	395	395	395	395	395	395	395	395	395	395	395	395
total weight	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500
agreed rate	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5	467087.5
running total	3541588	4245175	4948763	5652350	6355938	7059525	7763113	8466700	9170288	9873875	10577463	11281050



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## YEAR 3

	25	26	27	28	29	30	31	32	33	34	35	36
days	22	22	22	22	22	22	22	22	22	22	22	22
current production	50	50	50	50	50	50	50	50	50	50	50	50
total animals	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
average weight	200	200	200	200	200	200	200	200	200	200	200	200
average cost	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30
cost per animal	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00
cost per month	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000	946000
company equity	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500	236500
loan portion	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500	709500
previous year	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
expected weight	395	395	395	395	395	395	395	395	395	395	395	395
total weight	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500	434500
agreed rate	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
payout	467088	467088	467088	467088	467088	467088	467088	467088	467088	467088	467088	467088
average weight	575	575	575	575	575	575	575	575	575	575	575	575
average cost	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20
cost per animal	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265
cost per month	1391500	1391500	1391500	1391500	1391500	1391500	1391500	1391500	1391500	1391500	1391500	1391500
	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05
monthly cashout	2095088	2095088	2095088	2095088	2095088	2095088	2095088	2095088	2095088	2095088	2095088	2095088
<b>SALES</b>												
total animals	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100	1100
slaughter weight	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25
total weight	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275
sale price	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05
total income	2392363	2392363	2392363	2392363	2392363	2392363	2392363	2392363	2392363	2392363	2392363	2392363
net cash	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275	297275
running total	10983775	10686500	10389225	10091950	9794675	9497400	9200125	8902850	8605575	8308300	8011025	7713750

South Africa's beef imports

these stats will put in perspective what cattle we would have to produce to meet the imported market bearing in mind the model is based on 50 per day

Imports	48000000 kg's
average slaughter of east cape	270.3 kg's
units to slaughter per year	177580 animals average B2
average per month	14798 units
average per day	673 units



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model of 3rd year based on imported figures

<b>YEAR 3</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>	<b>35</b>	<b>36</b>
days	22	22	22	22	22	22	22	22	22	22	22	22
current production	673	673	673	673	673	673	673	673	673	673	673	673
total animals	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798
average weight	200	200	200	200	200	200	200	200	200	200	200	200
average cost	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30
cost per animal	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00	860.00
cost per month	12726600	12726600	12726600	12726600	12726600	12726600	12726600	12726600	12726600	12726600	12726600	12726600
<b>company equity</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>	<b>3181650</b>
<b>loan portion</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>	<b>9544950</b>
previous year	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798	14798
expected weight	395	395	395	395	395	395	395	395	395	395	395	395
total weight	5845357	5845357	5845357	5845357	5845357	5845357	5845357	5845357	5845357	5845357	5845357	5845357
agreed rate	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
payout	6283759	6283759	6283759	6283759	6283759	6283759	6283759	6283759	6283759	6283759	6283759	6283759
average weight	575	575	575	575	575	575	575	575	575	575	575	575
average cost	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20
cost per animal	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265	1265
cost per month	18719941	18719941	18719941	18719941	18719941	18719941	18719941	18719941	18719941	18719941	18719941	18719941
	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05	7.05
monthly cashout	28185350	28185350	28185350	28185350	28185350	28185350	28185350	28185350	28185350	28185350	28185350	28185350
<b>SALES</b>												
total animals	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37	14798.37
slaughter weoght	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25	270.25
total weight	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260
sale price	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05	8.05
total income	32184610	32184610	32184610	32184610	32184610	32184610	32184610	32184610	32184610	32184610	32184610	32184610
net cash	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260	3999260



month	current	anmemg	anmls	product	month	prod wght
nov	272	440	712	nov	52416	
dec	484	380	864	dec	103626	
jan	407	420	827	jan	96820	
feb	533	420	953	feb	118753	
mar	610	460	1070	mar	146422	
apr	569	400	969	apr	127398	
may	641	460	1101	may	147981	
jun	464	400	864	jun	98014	
jul	382	420	802	jul	86944	
aug	318	460	778	aug	69674	
sept	454	420	874	sept	93842	



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emerg wght	emerg gain	month	avg cost	emerging prices
154000	180400	nov	6.797	7.500
133000	155800	dec	6.996	7.500
147000	172200	jan	7.214	7.500
147000	172200	feb	6.923	7.500
161000	188600	mar	7.001	7.500
140000	162000	apr	7.034	7.500
161000	186300	may	7.016	7.500
154000	176000	jun	6.584	7.500
147000	168000	jul	7.255	7.500
161000	184000	aug	7.704	7.500
147000	170100	sept	7.683	7.500



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## IMPORT INFORMATION

These stats put in perspective what the members would have to produce to meet the imported market bearing in mind the model is based on 50 (slaughter) per day.

Imports	48000000 kg's
Average slaughter of East Cape	270.3 kg's
Units to slaughter per year	177580 animals average B2
Average per month	14798 units
Average per day	873 units



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# WHITE PAPER ON AGRICULTURE

PROVINCE OF THE EASTERN CAPE



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# THE WHITE PAPER ON AGRICULTURE

## ISSUED BY THE MINISTRY FOR AGRICULTURE AND LAND AFFAIRS

### PROVINCE OF THE EASTERN CAPE

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#### Unlocking the Agricultural Potential in the Province of the Eastern Cape.

This White Paper represents a highly significant **paradigm shift** which extends the endeavours and initiatives already made by this Department during the previous financial years, since its inception, in 1994.

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It strives to place the Agricultural Sector in its strategic position in the Province to deal with the socio economic issues of the past, provide a measure of preparedness for the new millennium and to meet the pertinent challenges brought about through globalization.

The basis for this white paper, is derived from two fundamental Government policies namely;

1. The **National Policy on Agriculture** which emphasises the importance of **Agricultural Support Services in respect of Research, Training and Extension as well as Resource Conservation (Land Care)**
2. The Growth and Development Strategy of the Province of the Eastern **Cape** with specific reference to four of its eight pillars namely;

Job creation;  
Investment in people;  
Meeting basic needs;  
Sustainable use of natural resources.

## 1. VISION OF THE DEPARTMENT

A vision for this Department has been borne out of the two above mentioned fundamental Government policies and therefore, sets the foundation for all our endeavours during this financial year and beyond.

The Vision of this Department is that of a **dynamic agricultural support service provider which stimulates, catalyses and promotes rapid sustainable agricultural growth and economic development within the framework of resource conservation and equitable land administration.**

## 2. GUIDING PRINCIPLES

The following guiding principles, which take into account the experiences of the past, help us sharpen our strategic focus within the realms of the agricultural milieu, and provide us with mechanisms to realise, monitor and evaluate measurable service deliverance in the Province. These guiding principles are:

- (a) Agriculture is an industry which is shifting from subsistence to commodity production (commercial agriculture);
- (b) Indigenous knowledge and technology already exist amongst the farming communities including animal traction and other low cost technologies;
- (c) Youth and Women constitute the majority of our beneficiaries in the Province and should be targeted therefore;
- (d) Agricultural land is diminishing and a need exists to increase productivity per unit area by promoting high value crops;
- (e) Integrated development planning will be invoked including promotion of game farming and landcare
- (f) Agricultural Support Services to be accessible to small scale as well as commercial farmers;

## 3. STRATEGIC OBJECTIVES

As we prepare for and move into the new millennium, the Department has set clear strategic objectives aimed at **unlocking Agricultural Potential in the Province of the Eastern Cape.** These strategic objectives are as follows:

1. To promote sustainable utilisation of natural resources;
2. To encourage increased food and fibre production, thus contributing towards food security;
3. To stimulate increased economic activity from agriculture;
4. To provide enabling Legislation.

To accelerate service delivery within each of these strategic objectives, the Department of Agriculture and Land Affairs will focus on specific projects within each Directorate, making use of task teams to ensure effective coordination between Directorates and Regions and to increase their effectiveness despite limitations of personnel and budget.

#### 4. IMPLEMENTATION STRATEGIES

##### 1. TO PROMOTE SUSTAINABLE UTILIZATION OF NATURAL RESOURCES

The key to unlocking the agricultural potential is the identification of the optimal agricultural enterprises based on the natural resources of each district and farming unit in the Province.

To open the lock, farmers must be empowered to recognise their potential and strive for new horizons of opportunity to fully utilize their resources.

This paradigm shift will be supported by the Department of Agriculture and Land Affairs through the accurate determination of the agricultural potential within the Province, coupled to effective policy development on land use, zoning and the planning of farm systems and farming enterprises.

The Geographic Information System using data collected from many sectors is, the primary tool used for identifying the natural resources and indicating areas of potential for Agricultural Production. The included maps indicate part of the process to be used at a macro Provincial level.

These maps are not given in order to provide an elementary Geography lesson. They are included to demonstrate how scientific selection of agricultural potential should be made prior to setting **Land Development Objectives and Integrated Development Planning**, to enable Legislators and Administrators to zone and protect land, with a high agricultural potential.

High potential agricultural land is a limited resource in the Province. The successful economic future of the agricultural sector and indeed the Province as a whole, depends on the careful identification of land potential and the protection of this land for productive purposes.

The Department of Agriculture and Land Affairs will be actively engaged in assisting with the planning of effective land use in the Province.

The included maps give an indication of the administrative and developmental infrastructure in the Province, which serves the agricultural community. The province is fortunate to have relatively good road, rail, harbour and airport infrastructures, which assist in the distribution of agricultural production requisites and in the transportation of goods to markets. However many of the high potential areas of the previous homelands are significantly lacking in this physical infrastructure, which is placing a serious limitation on the agricultural production. Road and transport linkages will have to be improved before the potential can be realised.

An analysis of annual rainfall, vegetation types, slope gradients, population densities and water resources are used in conjunction with each other to determine the potential and the limitations of areas for agricultural purposes. Water is the single most important limiting factor for agricultural production. Productive agricultural land is mostly in the higher rainfall areas, or areas which have potential for irrigation. The potential for animal production is determined by the availability of vegetation suitable for grazing. Where slopes are too steep intensive cultivation is limited.

The Department of Agriculture will bring together teams of scientists in a Planning and Project Unit in order to develop comprehensive plans for the development of agriculture, based on an in-depth analysis of resources and their responsible utilization.

Planning for viable agricultural production will also be encouraged at local community and farm levels in order to make best use of natural Resources.

Plans are well advanced to implement demonstration units at 13 strategic locations through out the Province. These units will be implemented with the participation of local farmers and in collaboration with private and public sector partners.

Working closely with farmer organisations and communities and private land owners, the Directorate Extension services will provide training and education on the problems of soils erosion and land care. Many of the previously disadvantaged areas of the Province have become badly eroded and over grazed.

The Directorate of Engineering Services will provide specialist advice on structures required for conservation of soil, improved water storage and utilization, irrigation and drainage.

This matter has to be taken seriously as permanent damage to the limited soil resources is increasing. Existing Legislation must be reviewed in the Province to enable support to be given to the more effective control of soil erosion.



## 2. TO ENCOURAGE INCREASED FOOD PRODUCTION

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Our Province has a largely untapped potential for the production of food from staple grains and meat, both for local consumption and for export. Food which is currently on the local markets comes from a relatively small number of producers, some of whom are outside of the Province. Local producers are also being challenged on price from foreign exporters, particularly in the lower value poultry products.

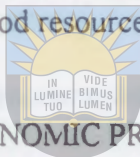
The Department of Agriculture will work with even more determination this year to encourage increased food production through specific strategies applied by the Extension Services. These include improving infrastructure such as fencing for food lots, promotion of small irrigation schemes, improved intensive food production technology, improved storage of staple grains and increased access for food producers to crop production requisites. Research on the optimal cultivars and production methods are being conducted for maize, sorghum, wheat, barley, groundnuts, cowpeas, beans and a variety of vegetables. New work is proceeding on evaluating inter cropping techniques, in an effort to optimise the production of food per unit area and to reduce risk due to weather and pests. Demonstrations will be carried out by extension officers with farmers and new seed cultivars made available.

Increase in food production is only one aspect of the human food chain. Pricing, distribution, storage, marketing, and quality all effect the availability of food for consumers. The Department will investigate all these aspects through the Directorate of Economics and Marketing in order to advise farmers on the most effective manner to make food available for themselves and for sale to others.

Strategies for working with Womens' Organisations and Youth Clubs to emphasise food production have been developed within the Extension Directorate. These will be expanded making use of radio and other media to educate and train these clients in the food production sector.

Export markets for maize, vegetables, meat and fruit are being sought by the Department in an effort to enhance the value of food production in the Province. The current value of the Rand is making products from South Africa more competitive on international markets.

Recognising the importance of increasing food production and availability in the Province, care must be exercised in determining land use objectives. The Province must ensure sufficient land resource is available for food when there is competition with other uses for land such as with afforestation, cash cropping, industrial crops, animal grazing, residential commercial and industrial land. Sound planning coupled with Administrative discipline will need to be applied by the Provincial Government in order to protect food resources for the future.



### 3. TO STIMULATE INCREASED ECONOMIC PRODUCTION FROM AGRICULTURE

The primary tasks of the Directorates of the Department of Agriculture and Land Affairs will be focussed on strategies for increasing economic production from agricultural sources and thereby **unlock the agricultural potential in the Province**. Each service and project provided by the directorates will be assessed in terms of the contribution to increase in livelihood to the producer, and down stream processing, distribution and marketing.

Extension Services to farmers will provide advice to improve efficiency, and profitability on their farm enterprises and farm systems.

Support will also be given to the formation of effective farmer organisations and women in agriculture organisations, enabling them to serve their members. Training courses will be provided at centres such as Mpofu Training Centre, farmer days and on farm demonstrations. Farmers will be encouraged to form Commodity Organisations to facilitate the production and marketing of crops and animal products.

Farmer Support Centres, led and managed by farmers, will be supported during their formative phase, to provide farm requisites, advisory and marketing services. These centres will develop into fully fledged commercial entities providing the necessary linkages to infrastructure and finance to enable small farmers to enter the commercial sector.

Applied Research and Training Directorate will provide Agricultural Scientists, Technicians and support staff for the development and transfer of agricultural technology, in order to maintain the competitiveness of the farmers in the Province; develop more effective production systems for

crops and animals, and provide demonstrations on integrated farm systems for optimal utilisation of soils slopes, rainfall and vegetation.

Together with the Extension Services the Research Team will be responsible for introducing new crops and animal products suitable for production in the Province.

The Veterinary Services play a crucial role in monitoring the Health of the Provincial herd, as well as making sure that animal products are wholesome.

The Province boasts 2,5 million Cattle, 9 million sheep, 3,3 million Goats, 323 000 pigs and 334,496 ostriches.

It is the protection of this vast Provincial asset that is entrusted to the Veterinary Services, through four major operational areas, namely, Animal Health, Veterinary Public Health, Laboratory Services and Training and Extension.

The current policy regarding dipping of Livestock should be reviewed in order to obtain more effective support from the communities without abdicating our obligations as a Province. A new policy in regards to dipping cattle will have to be introduced to cater for a minimal levy, as a direct contributions towards the costs of this activity.

This is in step with the Masakhane spirit, of encouraging communities to subscribe to services provided to them.

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Current effective disease control has enabled the simultaneous production of game farming with domestic animals. This will enhance the development of the game farming industry particularly in areas which are marginal for normal stock farming, provided that animal health services can be maintained.

Agricultural Engineering Services will play a crucial role in providing and maintaining infrastructure for water conservation and utilisation, improved utilisation of grazing, control of erosion, provision of technology for the development of irrigation and the advancement of drainage on arable land where this is a limitation. The Province has a huge backlog for such infrastructure, estimated at more than R3 billion. Funds will have to be accessed in order to assist farmers improve their infrastructure and increase productive capacity.

The development of new markets and improving the access to existing markets are critical for the enhancement of Agriculture in the Province. The Directorate of Economics Marketing will form teams to identify such markets and through economic enterprise analysis will provide advisory services for farmers on profitable production. The Directorate will also identify constraints to growth in production and assist in developing strategies for reducing these barriers.

One of the severe limitations to the expansion of agri-business is the availability and cost of credit. This year will see the amalgamation of the Agri banks into a new entity which will focus on provision of credit to small farm enterprises. This entity will provide service similar to the "Village Bank" concept, in an effort to provide services at an affordable rate to rural clients.

We are focussing on the priorities within each Directorate in the Department of Agriculture and Land Affairs is a natural outflow of the Policy directions. However the Directorates remain seriously hampered in their ability to deliver, by the lack of experienced skilled personnel, particularly Veterinarians, Veterinary Technical Assistants, Engineers, Agricultural Scientists and skilled data processing personnel for Geographic Information Systems. Serious consideration to remedy the inability to appoint staff and keep experienced staff, will have to be given in this year, in order to avoid a crisis in the Department. The Department can only support strategies to increase agricultural production, in as much as it has a cadre of highly skilled and motivated staff. In an effort to find solutions to this problem, private public partnerships are being encouraged. This will enable the private sector to link with the Department in providing services and implementing projects.

An excellent example of this is the consortium coordinated by the Research and Training Directorate for the promotion of 13 pilot projects in rural areas. The consortium includes the National Wool Growers Association, The Agricultural Research Council, the National Maize Producers Association, National Emergent Red Meat Producers Organisation. The 13 communities have been identified on the basis of organisational skills and representation, to be developed as all inclusive demonstration units. This joint venture will provide shearing sheds, dipping tanks, water supplies and fencing for integrated land use projects to foster increased livestock productivity.

Other similar joint ventures are being promoted by the Department for the pineapple industry, the citrus industry in the Alice Kat area, and on the irrigation schemes previously managed by the Parastatals or the Department.

Interest for further such partnerships and joint ventures for profitable production of agricultural products have been received from both South African and overseas investors. The proposed Sugar Beet industry which will exceed an investment of R 500 million is an example of overseas production expertise, local farmers and business interests putting together a venture which will have enormous benefits for the Province.

The Department has also attracted a R 1.5 million grant through the National Department of Agriculture from the Government of the Netherlands for improvements to the Farmer Support Systems through Extension.

Further interest has been shown by European and Middle Eastern companies, for products produced in the Province of the Eastern Cape, such as olives, artichokes, fresh vegetables and fruit, bast fibre, exotic medicinal and aromatic oil plants. There is also a niche demand for red meat.

The interest shown by local and foreign investors in Agricultural production, processing and marketing of products heralds a new era for emergent and established farmers in the Province. The Department will have to maintain a high level of international awareness, information and expertise if it is to facilitate potentially profitable joint ventures.

#### 4. PROVIDING ENABLING LEGISLATION

The Agricultural Sector cannot thrive without a peaceful and creative social and legal environment where Constitutional rights and standards are upheld for the benefit of all the inhabitants of our Province. Within the Constitution certain laws and responsibilities have been delegated to the Department of Agriculture and Land Affairs. Certain responsibilities remain with the National Departments such as Land Affairs, Water Affairs and Forestry and the National Department of Agriculture. It is imperative for the equitable distribution and optimal utilisation of land, water, afforestation, for the economic promotion of Agriculture in the Province, that close cooperation is obtained from all those to whom the authority has been delegated. Further more, certain provisions of past legislation require improvement or deletions.

A Green Paper on Agricultural Policy for the Province was published in 1998/99 financial year, comments were received and considered, and During the course of the year the National Department of Agriculture also produced a new draft White Paper. The present white paper is a natural evolution from the above mentioned processes.



#### CONCLUSION

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Tasika in isiXhosa

The Department of Agriculture and Land Affairs, is mindful of the crucial role it is required to play in the facilitation and stimulation of a vital and commercially sound Agricultural sector, with the full participation of all those who derive their livelihoods through investment of their social, natural, human, financial and physical capital in Agricultural production, processing and marketing.

Recognising the limitations of financial support available to the Province, the Department will attempt to be creative in the investment of its resources towards those areas which will bring the greatest growth and benefit the people of the Province.

We recognise our responsibility to provide guidance for the optimal utilisation of scarce natural resources, for encouraging the increase in the production and availability of food, for the need to stimulate increased economic growth in the Agricultural sector at a time when other sectors are retrenching people, and to provide an enabling Regulatory Framework.

The Department will focus on specific projects in the implementation of the work in the Directorates and form multi-skilled task teams in order to deploy scarce trained and experienced people most appropriately, for the delivery of high quality services to our farming community.

By applying these principles and policies the Department will play a pivotal role in **unlocking the Agricultural Potential of the Province of the Eastern Cape.**

## TRANSPORT

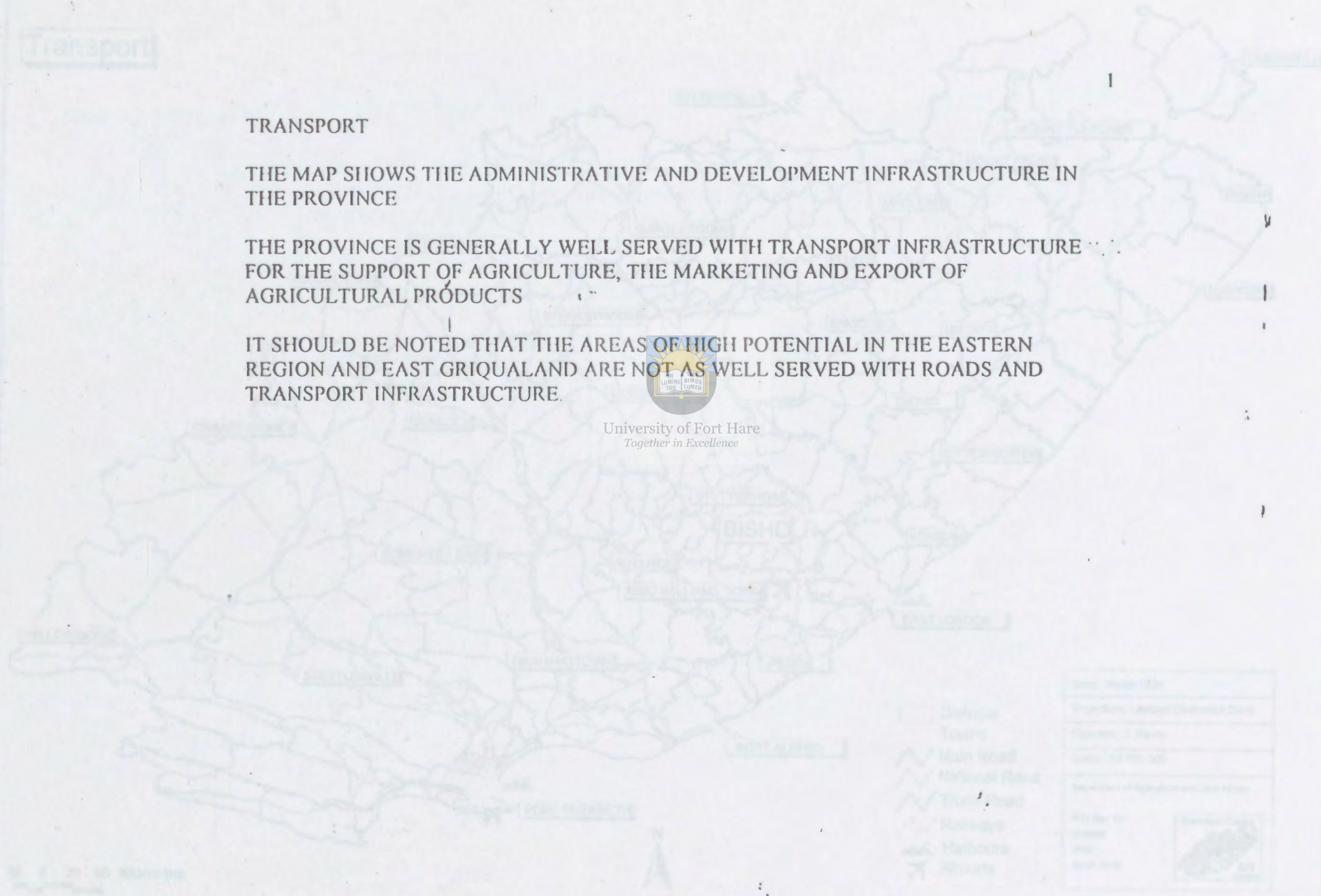
THE MAP SHOWS THE ADMINISTRATIVE AND DEVELOPMENT INFRASTRUCTURE IN THE PROVINCE

THE PROVINCE IS GENERALLY WELL SERVED WITH TRANSPORT INFRASTRUCTURE FOR THE SUPPORT OF AGRICULTURE, THE MARKETING AND EXPORT OF AGRICULTURAL PRODUCTS

IT SHOULD BE NOTED THAT THE AREAS OF HIGH POTENTIAL IN THE EASTERN REGION AND EAST GRIQUALAND ARE NOT AS WELL SERVED WITH ROADS AND TRANSPORT INFRASTRUCTURE.



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# Transport



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30 0 30 60 Kilometers



- Districts
- Towns
- Main Road
- National Road
- Trunk Road
- Railways
- Harbours
- Airports

Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
Department of Agriculture and Land Affairs
P.O. Box 131 Cradock 5880 South Africa



Annual Rainfall

Vegetation Types

2

ANNUAL RAINFALL.....

ANNUAL RAINFALL, VEGETATION TYPES, POPULATION DENSITY AND WATER RESOURCES, SLOPES AND GRADIENTS ALL CONTRIBUTE TO THE IDENTIFICATION OF LAND SUITABLE FOR AGRICULTURAL PURPOSES.

THESE MAPS HAVE TO BE USED IN CONJUNCTION WITH EACH OTHER TO DETERMINE AREAS OF HIGH POTENTIAL AND AREAS WITH LIMITATIONS.

RAINFALL IS GENERALLY HIGHEST IN THE EAST, WHICH ALSO HAS A HILLY AND MOUNTAINOUS TOPOGRAPHY.



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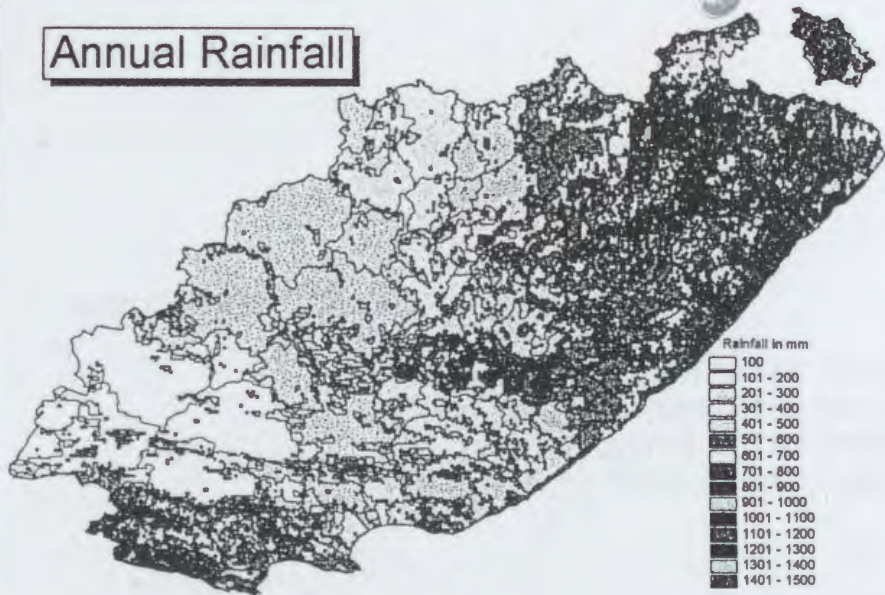
Population Density

Slope Gradients

Water Resources

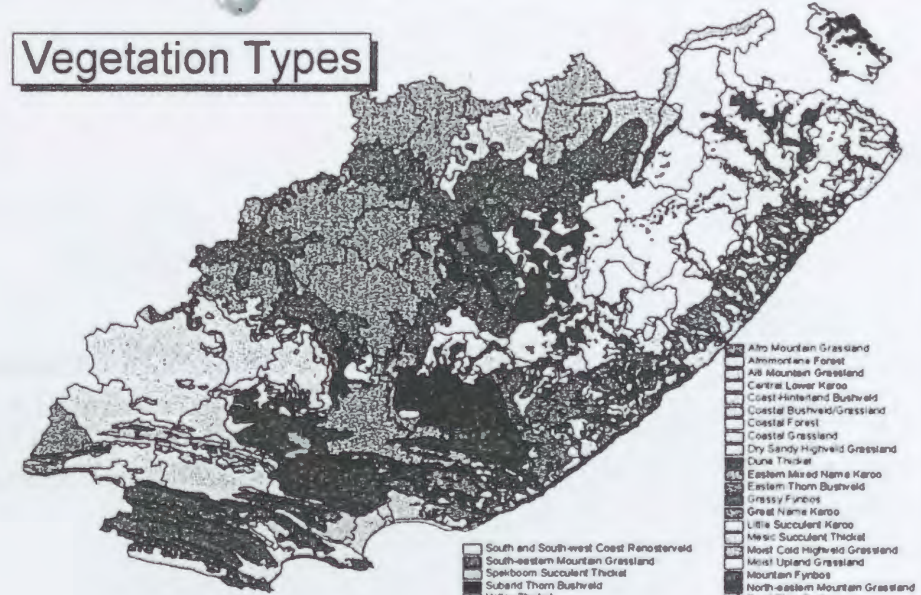
0 50 100 Kilometers

# Annual Rainfall



- Rainfall in mm
- 100
  - 101 - 200
  - 201 - 300
  - 301 - 400
  - 401 - 500
  - 501 - 600
  - 601 - 700
  - 701 - 800
  - 801 - 900
  - 901 - 1000
  - 1001 - 1100
  - 1101 - 1200
  - 1201 - 1300
  - 1301 - 1400
  - 1401 - 1500

# Vegetation Types



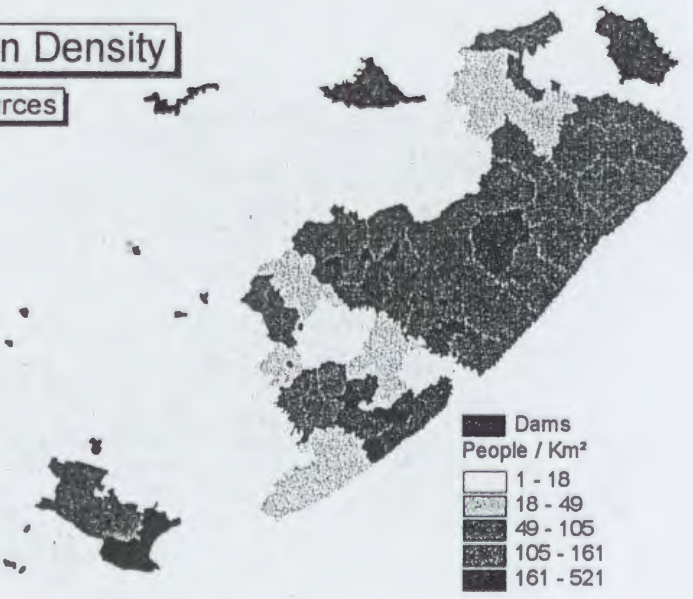
- Alto Mountain Grassland
- Altimontane Forest
- Alt Mountain Grassland
- Central Lower Karoo
- Coast-Hinterland Bushveld
- Coastal Bushveld/Grassland
- Coastal Forest
- Coastal Grassland
- Dry Sandy Highveld Grassland
- Dune Thicket
- Eastern Mixed Nama Karoo
- Eastern Thorn Bushveld
- Grassy Fynbos
- Great Nama Karoo
- Little Succulent Karoo
- Mesic Succulent Thicket
- Moist Cold Highveld Grassland
- Moist Upland Grassland
- Mountain Fynbos
- North-eastern Mountain Grassland
- Sand Plain Fynbos
- Short Mistbelt Grassland
- South and South-west Coast Renosterveld
- South-eastern Mountain Grassland
- Spekboom Succulent Thicket
- Subsant Thorn Bushveld
- Valley Thicket
- Xenc Succulent Thicket



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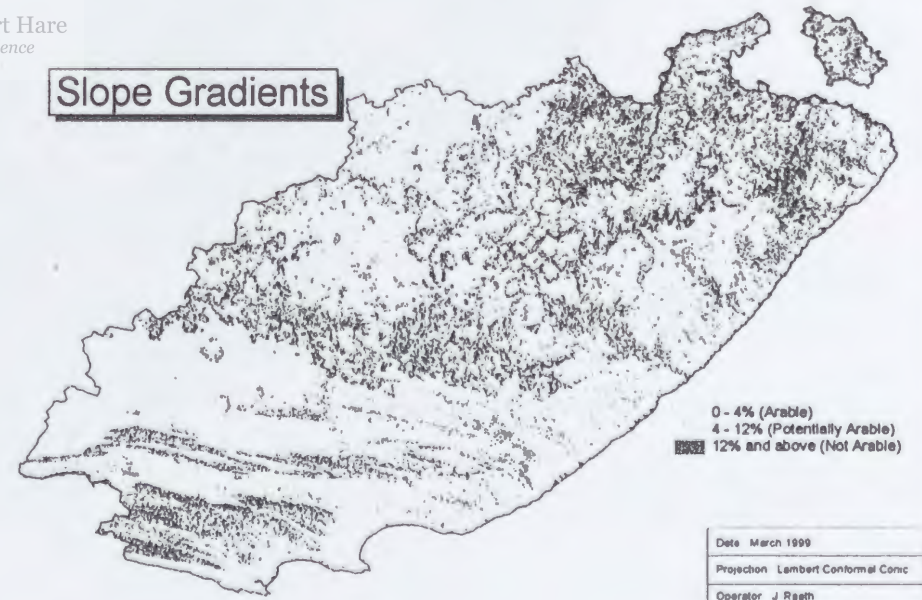
# Population Density

## Water Resources



- Dams  
People / Km<sup>2</sup>
- 1 - 18
  - 18 - 49
  - 49 - 105
  - 105 - 161
  - 161 - 521

# Slope Gradients



- 0 - 4% (Arable)
- 4 - 12% (Potentially Arable)
- 12% and above (Not Arable)



Date	March 1999
Projection	Lambert Conformal Conc
Operator	J Raath
Scale	1:11 000 000
Department of Agriculture and Land Affairs	
P O Box 131	Eastern Cape
Oradek	5960
South Africa	

# Population Density

## POPULATION DENSITY

POPULATION DENSITY WITH THE REQUIREMENT FOR LAND FOR DOMESTIC PURPOSES, COMPETES WITH LAND WITH A HIGH AGRICULTURAL POTENTIAL. HOWEVER IT IS IN THE DENSELY POPULATED RURAL AREAS THAT AGRICULTURE IS MOST IMPORTANT AS AN ECONOMIC BASE.



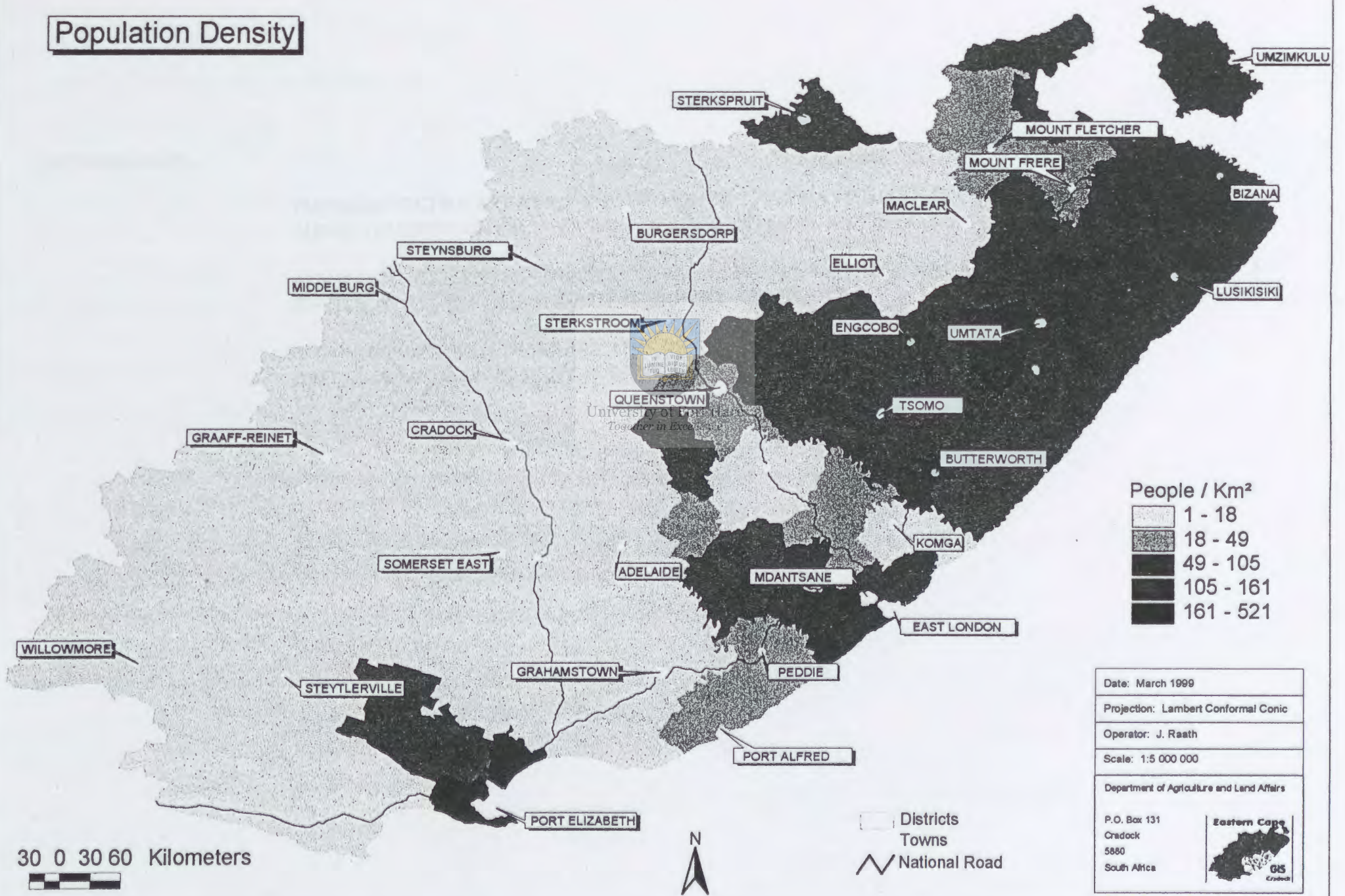
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0 30 60 Kilometers

Distance  
Town  
National Road

# Population Density



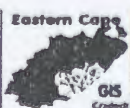
People / Km<sup>2</sup>

[Lightest shading]	1 - 18
[Dotted shading]	18 - 49
[Dark grey shading]	49 - 105
[Black shading]	105 - 161
[Darkest shading]	161 - 521

Date: March 1999  
 Projection: Lambert Conformal Conic  
 Operator: J. Raath  
 Scale: 1:5 000 000

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 Cradock  
 5880  
 South Africa



30 0 30 60 Kilometers



□ Districts  
 ● Towns  
 ≡ National Road



# Degradation

According to national soil and landscape division - CSIR

## DEGRADATION

THIS MAP SHOWS AREAS OF THE PROVINCE THAT HAVE BECOME DEGRADED THROUGH EROSION OR INVASION OF UNWANTED PLANT SPECIES.

AGRICULTURAL POTENTIAL IS SEVERELY LIMITED IN THESE AREAS. LITTLE RESTORATION IS POSSIBLE BUT IT IS VERY EXPENSIVE.

THE PROVINCE MUST EMBARK ON CREATIVE AND ENERGETIC LAND CARE PROGRAMMES TO PREVENT FURTHER LOSSES OF POTENTIAL FROM DEGRADATION.



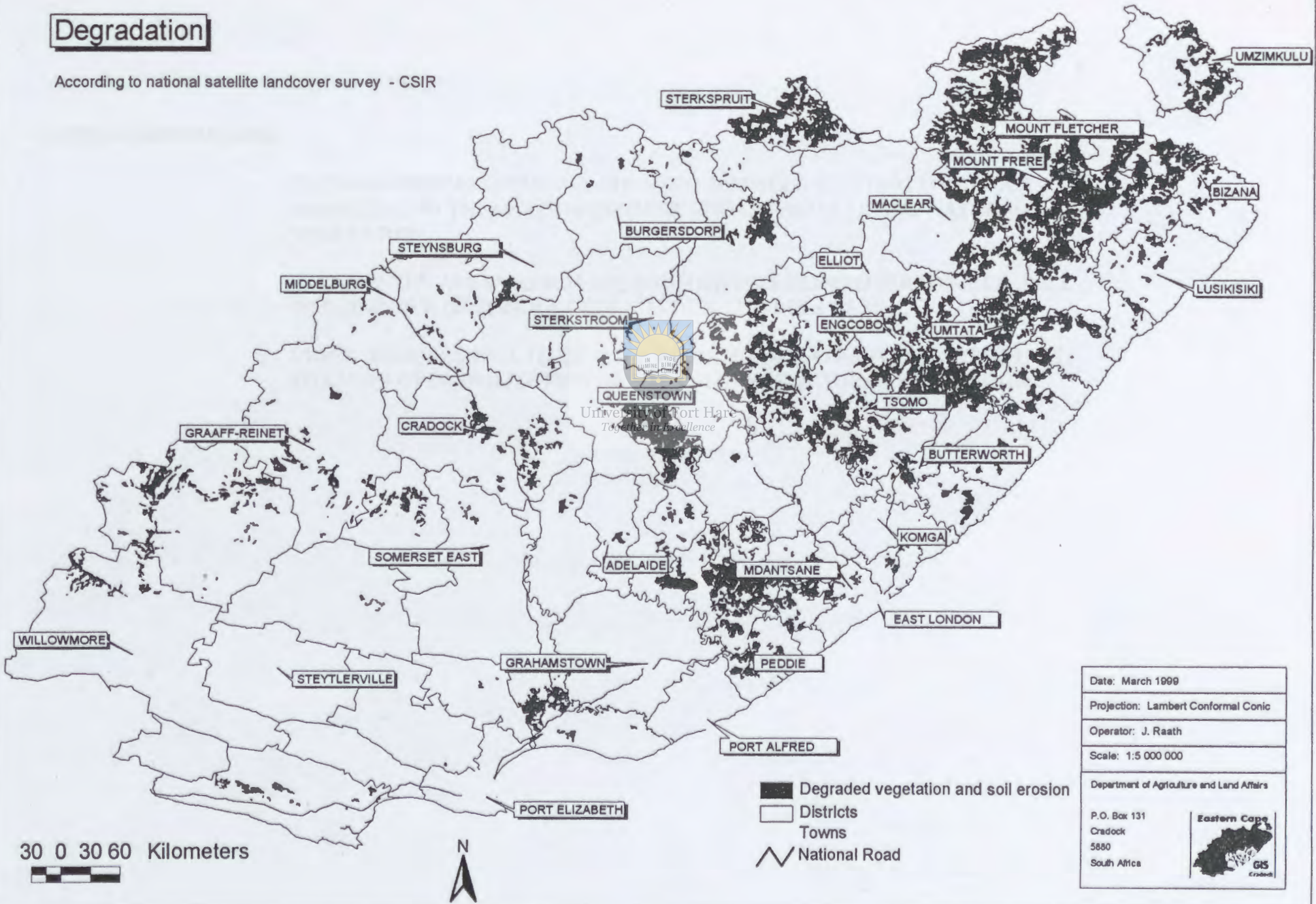
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0 30 60 Kilometers


Scale: 1:500,000
Projection: Lambert Conformal Conic
System: UTM
Units: 1:100,000
Source: Department of Agriculture and Land Affairs
Map Date: 1998
Scale: 1:500,000

# Degradation

According to national satellite landcover survey - CSIR



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Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
Department of Agriculture and Land Affairs
P.O. Box 131 Cradock 5880 South Africa


# Over / Understocking

(Stock numbers related to carrying capacity)

## OVER/UNDERSTOCKING

THIS MAP INDICATES THE RELATIONSHIP BETWEEN EXISTING LIVESTOCK NUMBERS AND THE GRAZING OR CARRYING CAPACITY OF THE NATURAL VEGETATION.

CLEARLY THE AREAS WHICH ARE IDENTIFIED AS BEING OVERSTOCKED, WILL BE IN DANGER OF SERIOUS DEGRADATION AND LOSS OF SOIL.

STOCK NUMBERS WILL HAVE TO BE REDUCED OR EXTRA FODDER PRODUCED TO AVOID OVER UTILIZATION OF THE VALUABLE NATURAL VEGETATION.



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0 30 60 Kilometers

Map Legend

- Overstocked
- Understocked
- Carrying Capacity
- Stocking Capacity

Scale: 1:50,000

Map of the Eastern Cape Province

Source: 2008

Date: 2008

Map of the Eastern Cape Province

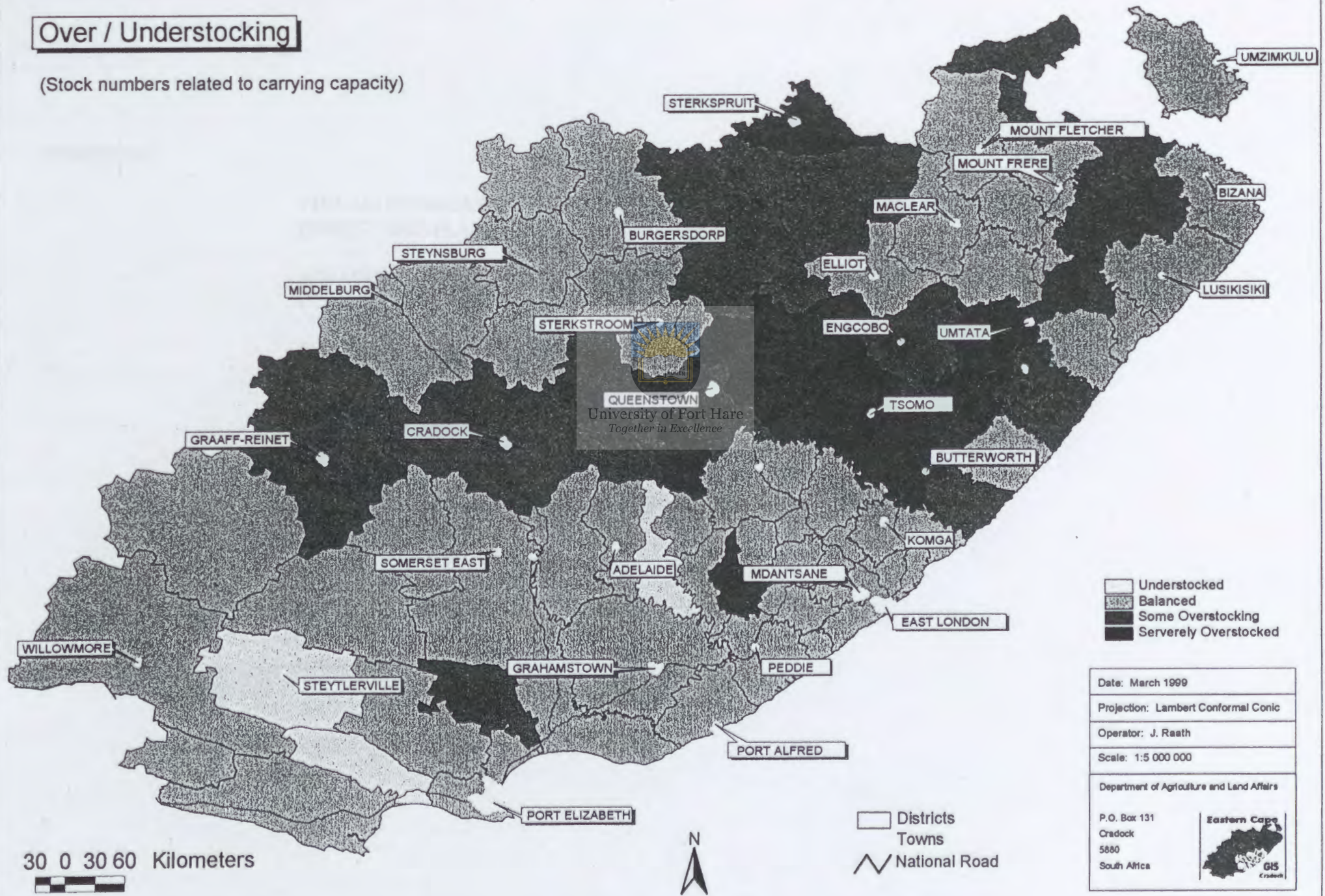
Scale: 1:50,000

Source: 2008


Date: 2008

# Over / Understocking

(Stock numbers related to carrying capacity)



- Understocked
- Balanced
- Some Overstocking
- Severely Overstocked

Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
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30 0 30 60 Kilometers

- Districts
- Towns
- National Road

# FORESTRY

THIS MAP INDICATES AREAS WHICH ARE AT PRESENT UNDER NATURAL FOREST AND PLANTATIONS.

ADJACENT TO THESE AREAS IS LAND SUITABLE FOR FURTHER EXPANSION OF COMMERCIAL PLANTATIONS.

CAREFUL PLANNING IS NEEDED TO INTEGRATE THE EXPANSION OF PLANTATIONS AND THE PRESERVATION OF LAND FOR THE PRODUCTION OF FOOD AND OTHER FORMS OF FIBRE

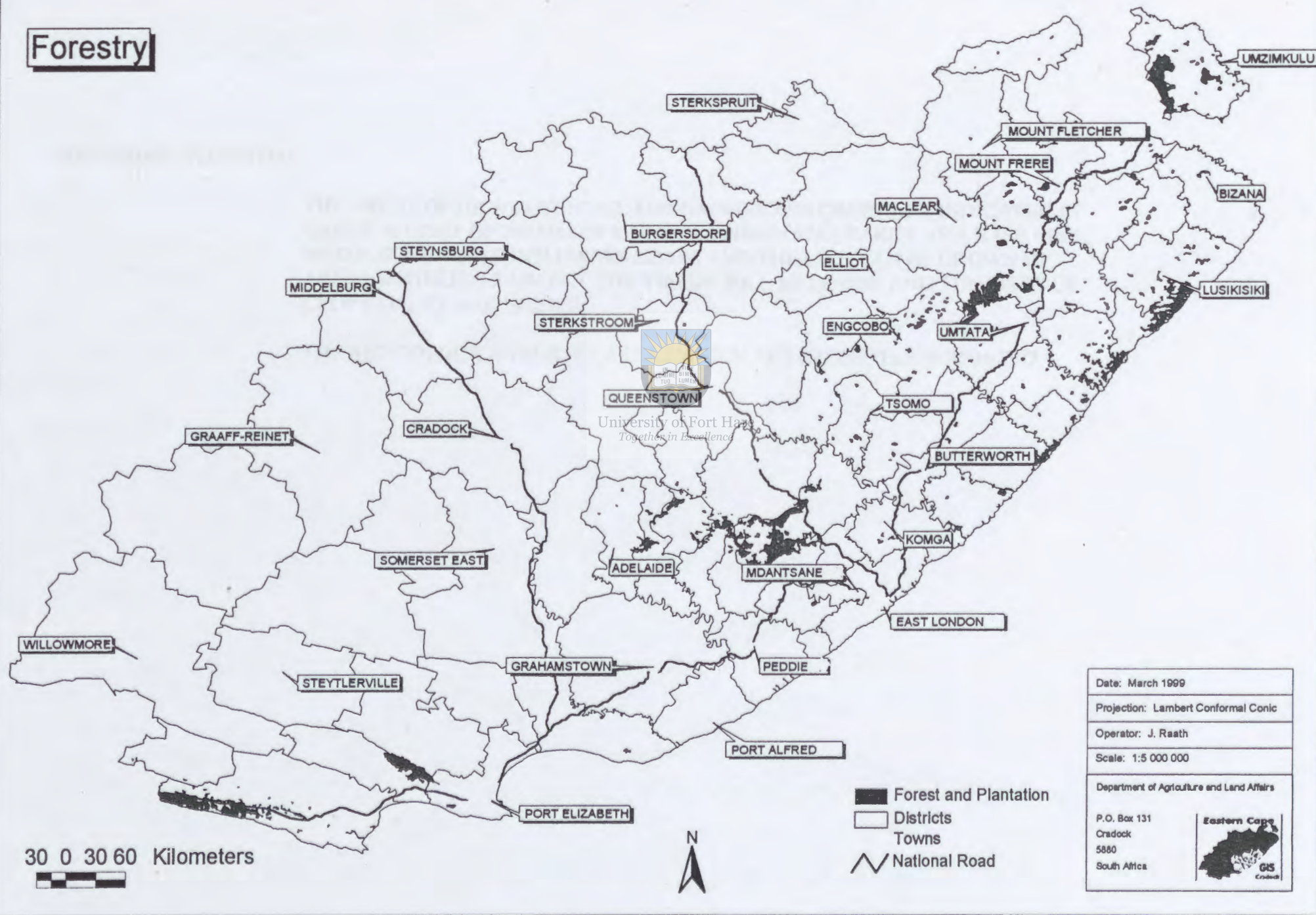


0 30 60 Kilometers

- Forest and Plantations
- District
- Town
- National Road





Date: March 2010  
Prepared by: Land Use Control Unit  
Scale: 1:500,000  
Department of Agriculture and Land Affairs


# Forestry



30 0 30 60 Kilometers



-  Forest and Plantation
-  Districts
-  Towns
-  National Road

Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
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# Agonomic Potential

## AGRONOMIC POTENTIAL.

THE AREAS OF HIGH POTENTIAL FOR RAIN GROWN CROPS ARE INDICATED IN GREEN. A LIMIT OF 700 MM OF RAIN PER ANNUM WAS TAKEN AS A BASE LINE. MAIZE, SORGHUM SUNFLOWERS BEANS AND THE LIKE CAN BE GROWN IN AREAS WITH LESS RAIN BUT THE YIELDS WILL BE LOWER AND THE RISKS OF CROP FAILURE ARE HIGHER.

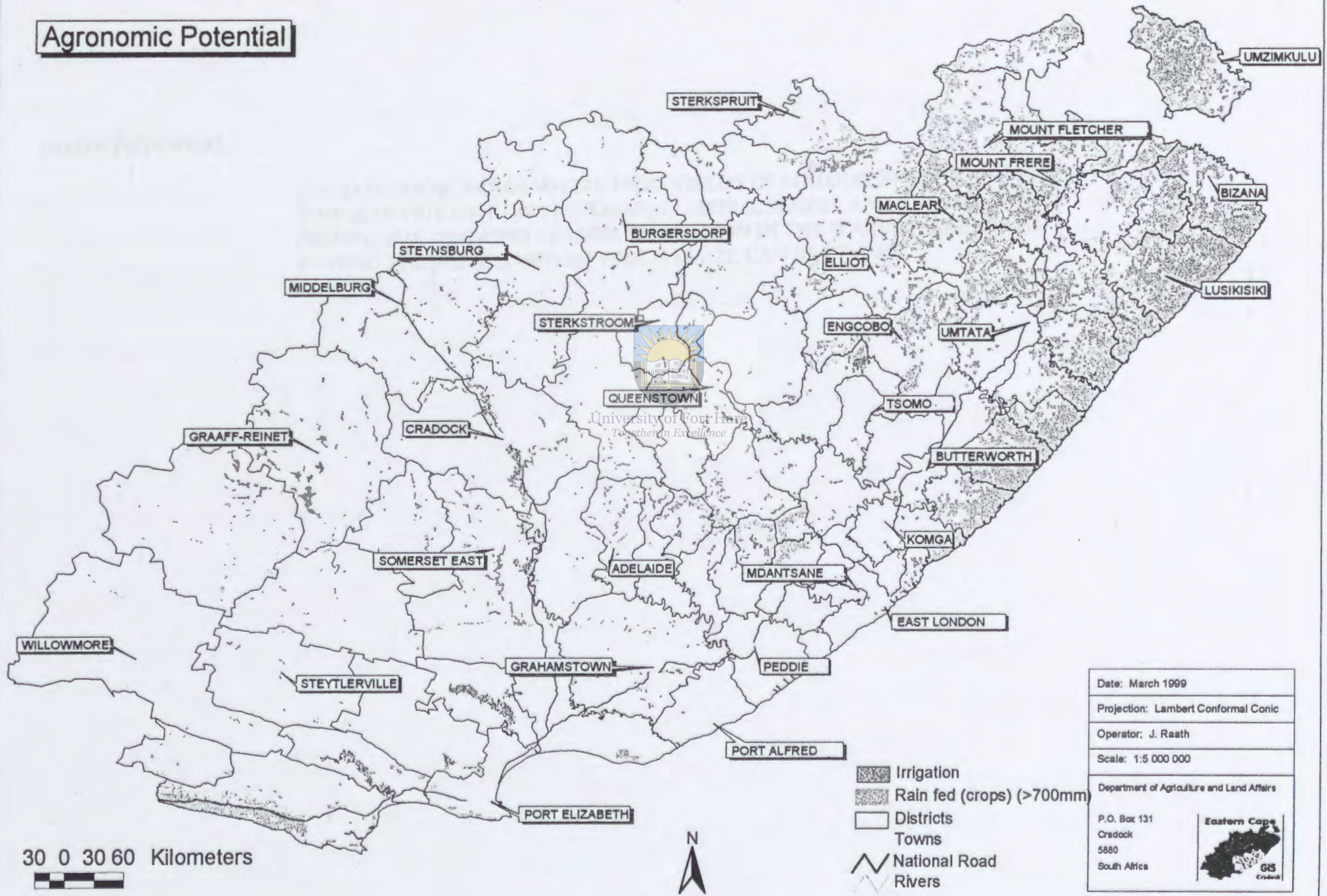
THE RED COLOUR INDICATES AREAS WHICH ARE PRESENTLY IRRIGATED



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# Agronomic Potential



30 0 30 60 Kilometers



Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
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# Maize Potential

## MAIZE POTENTIAL

Criteria Used:  
Summer Temperature  $> 15^{\circ}\text{C}$   
Slopes  $< 12\%$   
Rainfall  $> 700$   
Irrigation Areas

THE MAP SHOWS AREAS WHERE HIGH YIELDS OF MAIZE CAN BE EXPECTED. THIS IS DEPENDENT ON THE RAINFALL, SOILS, SLOPES AND TEMPERATURES DURING THE GROWING SEASON. IRRIGATION IN THE WARMER AREAS CAN EXTEND THE PERIOD WITHIN WHICH MAIZE CAN BE GROWN.



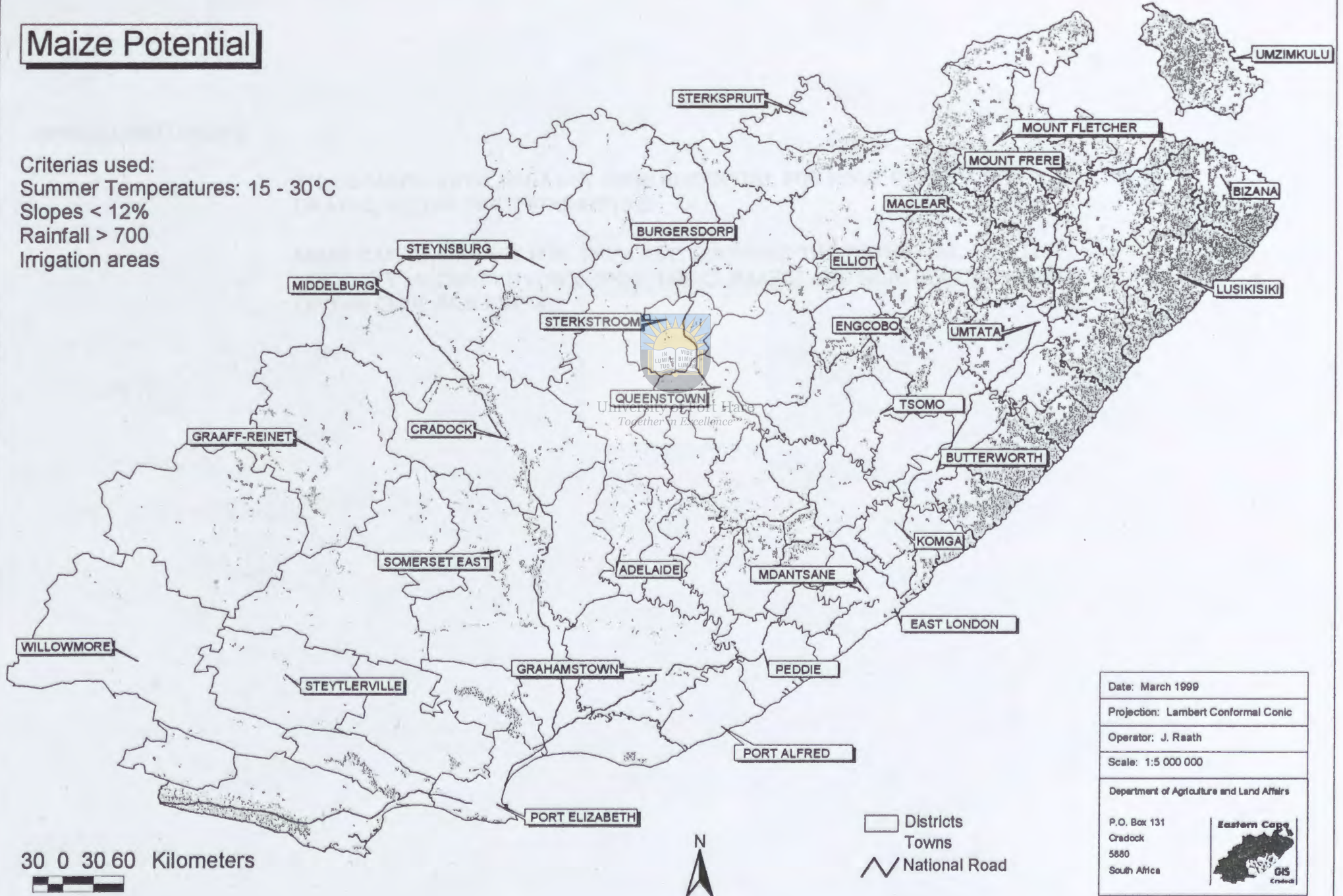
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0 30 60 Kilometers

Date: March 1997
Project: Land Use Potential Study
Author: J. Smith
Scale: 1:500,000
Map of South Africa showing the location of the study area
0 30 60 Kilometers
Legend: District, Town, National Road

# Maize Potential

Criteria used:  
 Summer Temperatures: 15 - 30°C  
 Slopes < 12%  
 Rainfall > 700  
 Irrigation areas



Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
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30 0 30 60 Kilometers



 Districts  
 Towns  
 National Road



# Specialized Crops

Citrus

## SPECIALIZED CROPS

THESE MAPS SHOW AREAS OF HIGH POTENTIAL FOR FOUR CROPS, CITRUS, GRAPES, SUGAR BEET, PINEAPPLES.

MAPS CAN BE DRAWN FOR ANY CROP, SHOWING THE POTENTIAL AND THE LOCALITY IN THE PROVINCE ONCE THE CLIMATIC AND SOIL REQUIREMENTS OF THE CROP ARE KNOWN.



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Sugar beet

Pineapples

Criteria used:  
Soil depth > 750 mm  
Slopes < 12%  
Irrigation areas

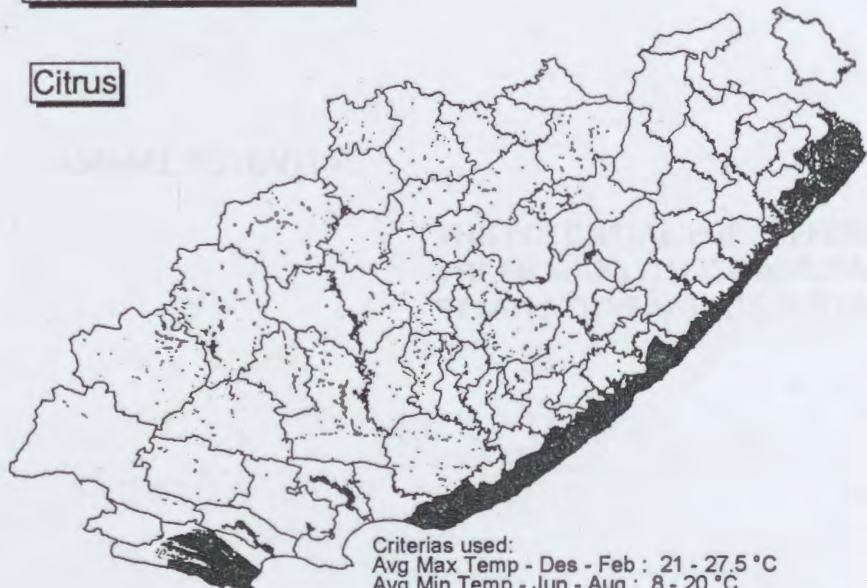
50 0 50120 Kilometers

Criteria used:  
Soil depth > 750 mm  
Soil Avg Temp: 13.5 °C  
Slopes < 12%

Soil Moisture	
Soil Temperature	
Soil pH	
Soil Salinity	
Soil Fertility	
Soil Structure	
Soil Color	
Soil Texture	
Soil Type	
Soil Use	
Soil Management	

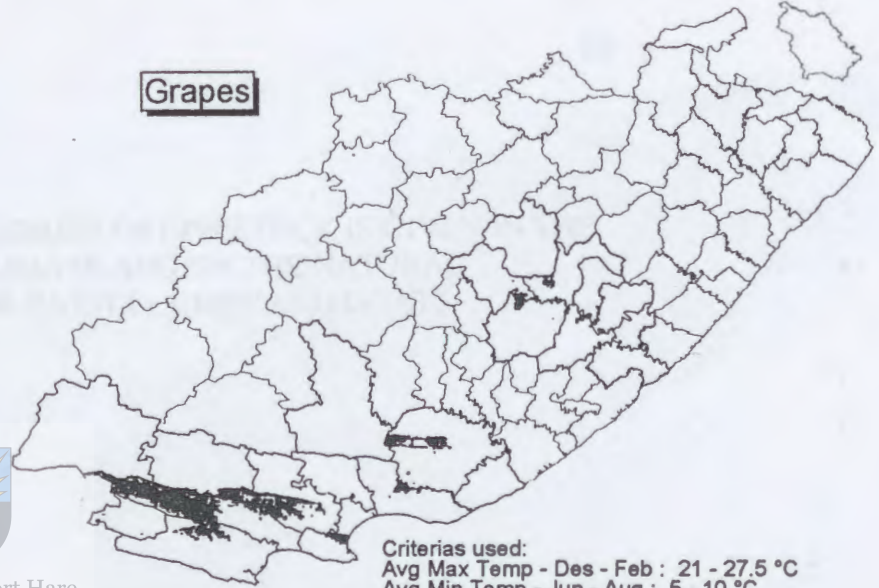
# Specialized Crops

## Citrus



**Criteria used:**  
 Avg Max Temp - Des - Feb : 21 - 27,5 °C  
 Avg Min Temp - Jun - Aug : 8 - 20 °C  
 Slopes < 12%  
 Irrigation areas

## Grapes

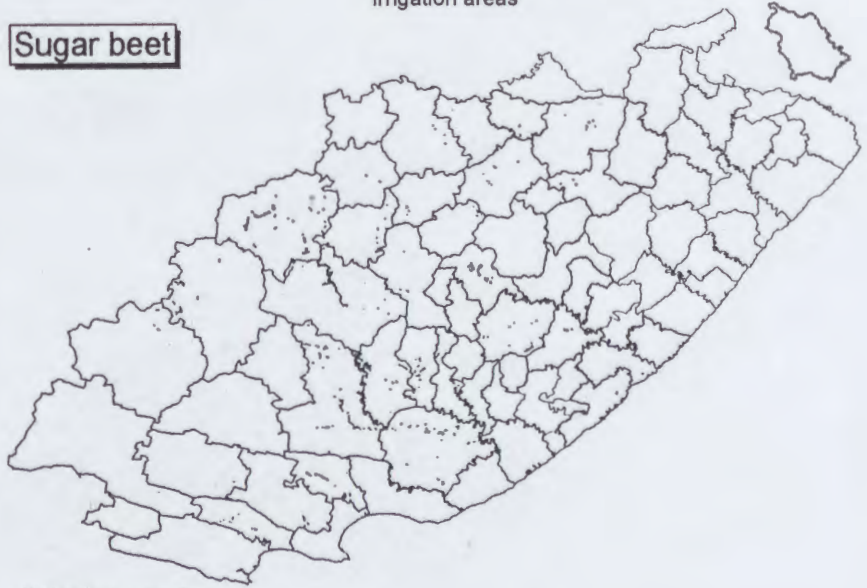


**Criteria used:**  
 Avg Max Temp - Des - Feb : 21 - 27,5 °C  
 Avg Min Temp - Jun - Aug : 5 - 10 °C  
 Rainfall < 500mm



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## Sugar beet

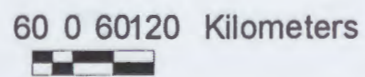


**Criteria used:**  
 Soil depth > 750 mm  
 Slopes < 12%  
 Irrigation areas

## Pineapples



**Criteria used:**  
 Ave Max Temp : 21 - 27,5 °C  
 Min Avg Temp : 13,5 °C  
 Slope < 12 %



Date	March 1999
Projection	Lambert Conformal Conic
Operator	J. Raath
Scale	1 : 11 000 000
Department of Agriculture and Land Affairs	
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Orstedt	
6860	
South Africa	



## ANIMAL POTENTIAL

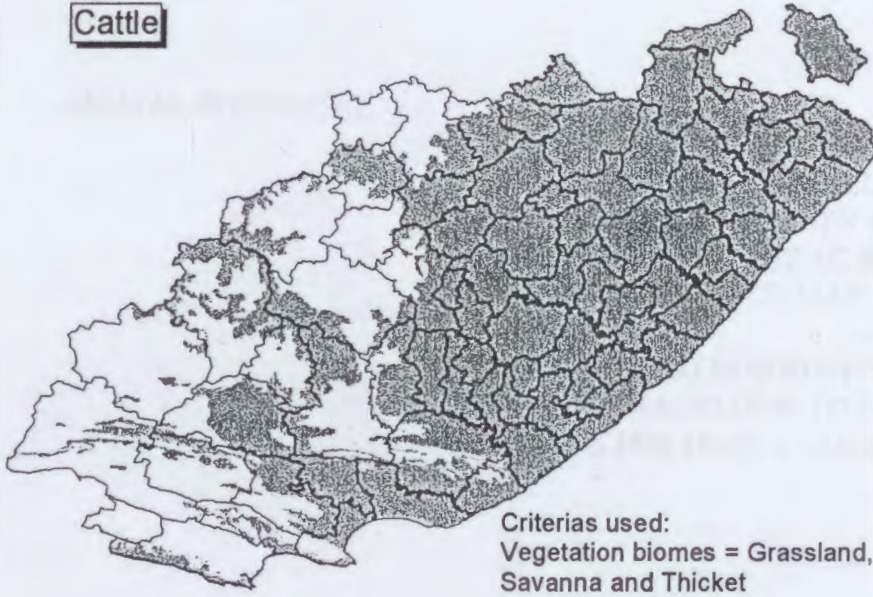
THE POTENTIAL FOR DIFFERENT CATEGORIES OF LIVESTOCK IS GIVEN IN THE THREE MAPS. THESE ARE BASED ON CLIMATE AND ON THE NATURAL VEGETATION AND ITS SUITABILITY FOR CATTLE, SHEEP AND GOATS.



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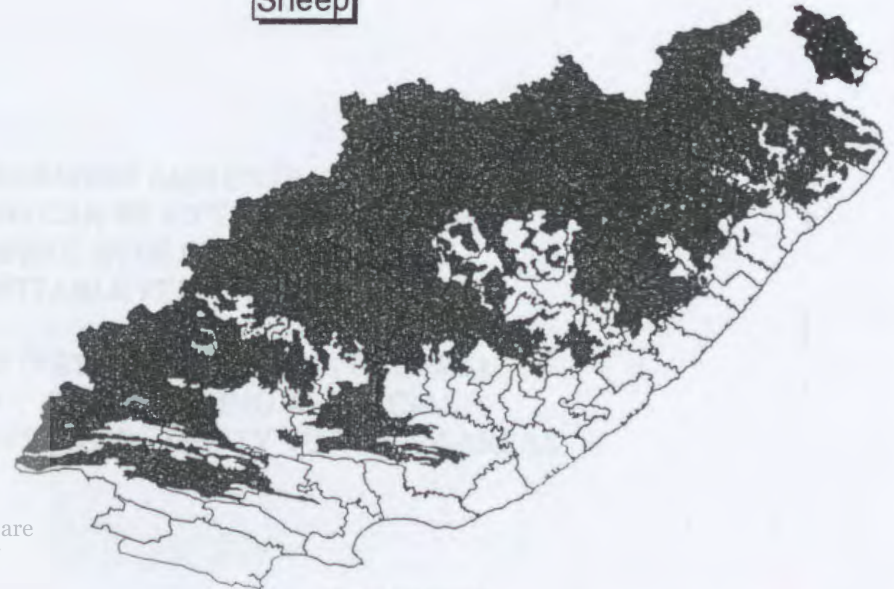
# Animal Potential

## Cattle



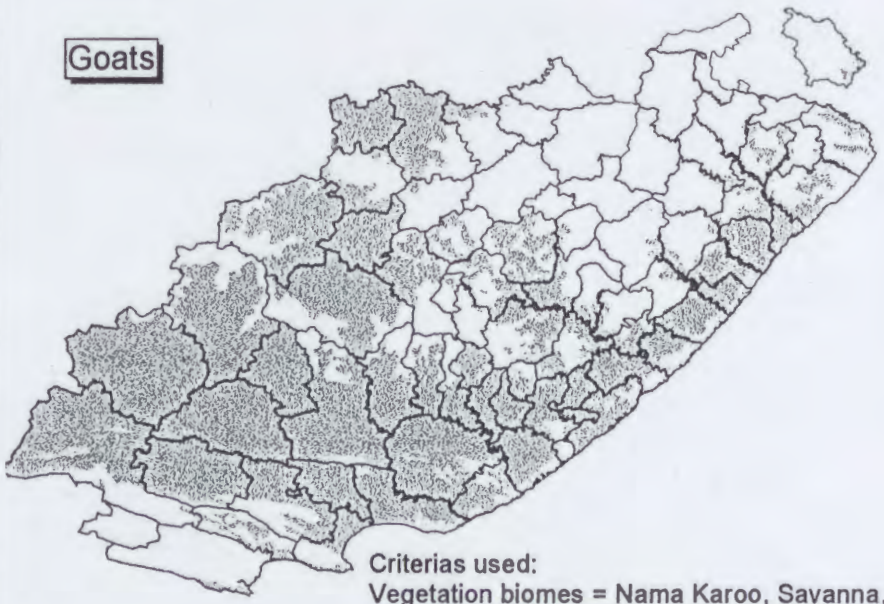
Criteria used:  
Vegetation biomes = Grassland,  
Savanna and Thicket

## Sheep



Criteria used:  
Vegetation biomes = Grassland and Nama Karoo  
Vegetation types = Coastal grassland excluded

## Goats



Criteria used:  
Vegetation biomes = Nama Karoo, Savanna,  
Succulent Karoo and Thicket



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30000 Kilometers



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Projection: Lambert Conformal Conic
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 Eastern Cape GIS Cradock

# Animal Potential

## Game farming

### ANIMAL POTENTIAL

AREAS WHICH ARE SUITABLE FOR GAME FARMING AND OSTRICH FARMING ARE SHOWN ON THE MAPS. GAME FARMING CAN BE EXTENDED INTO THE HIGHER RAINFALL AREAS BUT THEN COMPETE WITH OTHER FORMS OF AGRICULTURE WHICH MAY BE MORE PROFITABLE PER UNIT AREA.

DAIRY FARMING IS SHOWN WITH A WIDER DISTRIBUTION THAN GENERAL CATTLE FARMING DUE TO THE POSSIBILITY OF PRODUCING ARTIFICIAL PASTURES FOR HIGH VALUE MILKING COWS, IN PROXIMITY TO URBAN AREAS.



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Criteria used:  
Vegetation biome = Nama Karoo  
Game population

Criteria used:  
Cattle and sheep

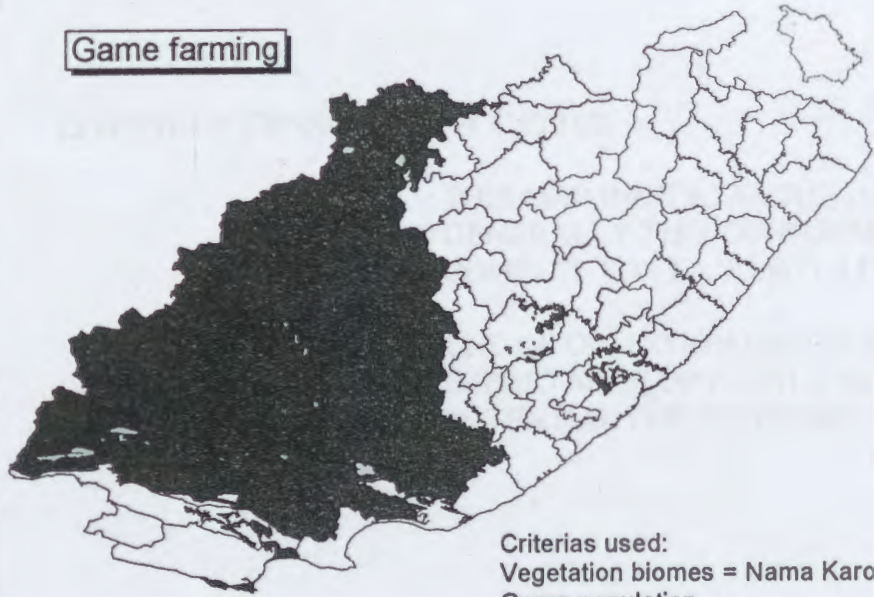
## Ostrich

Criteria used:  
Vegetation biome = Grassland, Nama Karoo  
Ostrich population

Map scale 1:100,000
Projection: UTM/World Bank
Datum: WGS 84
Units: Meters
Source: Department of Agriculture
Scale: 1:100,000
Author: [illegible]
Date: [illegible]
Version: [illegible]

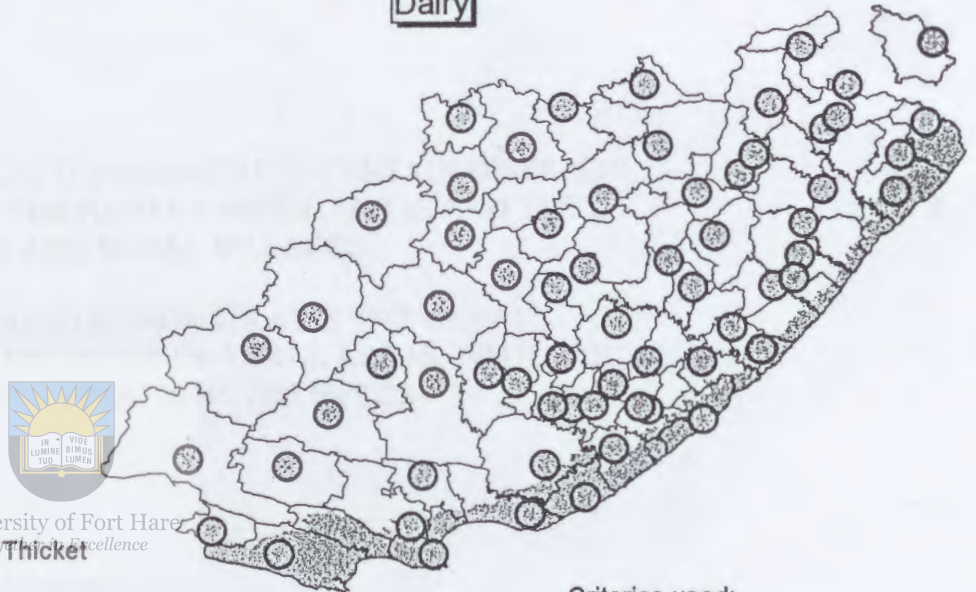
# Animal Potential

## Game farming



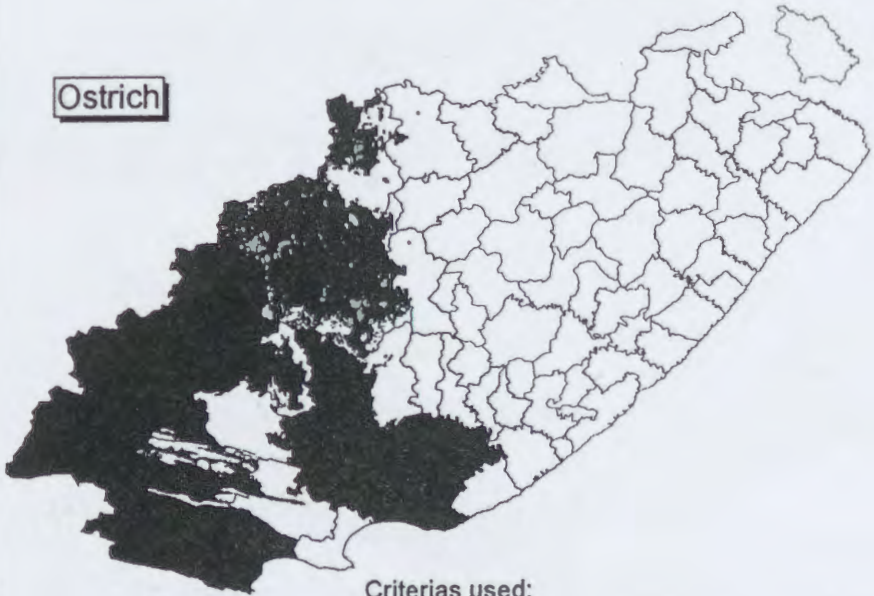
Criteria used:  
Vegetation biomes = Nama Karoo and Thicket  
Game population

## Dairy



Criteria used:  
Coastal belt and towns

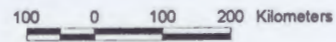
## Ostrich




Criteria used:  
Vegetation biomes = Grassland, Nama Karoo  
Ostrich population



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### LIVESTOCK CENSUS 1997-98 CATTLE

THIS MAP INDICATES THE HIGH CATTLE NUMBERS IN CERTAIN DISTRICTS. GENERALLY THIS CONFORMS TO THE HIGH RAINFALL AREAS AND THEY COMPETE FOR LAND WITH CROPS AND RURAL VILLAGES.

THE INFORMATION ON THE MAP ALSO DEMONSTRATES THE GREAT IMPORTANCE OF CATTLE IN THE ECONOMY OF RURAL AREAS, WITH THE POTENTIAL FOR ECONOMIC PRODUCTION FROM THE HERDS.



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Scale: 1:100,000

Map of South Africa showing the location of Fort Hare

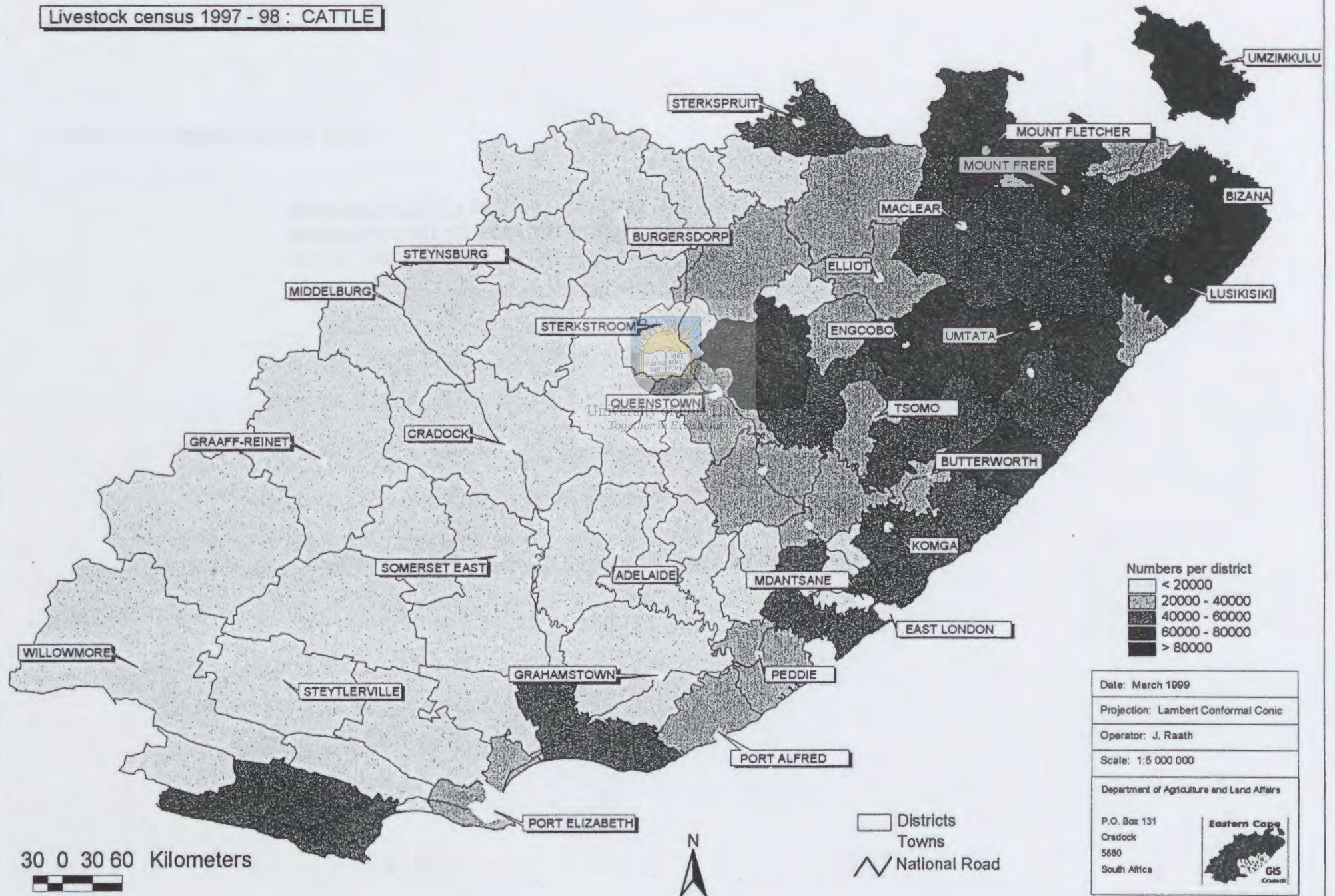
© 2000 University of Fort Hare

Printed by: [Name]

Date: [Date]

0 30 60 Kilometers

Livestock census 1997 - 98 : CATTLE

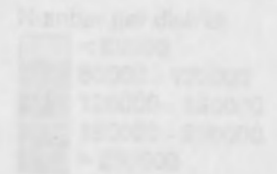


LIVESTOCK CENSUS 1997-98 SHEEP

THIS MAP INDICATES THE IMPORTANCE OF SHEEP IN THE PROVINCE. BETTER MANAGEMENT OF FLOCKS, IMPROVED BREEDING AND THE HANDLING OF WOOL WILL INCREASE THE INCOME TO BE DERIVED FROM SHEEP.

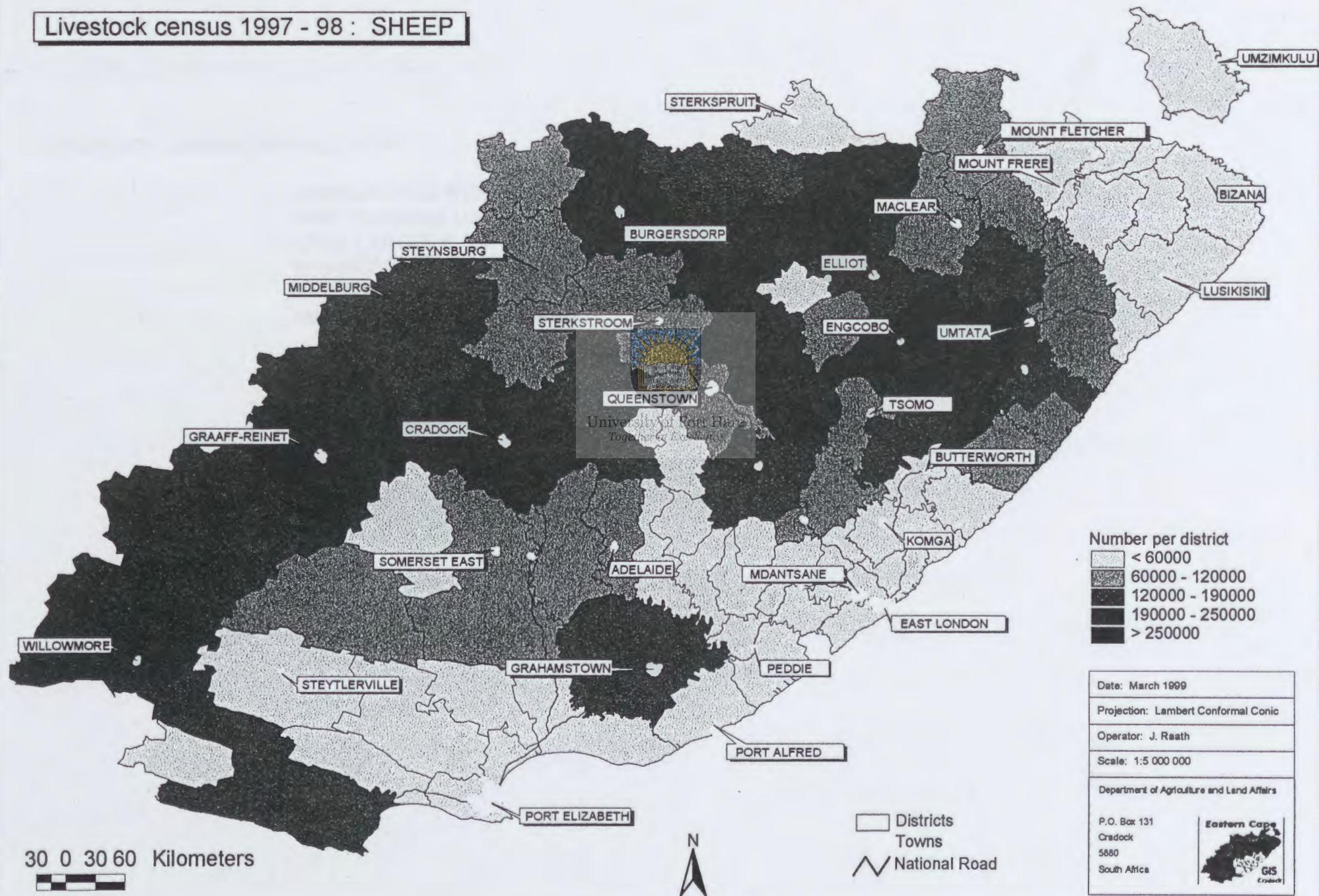


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30 0 30 60 120 180 240 300 360

# Livestock census 1997 - 98 : SHEEP




Number per district

- < 60000
- 60000 - 120000
- 120000 - 190000
- 190000 - 250000
- > 250000

Date: March 1999  
 Projection: Lambert Conformal Conic  
 Operator: J. Raath  
 Scale: 1:5 000 000

Department of Agriculture and Land Affairs

P.O. Box 131  
 Cradock  
 5880  
 South Africa



30 0 30 60 Kilometers




Districts  
 Towns  
 National Road

44

### LIVESTOCK CENSUS 1997-98 GOATS

GOATS IN THE WESTERN REGION ARE PRIMARILY FOR HIGH QUALITY MOHAIR AND COMMERCIAL MEAT, WHILE IN THE EASTERN AREAS THE GOATS ARE USED LARGELY WITHIN THE SUBSISTENCE FARMING SYSTEM. BASED ON THE NUMBERS PER DISTRICT THERE IS A GREAT POTENTIAL TO IMPROVE THE ECONOMIC PRODUCTION FROM GOATS IN THE EASTERN AREAS FOR FIBRE, MEAT AND MILK PRODUCTS.

CORRECT PLANNING OF AGRICULTURAL ENTERPRISES BASED ON THE POTENTIAL OF THE NATURAL RESOURCES, WILL ENABLE AND INCREASE IN THE ECONOMIC PRODUCTION FROM AGRICULTURE, TO OCCUR WITH OUT DEGRADATION OF THE NATURAL ENVIRONMENT.



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Numbers per district

0 - 5000
5000 - 10000
10000 - 15000
15000 - 20000

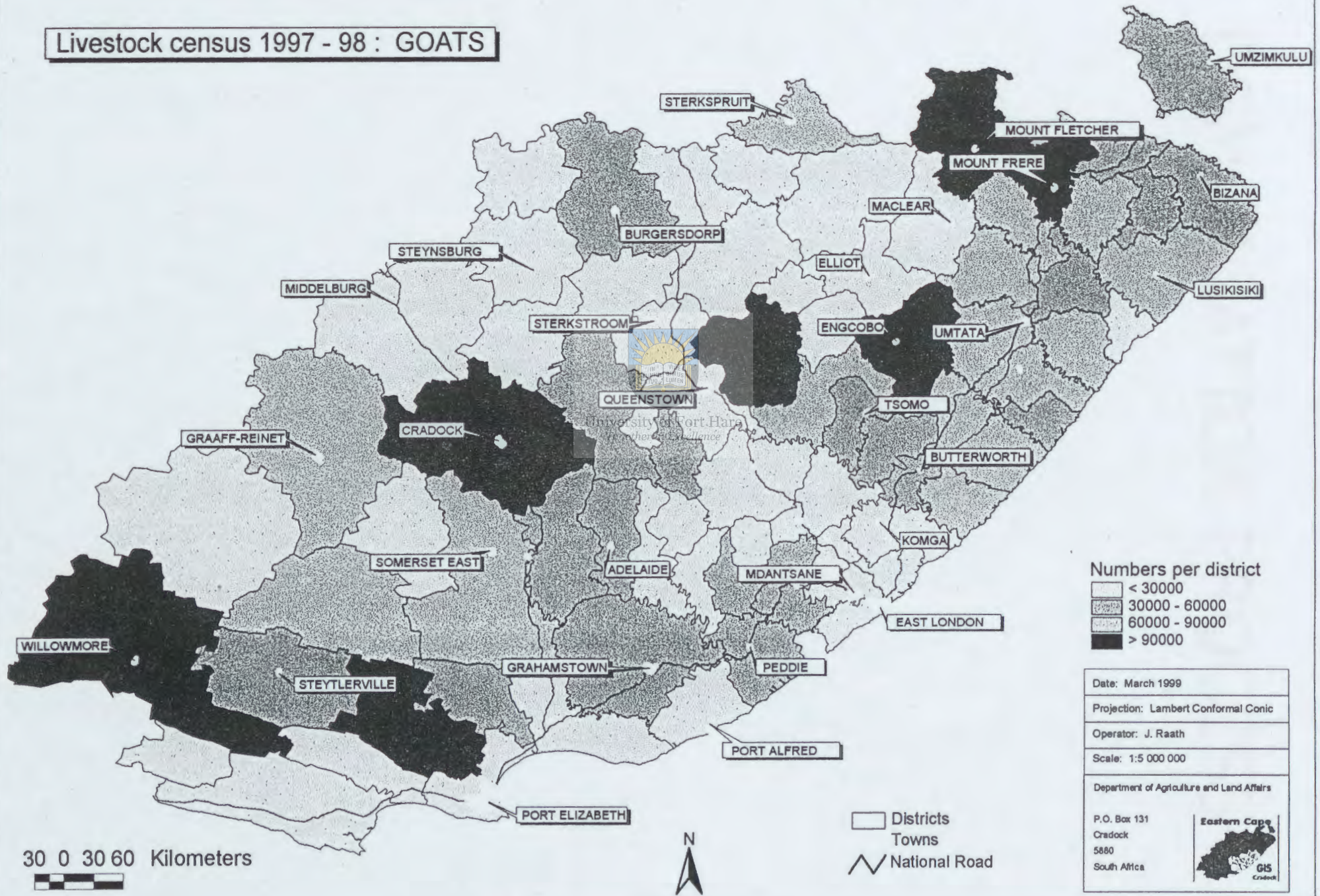
Map Scale

0	1000	2000	3000	4000	5000
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Map Legend


State	Local Government Area
Major Road	Minor Road
Water Body	Settlement

# Livestock census 1997 - 98 : GOATS



Numbers per district

- < 30000
- 30000 - 60000
- 60000 - 90000
- > 90000

Date: March 1999
Projection: Lambert Conformal Conic
Operator: J. Raath
Scale: 1:5 000 000
Department of Agriculture and Land Affairs
P.O. Box 131 Cradock 5880 South Africa


30 0 30 60 Kilometers




Districts  
 Towns  
 National Road

# DEMARCATIION PROCESS

MEMORANDUM

TO : ALL PERMANENT MEMBERS

FROM : PERMANENT SECRETARY  
HUMAN AND LOCAL GOVERNMENT

SUBJECT : DEMARCATIION



University of Fort Hare  
*Together in Excellence*

PROVINCE OF THE EASTERN CAPE  
DEPARTMENT OF HOUSING AND  
LOCAL GOVERNMENT

**MEMORANDUM**

TO : THE MEMBERS OF THE EXECUTIVE

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**TO : ALL PERMANENT SECRETARIES**

**FROM : PERMANENT SECRETARY  
HOUSING AND LOCAL GOVERNMENT**

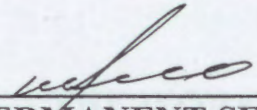
**SUBJECT : DERMACATION FILE**

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Attached hereto is the information on the dermacation process that is forwarded for your information.



Please retrieve the Municipal Structures Act, 1998 (Act No. 117 of 1998) and the Dermacation Act, 1998 (Act No. 27 of 1998) from Inter-Net.

  
**PERMANENT SECRETARY**

2000-1-12  
**DATE**

**PROVINCE OF THE EASTERN CAPE  
DEPARTMENT OF HOUSING AND  
LOCAL GOVERNMENT.**

**TO :** *THE MEMBERS OF THE EXECUTIVE  
COUNCIL AND STANDING COMMITTEE  
FOR LOCAL GOVERNMENT.*

**FROM :** *THE MEC FOR HOUSING AND LOCAL  
GOVERNMENT.*

**SUBJECT:** *UPDATE REPORT - THE DEMARCATION  
PROCESS.*

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**1. PURPOSE.**

This submission serves as an up-date report on the Demarcation process for the information of the Members of the Executive Council and Members of the Standing Committee for Local Government.

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**2. BACKGROUND.**

This report is a continuation of the implications of the demarcation process in the Province of the Eastern Cape.

**2.1 THE WORK PROGRAMME OF THE DEMARCATION BOARD.**

• **CATEGORY A (METRO) AND C (DISTRICT) MUNICIPALITIES**

In view of the judgement passed on 15 October 1999 by the Constitutional Court, on the constitutionality of certain provisions of the Municipal Structures Act, 1998, the Board decided to re-do some of the actions required by the demarcation process to ensure the validity of their legal consequence. 2/.....

At a Board meeting held on 18 November 1999, it was determined that the Greater Port Elizabeth area would be a category A Metropolitan Council. In addition the Board also determined the boundaries of all Category C municipalities and a Section 21 notice to this effect was published in the *Provincial Gazette* on 22 November 1999. The latest determination combines DC 10 and DC 11 into one District Municipality with the exclusion of Middelburg and Cradock Transitional Local Councils, which is now included into DC 13. In addition Elliot TLC has been excluded from DC 14 and included into the area of jurisdiction of DC 13 and Cathcart TLC excluded from DC 13 and included into DC 12.

In summary the Province of the Eastern Cape will have one Metropolitan Council and six District Councils, one of which is included in the Cross Boundary District Council proposal with Kwa-Zulu Natal. Maps are enclosed as item 4.2.

Summary Evaluation Report, of Category A and C submissions, is enclosed as "Annexure A" of the attached addendum.

• **CATEGORY B (LOCAL) MUNICIPALITIES.**

On 11 October 1999 the demarcation Board published a Section 26 notice of their intention to determine the boundaries of all category B municipalities. Comments and views were invited over the next 21 days, which ended on 1 November 1999.

The Board has made available its views on draft boundaries for Category B municipalities. The Board proposed that between 40 to 45 category B municipalities would be established in the Province of the Eastern Cape. These have been published and sent to affected municipalities during the week beginning 22 November 1999. Enclosures 4.1 and 4.3 refer.

The Board has conducted 23 public hearings into the proposed boundaries in the Province of the Eastern Cape as from 29 November 1999 to 3 December 1999. 3/.....

Summary Evaluation Report on the Section 26 submissions is enclosed as "Annexure B" of the attached addendum. (Cat. B)

The Demarcation Board has determined the boundaries of thirty-seven Category B municipalities and a Section 21 notice to this effect was published on 20 December 1999. The Board's determination in respect of the foregoing category B municipalities has been compiled into one document and is enclosed as item 4.5 for easy reference.

The public is invited to object to the Board's determination of Category B municipalities within 30 days. (18 January 2000.)

- **DISTRICT MANAGEMENT AREAS. (DMA)**

The Board has decided that the following areas could qualify to be categorised as DMAs namely:

- Deserts and semi-arid areas.
- State protected and conservation areas
- Special Economic Areas.

Policy on DMA's is attached as Annexure C of the addendum.

- **DRAFTING OF SECTION 12 ESTABLISHMENT NOTICES FOR EACH NEW MUNICIPALITY DEMARCATED BY THE BOARD.**

The Demarcation board has been requested to provide draft Section 12 proclamations, in respect of each new municipality that must be established, to the MEC's concerned. The Board's terms of reference and proposed modus operandi is enclosed as item 4.7.

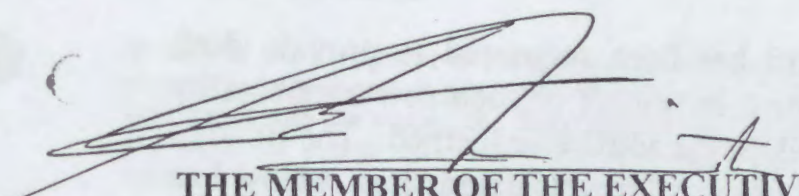
In preparation for the establishment process the Demarcation Board has developed a plan consisting of 6 phases, namely:

- Phase 1: Modelling functions, powers, finances and administration capacity.
- Phase 2: Setting up Transitional committees.
- Phase 3: Testing the split of functions and powers. 4/...

- Phase 4: Provincial inputs on types, names and number of councillors.
- Phase 5: Drafting of Establishment Proclamations.
- Phase 6: Drafting proforma By-laws.

#### 4. ENCLOSURES.

- 4.1 Determination of Category A (Metropolitan) and Category C (District) Council Boundaries, the Publication of Draft Boundaries for Category B (Local) municipalities and the Board's approach to District Management Areas. Document dated 18 November 1999.
- 4.2 Maps on which the latest Metropolitan and District Council boundaries are depicted.
- 4.3 Circular issued by the Demarcation Board dated 22 November 1999.
- 4.4 Itinerary of meetings scheduled by the Demarcation Board during 29 November 1999 to 3 December 1999.
- 4.5 Summary of the boundaries in respect of category B municipalities, as determined by the Demarcation Board on 20 December 1999.
- 4.6 Statistical information in relation to the category B municipal boundaries dated 21 December 1999.
- 4.7 Drafting of Notices in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 – DRAFT.
- 4.8 Addendum of additional documentation.



**THE MEMBER OF THE EXECUTIVE COUNCIL.  
DEPARTMENT OF HOUSING AND LOCAL GOVERNMENT.**

**DATE:** 22/12/1999



## MUNICIPAL DEMARCATION BOARD

Pretoria Office: iParioli, Ground Floor, Block B2, 1166 Park Street, Hatfield.  
Postal Address: Private Bag X28, Hatfield 0028  
Phone: 012 3422481 Fax: 012 3422480

# CATEGORY A (METROPOLITAN) & C (DISTRICT) SUBMISSIONS SUMMARY EVALUATION

## 1. INTRODUCTION



This report provides a brief overview of all submissions received by the demarcation Board regarding Category A and C boundaries. Submissions are assessed according to province and through a brief evaluation per district council.

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Category A and C submissions have been received by the Board, specifically in response to the following processes:

- the publication of a general framework on nodal points for District and Metropolitan areas on the 28th June 1999, and a call for submissions in response to this framework,
- the publication of a Section 26 Notice on the 10th August 1999, and a call for submissions in response to the proposed Category A & C boundaries, and
- the publication of a Section 21 Notice and a call for objections to the proposed Category A and C boundaries.

In view of the judgement of the Constitutional Court on 15 October 1999, pertaining to the constitutionality of certain provisions of the Municipal Structures Act, 1998 and after obtaining legal advice on the matter, the Board decided to again publish a Section 26 notice to invite the public to submit their views and representations to the Board on the boundaries of categories A and C municipalities.

The Board further decided to combine the Section 21 objections received with other submissions as it would be necessary to publish another Section 21 notice after the second Section 26 notice. Re-determinations will be completed towards the end of 1999.

Criteria outlined below were established in order to ensure consistency in the evaluation:

**Table 1 - Evaluation Criteria for Submissions**

Category	Type	Criteria
1	Non Compliant Submission	<ul style="list-style-type: none"> <li>No or very little data provided</li> <li>Unjustified arguments</li> <li>No or very limited application of Section 24 and 25 municipal demarcation criteria</li> <li>No or very limited compliance to national framework for category A &amp; C boundaries</li> </ul>
2	Technical Information Submission	<ul style="list-style-type: none"> <li>Contains useful information for demarcation purposes</li> <li>But insufficient application of the section 24 and 25 demarcation criteria</li> <li>Insufficient argument provided</li> <li>Does not conform to the national framework</li> </ul>
3	Compliant Submission	<ul style="list-style-type: none"> <li>Good application of the Section 24 and 25 criteria</li> <li>Contains useful and verifiable data</li> <li>Difficult to provide a counter argument</li> <li>Conforms to the national framework</li> </ul>
4	Other	<p>Category 1-3 do not apply</p> <p>Organisations such as Ratepayers who do not have access to technical information but have attempted to provide a rational argument</p> <ul style="list-style-type: none"> <li>Limited compliance to the national framework</li> </ul>

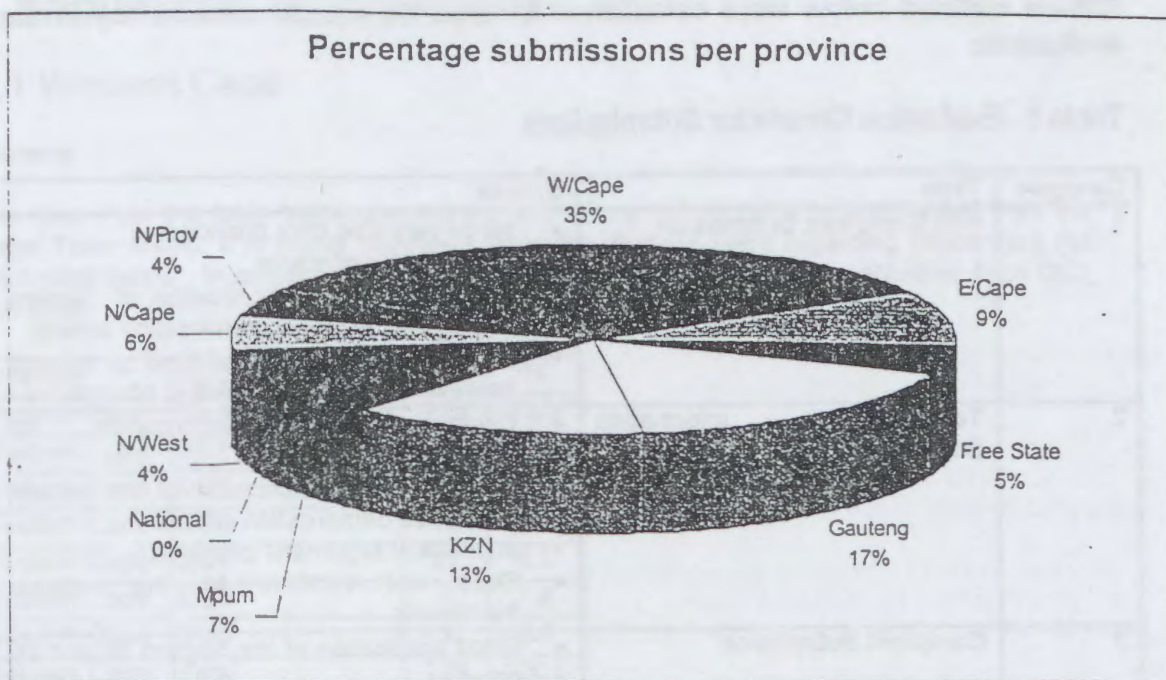
The report will provide a national overview followed by an evaluation per province and district council area.

## 2. NATIONAL OVERVIEW

As at the 15<sup>th</sup> November 1999, 827 Category A and C submissions were received by the Demarcation Board. Of these, 525 were nodal or boundary submissions and 302 were submitted as objections.

### 2.1 Assessment of Submissions Received Per Province

As is illustrated by the figure below, the amount of submissions received varied from province to province. The greatest number of submissions were received from the Western Cape with 35% (279 submissions), followed by Gauteng with 17% (139 submissions), and KwaZulu/Natal with 13% (110 submissions). The percentage of submissions received drops significantly from here with the Eastern Cape accounting for 9% (78 submissions), Mpumalanga accounting for 7% (62 submissions), the Northern Cape accounting for 6% (49 submissions) and the Free State accounting for 5% (41 submissions). The Northern Province accounted for 4% (35 submissions) and the North West for 4% (31 submissions).



## 2.2 Assessment of Submissions Received Objecting to Category A and C Boundaries



Of the 302 objections, it is important to note that 181 objections were received from Helderberg, 33 from Midrand and 5 from Centurion. Although recorded separately when received by the Board it is significant that most submissions received from these three areas were single line e-mails or single line copies faxed through to the Board with no substantiation of the objection.

In most cases the most contentious of submissions were captured in the objections database. Each objection to a proposed boundary was carefully analysed and, if warranted, an investigation was ordered. Of the 302 objections, approximately 83 warranted further analysis and of these, a total of 16 investigations were ordered into the following areas:

- Objection to Cala in DC13 (Cala Local Council),
- Objection to Kwahozha Traditional Authority in DC29 (Mandeni Local Council),
- Objection to the inclusion of Giyani and Malamulele in DC34 (Mhinga Royal Palace),
- Objection to the splitting of WD6 into DC10 and DC11 (Somerset East),
- Object to the splitting of the Sithole and Ingwe Traditional Authorities in DC23 and DC24 (Uthukela),
- Objection to the inclusion of Helderberg into Cape Town Metro,
- Objection to the inclusion of Midrand into Johannesburg Metro,
- Objection by the Western Cape Ministry into the demarcation of various small parcels of land,
- Objection to the exclusion of Weza from Harding in DC21 (Alfred County Farmers Association),
- Objection to currently proposed boundaries of Bushbuckridge,
- Objection to the exclusion of Cottonlands from Durban Metro (Cottonlands Community),
- Objection to the exclusion of Herschel (Herschel Democratic Party) from the Free State,
- Objection to Naboomspruit's exclusion from DC36 (Naboomspruit TLC/ ANC),
- Objection to the exclusion of Tiyani from DC34 (Tiyani TLC), and
- Objection to the inclusion of Wepener in DC16 (Wepener TLC).

### 3. PROVINCIAL EVALUATIONS

#### 3.1 Western Cape

##### General

It is clear from the table below that the majority of the submissions received were from the Cape Town Metro. It is highly significant that 181 of these were regarding Helderberg (as discussed below). In addition, a significant number of submissions were obtained from DC2 and DC4.

Province	DC	Total	%
Western Cape	Cape Town Metro	210	75.3
Western Cape	DC1	7	2.5
Western Cape	DC2	23	8.2
Western Cape	DC3	10	3.6
Western Cape	DC4	23	8.2
Western Cape	DC5	5	1.8
Western Cape	DC6	1	0.4
Western Cape	Total	279	100.0

##### Cape Town Metro

A total of 181 objections were received objecting to Helderberg's inclusion in the Cape Town Metro. Most of these submissions were single line e-mails or faxes simply stating opposition to Helderberg's inclusion in the Cape Town Metro. However, it was decided that it would be strategic for the Board to order an investigation into the Helderberg issue to ensure that research would be available to back the Board's decision.

A number of submissions were received from stakeholders regarding other issues such as boundary alignments, particularly given that the Board had synchronised its boundaries with the cadastre. It seems there is clear evidence to realign the proposed boundary to the existing municipal boundary but to include the Kuils River magisterial area.

District Council	Category 1	Category 2	Category 3	Category 4
Cape Town Metro	4	15	5	186

##### District Council 1

One of the most significant submission regarding DC1 was the Western Cape Provincial Government's request that 2 small areas on the Northern Cape boundary be investigated for inclusion/ exclusion into/ out of the Western Cape, the most significant area being Lepelsfontein, which is in the Northern Province. An investigation was ordered but was inconclusive. Weighing up the facts, a boundary change does not seem warranted.

District Council	Category 1	Category 2	Category 3	Category 4
DC1	3	2	0	2

##### District Council 2

There was a significant response from DC2. Most submissions requested a maintenance of the status quo, especially regarding the Winelands DC. There was some apprehension stated that the proposed changes would harm the local economy. However, as indicated below there were no submissions which made a compelling case for changes to the proposed boundaries taking the demarcation criteria into account.

District Council	Category 1	Category 2	Category 3	Category 4
DC2	10	11	0	2

### District-Council 3

A number of submissions objected to changing the status quo of the Overberg DC and many of these objected to the placing of the node of DC3 at Swellendam, as the previous node of the Overberg DC was Bredasdorp. This could be attributed to local stakeholders wanting to maintain the *status quo* and a fear of incurring expenses if the headquarters was moved to Swellendam. Some stakeholders, such as those in Gansbaai, Caledon, Grabouw, Hermanus and Bredasdorp, felt that increasing their distance from the DC node would put them at a considerable disadvantage. However, it should be noted that the issue of headquarters is not a matter the Board pronounces on.

Stakeholders in Caledon and the Caledon TLC also proposed that the DC node be at Caledon. Again, this could be attributed to a perception that the DC node brings with it significant resources.

The Barrydale TLC is currently located in DC2. During the category B modelling, it was apparent that it would be more appropriate to locate Barrydale in DC3 as it functionally relates to Swellendam thereby forming a single category B municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC3	2	5	2	1



### District Council 4

There was a significant response from DC4. While some submissions called for a maintenance of the status quo it is significant that the majority called for a merging of previous DCs, specifically the Klein Karoo and South Cape DCs. In effect DC4 acted in large part to bring these proposals about.

District Council	Category 1	Category 2	Category 3	Category 4
DC4	4	16	0	3

### District Council 5

Most submissions from DC5 requested the maintenance of the Central Karoo DC. This was largely achieved.

District Council	Category 1	Category 2	Category 3	Category 4
DC5	0	5	0	0

### Conclusion: Demarcating Feasible District Councils

Most submissions from DCs or stakeholders wish to maintain the *status quo*. In most cases the *status quo* was maintained by the Board's recommendations, such as with DC1, DC3 and DC5. However, DC2 is made up of the previous Winelands and Breede River DCs, while DC4 is made up of the previous South Cape and Klein Karoo DCs. As with the Overberg (discussed above), amalgamating the South Cape and Klein Karoo DCs resulted in some controversy. Submissions requesting the status quo remain were received from, among others: South Cape DC, Knoetzie Local Council,

Significantly, some stakeholders were in favour of uniting the Klein Karoo and South Cape DCs, such as the Knysna TLC or the George TLC, which is currently split between the Southern Cape and Klein Karoo DCs. Again, it is clear from the Demarcation Criteria that a holistic view of a variety of factors is taken into account when demarcating DC boundaries, not least of these in the cases of DCs 2 and 3, an inclusive tax base and the financial viability of a municipality.

District Council	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6	Category 7	Category 8	Category 9	Category 10	Category 11	Category 12	Category 13	Category 14	Category 15	Category 16	Category 17	Category 18	Category 19	Category 20	
Category 1	1																				
Category 2		1																			
Category 3			1																		
Category 4				1																	
Category 5					1																
Category 6						1															
Category 7							1														
Category 8								1													
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Category 10										1											
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Category 20																				1	



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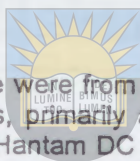
## 3.2 Northern Cape

### General

Similar to the Category B boundary process, most of the submissions from the Northern Cape came from DC6, followed by DC 7. This was to be expected, given that areas such as Hantam and the Karoo, which are the two district councils actively participating in the demarcation process.

Province	DC	Total	%
Northern Cape	DC6	18	36.7
Northern Cape	DC7	14	28.6
Northern Cape	DC8	7	14.3
Northern Cape	DC9	6	12.2
Northern Cape	CBDC1	4	8.2
Northern Cape	Subtotal	49	100.0

### District Council 6



36% of submissions in the Northern Cape were from DC6. Hantam DC objected strongly to the proposed boundary recommendations, primarily as the recommendations would act to dissolve the DC, the existence of which, Hantam DC argues, is critical to the economic and functional well-being of the entire area. Added to which, Calvinia would no longer be the administrative node of the DC. Many other stakeholders in the area stated agreement with Hantam DC. These included: Sakrivier Council, Spitsberg Council, the Freedom Front,

There were, however, submissions from other stakeholders which disagreed with Hantam DC, such as the submissions from the Namakwaland DC and the Niekershoop TLC which argued that Hantam DC was unsustainable and proposed that Orange River, Hantam and Namakwaland should be placed within one DC.

District Council	Category 1	Category 2	Category 3	Category 4
DC6	9	6	0	3

### District Council 7

Most of the submissions from DC7 called for the status quo to remain and expressed concern that the existing DCs in the area would no longer exist for similar reasons as in DC7. There were a number of objections received, namely from Hopetown Municipality, Kuruman Farmers Union, Niekershoop Municipality and Prieska Municipality. However, there were found to be insufficient grounds to consider changing proposed boundaries.

District Council	Category 1	Category 2	Category 3	Category 4
DC7	7	2	0	5

## District Council 8

Submissions from DC8 centred on proposing the retention of the Kalahari DC boundaries. An objection from the Kalahari DC / PPC Lime is currently under consideration. The objection proposes the inclusion of Danielskuil, Postmasburg and Lime Acres in DC7 (the areas are presently in DC8). Members of the Board will meet the affected parties shortly. A way forward will be decided on hereafter.

District Council	Category 1	Category 2	Category 3	Category 4
DC8	3	3	0	1

## District Council 9

The submissions are similar to those received from DC8 and DC9 requesting that the status quo is maintained

District Council	Category 1	Category 2	Category 3	Category 4
DC9	1	4	0	1

## CBDC1

Again the preference in the submissions is to maintain the status quo. The purpose of the CBDC is questioned.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC1	1	2	1	1

## Conclusion

While the Hantam DC and Kalahari DC issues dominated the submissions, a significant number of stakeholders expressed concern at the proposed decreasing of DCs in the province. These included most of those supporting Hantam DC.

However, by and large the proposed boundaries seemed to be well accepted by the majority of stakeholders.

## 3.3 Eastern Cape

### General

The most significant number of submissions in the Eastern Cape were received from DC10, the DC containing Port Elizabeth.

The ANC and the Department of Housing and Local Government proposed maintaining the *status quo* or re-demarcating on the basis of financial viability. But it was clear to the Demarcation Board that the *status quo* was unsustainable, especially given the distances within the current districts and ongoing sustainability problems. Also, while financial sustainability is critical to the sustainability of a DC, it is not the only criteria for consideration - the Board has already noted that other sources of finance must be explored to sustain local government.

Province	DC	Total	%
Eastern Cape	DC10	21	26.9
Eastern Cape	DC11	4	5.1
Eastern Cape	DC12	17	21.8
Eastern Cape	DC13	8	10.3
Eastern Cape	DC14	6	7.7
Eastern Cape	DC15	13	16.7
Eastern Cape	CBDC 5	9	11.5
Eastern Cape	subtotal	78	100.0

#### District Council 10

The PE TLC and stakeholders in Uitenhage were of the opinion that PE should be declared a metro (or Category A municipality). It was suggested in the Uitenhage submission that the metro be made up of PE, Uitenhage and Dispatch. PE is currently being considered for Category A status and an investigation is pending.

A significant number of submissions raised concerns over the splitting of the Western DC and appealed that the status quo be maintained. The formation of DC10 and DC11 will mean the splitting of Western DC. Western DC expressed opposition to the recommendations arguing that there was a need to maintain the existing tax base within the Western DC, not least to cross-subsidise the entire area. However, further investigation by the Board established that the viability of both DC10 and DC11 would be assured by the new boundaries.

District Council	Category 1	Category 2	Category 3	Category 4
DC10	6	8	3	4

#### District Council 11

The submissions from DC11 expressed a wish to maintain the status quo. However, there was found to be inadequate grounds to make boundary changes in this regard.

District Council	Category 1	Category 2	Category 3	Category 4
DC11	0	3	0	1

#### District Council 12

In many cases the recommendation of boundaries coincided with those proposed in submissions. The East London Council proposed that a DC should be formed around East London, King Williams Town, Komga and Stutterheim. This is the same as the proposed boundaries for DC12.

District Council	Category 1	Category 2	Category 3	Category 4
DC12	5	9	0	3

#### District Council 13

Submissions were received from Steynsburg, Hofmeyr and Molteno expressing a desire to be included in DC13 because of strong functional linkages to DC13 and a lack of linkages to DC14. An investigation by the Board found merit in the claim. The investigation also felt that with the lack of other significant settlements DC13 would

be too reliant on Queenstown. The boundary was therefore changed to include Motteno and Hofmeyr, but not Steynsburg.

Cala TLC objected to its inclusion in DC13 and wanted to be moved to DC14 primarily because of investments in infrastructure and also because Cala is closer to the node of DC14. After due consideration an investigation was ordered. However, the investigation found that while Cala made a strong case, there were insufficient grounds to change the boundary and include Cala in DC14.

District Council	Category 1	Category 2	Category 3	Category 4
DC13	1	5	2	0

#### District Council 14

The Democratic Party in Herschel requested that Herschel become part of a CBDC in DC14 and 18. An investigation into the issue found that the core issue was that Herschel wished to become part of the Free State Province. The investigation concluded there were insufficient grounds to justify a CBDC and that the issue should be investigated by the two respective provincial governments.

The Allwal Business Association proposed that the natural boundaries be followed when finalising boundaries, especially in DC14. However, a holistic assessment of all demarcation criteria has to be followed – natural boundaries are only one consideration.

District Council	Category 1	Category 2	Category 3	Category 4
DC 14	2	3	0	1

#### District Council 15

The Qumbu Council proposed the inclusion of Umtata, Xhoro, Encobob, Mqandli, Libode, Ngqeleni, Tsolo, Qumbu, Port St Johns in one DC. This was largely achieved by the establishment of DC15.

It is clear that changes are necessary in DC15.

District Council	Category 1	Category 2	Category 3	Category 4
DC 15	3	6	2	2

#### CBDC 5

A significant number of submissions from CBDC5 requested that the Wild Coast DC boundaries remain. However, there was also significant support in the submissions for CBDC5.

An amendment is recommended on the southern boundary of CBDC5 in the Ixopo sub region. A number of traditional areas are located immediately south of the boundary and due to topographical constraints, the communities tend to relate more toward Ixopo rather than the coastal towns.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC 5	2	3	3	1

### 3.4 Free State

#### General

The Free State provided a relatively even spread of submissions from across the province. Many Free State stakeholders expressed concern over reports of the Demarcation Board's proposed increase of DCs from 4 to 6. Stakeholders included the New National Party, Bothaville/ Khotsong TLC and Reitz/ Petsana TLC. Criticism was

based mainly on the fear that more DCs would be financially unsustainable. The Bothaville/ Khotsong submission stated that there are only two viable DC areas: Bloemfontein and Welkom, and possibly Kroonstad and Bethlehem.

In a similar vein Venterstad, the Northern Free State DC and the Goldfields DC proposed that the boundaries remain the same.

While perceived financial sustainability is critical to the long term sustainability of DCs, one cannot presume that simply because there will be more DCs that they will be financially unsustainable. An investigation of a range of variables must be carried out along with a projection of probable income and costs in these DCs.

Apart from the fact that 5 and not 6 DCs were recommended, the Board was also confident that the proposed DCs would all be financially sustainable taking into account probable income and expenditure. Added to this the recommended 5 DCs fulfilled the range of demarcation criteria.

Province	DC	Total	%
Free State	DC16	8	19.5
Free State	DC17	9	22.0
Free State	DC18	10	24.4
Free State	DC19	8	19.5
Free State	DC20	6	14.6
Free State	Sub Total	41	100.0

#### District Council 16



There was acceptance of the proposed boundary recommendations among stakeholders but a general concern about the financial viability of DC16 without Bloemfontein, especially from the Bloem Area DC. The Board is, however, confident that DC16 is sustainable without Bloemfontein.

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District Council	Category 1	Category 2	Category 3	Category 4
DC16	2	4	0	2

#### District Council 17

The Bloemfontein City Council and other Bloemfontein stakeholders proposed that Bloemfontein should be considered as a metro. However, Bloemfontein does not fulfil the criteria to be declared a Category A municipality, neither would it be sustainable as a metro at this stage of its development.

As an alternative the Bloemfontein City Council proposed that Bloemfontein, Thaba Nchu, and Botshabelo be considered as the core of a DC. This proposal is largely met with the formation of DC17.

District Council	Category 1	Category 2	Category 3	Category 4
DC17	3	5	0	1

#### District Council 18

DC18 consists largely of the old Goldfields DC. Some submissions from councils requested they be in a DC with Bloemfontein but this is clearly unrealistic. It seems that most submissions accepted and agreed with being placed with the Goldfields DC core.

District Council	Category 1	Category 2	Category 3	Category 4
DC18	3	5	0	2

#### District Council 19

Stakeholders in Ficksburg, i.e. Ficksburg TLC and the Ficksburg Business Association were concerned that the functional integrity of their region should be maintained. They recommended that Clocolan, Rosendal, Marquard and Fouriesberg be incorporated with

Ficksburg in a DC. The recommendations of the Board were the same and these areas are proposed to be included in DC 19

District Council	Category 1	Category 2	Category 3	Category 4
DC19	3	5	0	0

#### District Council 20

Parys Municipality prepared a substantial submission. Their underlying concern was that DCs should be financially and economically sustainable.

District Council	Category 1	Category 2	Category 3	Category 4
DC20	1	3	0	2

### 3.5 KwaZulu/ Natal

#### General

KwaZulu/ Natal has ten proposed DCs - more than any other province. This is largely due to its population density and the fact that in terms of the Demarcation Board's interpretation of the demarcation criteria it was deemed necessary.

The KwaZulu/ Natal provincial government suggested that proposed DCs should be decreased from 10 to 8 to strike a balance between the size and accessibility of DCs and their viability and sustainability within the confines of limited resources and capacity. While these are critical considerations and part of the criteria determining demarcation, they do not describe the range of factors and must also be weighed up against other criteria. To this end, the Board maintains that ten DCs are needed in this province.

Province	DC	Total	%
KwaZulu Natal	Durban Metro	23	20.9
KwaZulu Natal	DC21	11	10.0
KwaZulu Natal	DC22	17	15.5
KwaZulu Natal	DC23	9	8.2
KwaZulu Natal	DC24	6	5.5
KwaZulu Natal	DC25	3	2.7
KwaZulu Natal	DC26	15	13.6
KwaZulu Natal	DC27	2	1.8
KwaZulu Natal	DC28	6	5.5
KwaZulu Natal	DC29	12	10.9
KwaZulu Natal	CBDC5	6	5.5
KwaZulu Natal	Sub Total	110	100.0

#### Durban Metro

There was significant opposition to the enlargement of the Durban Metro area. Most notably, the New National Party (NNP) and the Democratic Party (DP) took issue with the Board's proposals to enlarge the boundaries of Durban to include surrounding areas. A key criticism of the proposal from the NNP was that there was no investigation into the financial viability of a significantly larger Metro and doubts over the Metro's ability to increase service delivery to accommodate the new areas. Similarly, the DP expressed doubts about the Metro's ability to deliver services to the increased area, especially as they asserted that the cost of service delivery from the Metro to these areas would be higher than from DC level.

These assertions were largely unsubstantiated with no evidence or projections of how the proposed Metro area would be either financially unviable or unable to sustain service delivery. Added to this, while financial viability and sustainable service delivery are key demarcation criteria they are not exclusive of a range of other important criteria that have to be considered in the demarcation process.

A key consideration of the Board was that the surrounding traditional areas were functionally linked to Durban and cannot be divided out from it. Neither would it be possible to divide existing traditional boundaries (another key factor in the demarcation criteria).

However, on further investigation it is clear that some boundary changes to Durban Metro are necessary. A realignment of the Durban Metro boundaries will be finalised by the Board.

A key objection received regarding Durban Metro was Cottonlands which lies north of Durban on the boundary in DC29. An investigation into its possible inclusion into Durban Metro was ordered and the investigation found that the Board should seriously consider including Cottonlands in Durban Metro.

District Council	Category 1	Category 2	Category 3	Category 4
Durban Metro	8	11	3	1

#### District Council 21

Ugu RC expressed dissatisfaction with the proposed boundaries of DC21, arguing that the current boundaries are preferable. It was difficult to ascertain the validity of this claim or come up with an alternative scenario.

Two significant objections were received from the Embo Thimuni Traditional Authority and the Vumukwenza Traditional Authority. Both objected to being in DC21 and expressed a desire to be in DC22. The viability of both claims are currently being ascertained.

See the discussion of Weza below in CBDC5.

District Council	Category 1	Category 2	Category 3	Category 4
DC21	4	6	0	1

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#### District Council 22

There were a number of submissions from the iNdllovu area that called for the maintenance of iNdllovu with differing variations, these included submissions from: iNdllovu RC, Ashburton Council, and others.

However it was not possible to ensure a functional DC in DC22, Durban Metro, the adjoining cross boundary DC (CBDC5), whilst keeping iNdllovu DC intact.

District Council	Category 1	Category 2	Category 3	Category 4
DC22	2	13	0	2

#### District Council 23

A number of submissions called for the status quo to be maintained, especially in regard to the Uthukela RC.

Ladysmith TLC contended that while the nodal points of DC23 are at Escourt/ Wembezi, they should be at Ladysmith/ Emnambithi, because of higher population densities, its role as a central conurbation, and the fact that it is an economic base. However, Ladysmith may be slightly biased in this regard. The submission from the Regional Consultative Forum on Rural Development concurred, pointing out that current transport networks and activities are based in Ladysmith.

A significant submission was received from the Uthukela RC objecting to the eastern boundary of DC23 as it cuts through the traditional areas of both the Sithole and Ingwe tribes and divides traditional authority areas between DC23 and DC24. The investigation into this objection found that the eastern boundary of DC23 seemed for the most part to be correctly drawn. It did however note that the GIS/ cadastral detail should be checked to ensure that traditional boundaries were not split.

District Council	Category 1	Category 2	Category 3	Category 4
DC23	2	6	1	0

#### District Council 24

A small number of submissions were received from DC24 and while two of these were objections neither was found to be substantial.

District Council	Category 1	Category 2	Category 3	Category 4
DC24	4	0	0	2

#### District Council 25

Only three submissions were received from DC25 and none led to the Board considering boundary changes.

District Council	Category 1	Category 2	Category 3	Category 4
DC25	3	0	0	0

#### District Council 26

Many stakeholders called for the inclusion of Vryheid in the previous Zululand area so as to strengthen this DC - submissions received included those from Wartburg TLC and Zululand RC. These views were accommodated as the boundary was moved to include Vryheid in DC26, along with Paulpietersburg, Scheepersnek, Calevert, and Lenjanedrif.

Vryheid's proposal that yet another DC be formed with it as the node was considered unrealistic.

District Council	Category 1	Category 2	Category 3	Category 4
DC26	4	9	2	0

#### District Council 27

Only two submissions were received for DC27 and while both contained useful technical information which the Board has noted, no boundary changes were considered.

District Council	Category 1	Category 2	Category 3	Category 4
DC27	0	2	0	0

#### District Council 28

Although Richards Bay TLC wished to be considered as a Metro this was thought to be unfeasible by the Board.

Uthungulu RC expressed a wish to maintain the status quo but this was also thought to be unfeasible.

District Council	Category 1	Category 2	Category 3	Category 4
DC28	3	3	0	0

#### District Council 29

A number of submissions were received calling for the Ilembe RC to remain unchanged. Submissions to this effect were received from the Ilembe RC, KwaDukuza/ Stanger, Mandeni and others.

Variations of the existing Ilembe RC were suggested. The submission from Mandeni TLC proposed that the new DC should include: Mandeni, KwaDukuza/ Stanger and Dolphin Coast,

which is in line with what the Demarcation Board proposed. But it also proposed that the DC comprise all areas in Ilembe DC without providing substantiation for this. To a great extent DC29 meets these proposals.

At a later stage an objection was received from Mandeni, proposing that the Kwahoza Traditional Authority be moved from DC29 to DC28. An investigation into the issue found, however, that the Kwahoza Traditional Authority is strongly linked to the Inkanyezi Traditional Authority and further that in terms of potential linkages in the local economy, the Kwahoza Traditional Authority stand to gain more from their current position in DC29 than moving to DC28.

District Council	Category 1	Category 2	Category 3	Category 4
DC29	2	9	0	1

#### Cross Boundary District Council 5

The Alfred County Farmers Association objected to the exclusion of Weza and adjoining farms (currently in CBDC5) from Harding in DC21 because of functional links between Weza and Harding. An investigation was ordered and the investigation recommended that the boundary should be changed to include Weza in DC21.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC5	2	3	1	0

#### Conclusion

Demarcating boundaries in this province proved a particularly complex task and it was critical that the Board took into account an array of different and opposing views held by different stakeholders.



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The Board recommended far-reaching boundary changes; these changes would in effectively transform the regional areas in the province and in many cases, act to abolish existing RCs. Many of the submissions received proposed maintaining existing boundaries or realignment based on changes to these RC boundaries. However, an assessment of the demarcation criteria necessitated making substantial changes to existing boundaries.

### 3.6 Mpumalanga

#### General

The debate over increasing or keeping the same number of DCs dominated the submissions in this province. There were also a large number of requests to be included in CBDCs.

It is interesting that while many local councils supported the notion that DCs should be increased in the province from 3 to 6, regional councils and stakeholders in provincial government were wary of introducing more DCs.

Lowveld Escarpment DC, Mbibane, the Mpumalanga Provincial Government and the Department of Local Government and Traffic all warned against increasing the amount of DCs, fearing an increased number would not be financially sustainable.

Province	DC	Total	%
Mpumalanga	DC30	8	12.9
Mpumalanga	DC31	8	12.9
Mpumalanga	DC32	11	17.7
Mpumalanga	CBDC2	21	33.9
Mpumalanga	CBDC3	11	17.7
Mpumalanga	CBDC4	3	4.8

Mpumalanga	Sub Total	62	100.0
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### District Council 30

The East Vaal DC proposed that the existing DC boundaries are maintained while Leandra TLC supported the increase in DCs.

District Council	Category 1	Category 2	Category 3	Category 4
DC30	2	4	0	2

### District Council 31

It is interesting to note that Elukwatini, Witbank City Council, Leandra TLC and Marble Hall Council all supported increasing the number of DCs from 3 to 6. Furthermore, Witbank argued that the assumption that increasing the amount of DCs from 3 to the proposed 6 will increase costs is a myth.

District Council	Category 1	Category 2	Category 3	Category 4
DC31	2	5	0	1

### District Council 32

As with submissions from DC30 and DC31, the submissions received from DC32 focused on the number of DCs in the province.

District Council	Category 1	Category 2	Category 3	Category 4
DC32	7	2	0	2

### Cross Boundary District Council 2 University of Fort Hare Together in Excellence

The new concept of CBDCs has found much favour in Mpumalanga, with advocates of the concept very much in support of all the proposed DCs. It seems the primary reason for support of the concept is the perception that municipalities or DCs in other provinces will provide much needed financial and other capacity to Mpumalanga.

A good example of this is the submissions of Mthanjana TLC, the ANC branch in Mamethhake, and Seabe DC. They all want Mathanjana and Mbibanje in a CBDC with Pretoria Metro, i.e. CBDC2.

33.9% of submissions for Mpumalanga were received from CBDC2.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC2	4	8	6	3

### Cross Boundary District Council 3

Grobblersdal TLC proposed a CBDC in the Motetema-Tafelkop-Elandsdraal-Leeufontein with Grobblersdal as the node, i.e. CBDC3. However, the viability of this proposal is unclear.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC3	4	4	0	3

### Cross Boundary District Council 4

There was considerable support in the province for the idea of a Cross Boundary DC for the Kruger Park, to protect environmental issues.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC4	0	2	0	1

### Conclusion

It is worth noting that submissions received by the Board for the most part did not vary much from the proposed boundaries. After taking note of submissions and an investigation process, the Board made some relatively minor changes to its originally proposed boundaries.

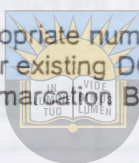
## 3.7 Northern Province

### General

As in Mpumalanga, the debate over increasing or keeping the same number of DCs was an important theme in the submissions in this province. The African Christian Democratic Party (ACDP) welcomed the increase from 2 to 6.

The Northern Province Ministry of Housing and Water Affairs and the Transvaal Agricultural Union stated that the increased nodal points and DCs would be acceptable to it if found to be justifiable by the Board. The Northern Province Branch of the ANC deemed the establishment of 8 (or 6) DCs too costly.

As in Mpumalanga the debate on the appropriate number of DCs hinged on unsubstantiated views of the financial viability of proposed or existing DCs, with little appreciation for the range of other demarcation criteria which the Demarcation Board was compelled to consider when demarcating boundaries.



Province	DC	Units	% of Fort Hare
Northern Province	DC33	4	11.4
Northern Province	DC34	12	34.3
Northern Province	DC35	4	11.4
Northern Province	DC36	4	11.4
Northern Province	CBDC3	3	8.6
Northern Province	CBDC4	5	14.3
Northern Province	Other	3	8.6
Northern Province	Sub Total	35	100.0

### District Council 33

The Greater Tiyani Council objected to the Tiyani Traditional Authority being placed in DC33, as they wish to be in DC34. The investigation found that the objection had substantial adherence to the demarcation criteria and therefore recommended that the boundaries of DC34 are amended to include Tiyani.

District Council	Category 1	Category 2	Category 3	Category 4
DC33	2	1	1	0

### District Council 34

Greater Louis Trichardt TLC proposed splitting the Bosveld DC into 2 DCs and the remainder of the province into a further 4. Although, the submission requested maintaining the functional integrity of Louis Trichardt itself by not splitting it between DCs.

The Bosveld DC was against the establishment of more DCs and labelled this suggestion by the Board as extravagant and ill thought out, especially as the proposals for DC33 and DC34 would skew resources in favour of the already wealthier DC33 away from the poorer and more under-resourced DC34.

A submission was received from the traditional leaders and the business communities of Giyani and Malamulele objecting to the inclusion of Giyani and Malamulele in DC34 and a wish to be included in DC33. Apart from the drafters of the objection feeling that the affected areas would benefit more from being in DC33, it was felt that there was a need to 'balance' out DC33 and DC34. The investigation found that there were insufficient grounds for a boundary change.

District Council	Category 1	Category 2	Category 3	Category 4
DC34	4	4	0	4

### District Council 35

The submissions received for DC35 were broad based and directed at the demarcation process in the province as a whole (see Introduction).

District Council	Category 1	Category 2	Category 3	Category 4
DC35	3	1	0	0

### District Council 36

A significant submission was received from the Bosveld DC. It came out against dividing up Bosveld DC.

District Council	Category 1	Category 2	Category 3	Category 4
DC36	2	1	1	1

### Cross Border District Council 3

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The most significant submission received was an objection from the Naboomspruit TLC objecting to its inclusion in CBDC3 and requesting inclusion in DC36. The objection was assessed and it was decided there was insufficient grounds to grant the request.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC3	2	1	0	1

### Cross Border District Council 4

A number of submissions were received from Bushbuckridge, one objecting to the latest recommended boundaries. Special attention was paid to this area and the Board ensured an inclusive process of deciding on the boundary. However, an objection was still received representing a number of stakeholders, including the provincial government, the local council and community groups. The stakeholders objected to the proposed boundaries, specifically CBDC4a, CBDC4b, and the parts of Bushbuckridge in DC32. Further substantiation has been requested from stakeholders on why the objection is being made and an investigation into the boundaries is currently being carried out.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC4	2	1	1	1

## 3.8 North West Province

### General

Only 4% or 31 submissions were received from the North West Province. The general theme of most submissions in this province was to appeal to the Board to maintain the status quo.

As an example, the Bophirima DC and the ANC Taung Region submissions appeal that Bophirima DC boundaries be left intact, while the Schweizer-Reneike Agricultural Union's submission proposes maintaining the DC boundaries for the entire province.

However, significant changes were proposed to boundaries by the Demarcation Board.

Province	DC	Total	%
North West	DC37	4	12.9
North West	DC38	6	19.4
North West	DC39	9	29.0
North West	DC40	7	22.6
North West	CBDC1	3	9.7
North West	Other	2	6.5
North West	Sub Total	31	100.0

### District Council 37

The most significant changes proposed by the Board meant that the existing Eastern and Rustenburg DCs would be amalgamated into DC37. Although the Eastern and Rustenburg DCs indicated that their first choice was to maintain the status quo, it is clear that the formation of DC29 will strengthen the financial base and the sustainability of the area.

Three of the four submissions received from DC39 were considered irrelevant to the demarcation process.

District Council	Category 1	Category 2	Category 3	Category 4
DC37	1	0	0	3

### District Council 38

The Central DC appealed in its submission that Greater Mareetsane and Mmasebudule fall within Central DC area. With the expansion of the area as DC38 the DC will include these and other areas to ensure DC38's sustainability.

Madikwe Game Reserve should be moved from DC 38 into DC37. It is part of an environmental strategy developed by the current Rustenburg District Council to link the Magaliesburg conservation area and the Pilanesburg Game Reserve to the Reserve. It is apparently also linked to the Platinum Highway SDI initiative.

District Council	Category 1	Category 2	Category 3	Category 4
DC38	2	3	0	1

### District Council 39

Although it was impossible to meet Bophirima DC's request to maintain its boundaries, DC39 was expanded in the southeast to include Schweizer Reneke, Amalia and Christiana to ensure its sustainability.

District Council	Category 1	Category 2	Category 3	Category 4
DC39	3	4	0	2

## District Council 40

Although the Southern DC indicated that Schweizer Reneke, Christiana, Mogopa, Fochville, and Wedela should stay within its jurisdiction, it was not possible to keep these areas within DC40 and still maintain the functional integrity of the adjoining DCs, especially DC39 which will certainly be reliant to a great extent on Schweizer Reneke and Christiana for its own sustainability.

District Council	Category 1	Category 2	Category 3	Category 4
DC40	2	5	0	0

## Cross Boundary District Council 1

The Kalahari DC wished to maintain their current boundaries but this was clearly not possible.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC1	1	2	0	0

## Conclusion

While some individual stakeholders may have questioned the need to re-demarcate boundaries in North West Province, the Board is confident that the boundary changes proposed will act in the best long-term interests of all stakeholders in North West Province.

## 3.9 Gauteng



### General

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Demarcating boundaries in Gauteng proved to be a controversial and sensitive process. It is noteworthy that the Demarcation Board has made significant changes to the original recommendations in recognition of the submissions and investigations made in this province.

As the industrial and economic base of the country, many of the submissions reflected concerns that the demarcation process should not adversely affect these characteristics. The metropolitan and unicity issue was prevalent in the majority of submissions, which is to be expected as Gauteng contains three of the unicitys in the country.

Province	DC	Total	%
Gauteng	Johannesburg Metro	73	52.5
Gauteng	Pretoria Metro	30	21.6
Gauteng	East Rand Metro	17	12.2
Gauteng	DC41	6	4.3
Gauteng	DC42	10	7.2
Gauteng	CBDC2	2	1.4
Gauteng	Other	1	0.7
Gauteng	Sub Total	139	100.0

### Johannesburg Metro

Alberton: two submissions were received from Alberton Town Council. The Council objected to the inclusion of an area north of the N12 and west of the R59 freeway to which Johannesburg Metro is already supplying services. They also objected to the exclusion of areas of the Alberton Cemetery. Both of these areas fall on the western border of East Rand Metro, the border with Johannesburg Metro.

At this stage, further substantiation has been requested and received from Alberton TLC and the case is being assessed.

Midrand: A total of 33 objections were received objecting to Midrand's inclusion in Johannesburg Metro. Most of these were one line e-mails or faxes stating opposition to Midrand's inclusion into Johannesburg Metro. It is significant that no substantial objections giving reasons for opposing the proposed boundaries were received.

It has been pointed out that there are possibly three parcels of land which may need to be included in Midrand, i.e. Erf 6/ 13 IR, Kaalfontein and Erf 42/ 410 JR. These pieces of land are currently being investigated.

There were many submissions from stakeholders in Midrand, including the Midrand Council that Rabie Ridge, Ivory Park, that Tembisa remain part of Midrand as the areas are functionally linked in many ways, not least in terms of the investment of infrastructure made by the Midrand municipality in these areas. After investigating the issue and considering submissions from all stakeholders the boundary was moved to include Rabie Ridge and Ivory Park.

Heartlands: Heartlands objected to the exclusion of Modderfontein from the East Rand Metro. Heartlands argues that Modderfontein is an integral part of Lethabong and as such should be included with Lethabong in the East Rand Metro. Heartlands Properties is a subsidiary of AECI, which has an explosives factory at Modderfontein. The real issue of the objection is the exclusion of the AECI explosives factory complex from the East Rand Metro. For a variety of reasons it seems that AECI want to continue a functional relationship between themselves and the Lethabong and East Rand authorities. There is also an implicit fear that Johannesburg Metro will not be able to provide the same services or relationship that East Rand/ Lethabong will. A meeting will take place between the Board and AECI/ Heartlands. Hereafter a way forward will be decided on.

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District Council	Category 1	Category 2	Category 3	Category 4
JHB Metro	12	15	2	44

#### Pretoria Metro

In light of the investigations carried out and the submissions made many changes have been made to the Board's original recommendations, although obviously not all changes requested could be accommodated.

Many submissions, including one by Pretoria Metro itself, requested the inclusion of Hamaanskraal, Rooiwal and Baviaanspoort on the eastern periphery, after further investigation and due consideration of submissions, these changes were made by the Board.

Concern was expressed about de-linking surrounding areas from Pretoria, specifically Cullinan, Rayton, Bronkhorstspuit, and surrounding areas in view of economic consequences.

District Council	Category 1	Category 2	Category 3	Category 4
PTA Metro	14	12	0	4

#### East Rand Metro

The boundary of this metro did change significantly after the submission of the relevant Investigation Committee and also some submissions by TLCs in the demarcated area (e.g. Benoni). The demarcated area now extends further to the North than in the Board's preliminary boundary, thus allowing room for urban expansion. It also expanded to the south significantly.

A significant number of submissions were received which proposed that Midrand should be part of East Rand Metro, including those from Khayalami Metro which contended that the East Rand area's strongest land use linkages include Midrand.

While it is recognised that there are linkages between Midrand and the greater East Rand area, as many of the submissions pointed out, the Board decided that there are more linkages between Johannesburg and Midrand.

District Council	Category 1	Category 2	Category 3	Category 4
East Rand Metro	2	14	0	1

#### District Council 41

Only six submissions were received from DC41. The Vaal river RC objected to their exclusion from DC42. After a thorough assessment it was found, however, that there were inadequate grounds for a boundary change.

District Council	Category 1	Category 2	Category 3	Category 4
DC41	3	3	0	0

#### District Council 42

Some submissions, such as that from the Heidelberg TLC proposed the extension of the East Rand Metro to the south to include Heidelberg and other areas. However, it is clear that not only is Heidelberg some distance way from those areas included in the East Rand Metro, but it is also very much integrated into surrounding areas in DC42.

District Council	Category 1	Category 2	Category 3	Category 4
DC42	2	6	2	2

#### Cross Border District Council 2

Two submissions were received from CBDC2. Both were from Cullinan TLC and both expressed concern at de-linking Cullinan and other small towns adjoining Pretoria (in CBDC2) from Pretoria. However, these towns have always been separate from Pretoria and their relationship with Pretoria should not be negatively influenced by the proposed boundaries.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC2	2	0	0	0

## SUMMARY OF CHANGES

As compared with the first set of determinations published on 4 October 1999, the following is a list of some of the bigger boundary changes for Category A and C municipalities:

#### Western Cape

- Cape Metro - The Bellville magisterial district to the west of Paarl was incorporated into the Metro. The towns of Philadelphia and Klipheuwel are now included.
- DC 2 - The boundary change to Cape Metro affects this DC. The Barrydale TLC is now in DC3.
- DC 3 - refer to (?)

#### Northern Cape

- No further changes have been made.

## Eastern Cape

- Port Elizabeth has been determined as a Metropolitan Area.
- DC10 - DC11 now falls away and is incorporated with the remainder of DC10.
- DC13 - The Middelburg and Cradock TRC's (formerly DC11) are now in DC13.

## Free State

- No further changes have been made

## KwaZulu-Natal

- Changes have been made to the Durban boundary in terms of excluding some traditional authority areas.
- DC21/CBDC5a - Weza forest is now in DC21. The western boundary west of Harding is as per the current Ugu/Indlovu boundary.
- DC21/DC22 - The Embo/Vumukwenza and portion of the Isimahla TA (Inkosi Mkhize) now are in DC22.
- Changes have been made to the DC22/DC24/DC29 boundary
- DC23 - The Sithole TA now in DC23.
- DC26 - The Lushwana and Mondlo areas are now in DC26

## Mpumalanga

- CBDC2a - The CBDC reduced to only the Ekangala area.
- CBDC9 - The Etwatwa cross border with East Rand
- DC32/DC30 - The Badplaas/ 3 E's areas now into DC30.
- CBDC4b - The Bushbuckridge area now sorted out



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## Northern Province

- No further changes have been made

## North West

- CBDC7/DC39 - The Pampierstad/Jan Kempdorp/Hartswater CDBC, including the Mothibi TA.
- CBDC8/DC40 - The Fochville/Wedela and farms in between to become a CBM with Carltonville.

## Gauteng

- East Rand/DC42 - The Vischkuil area now into DC42.

# MUNICIPAL DEMARCATION BOARD



## POLICY ON DISTRICT MANAGEMENT AREAS

18 NOVEMBER 1999

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# POLICY ON DISTRICT MANAGEMENT AREAS

18 November 1999

## CONSTITUTIONAL PROVISIONS FOR LOCAL GOVERNMENT:

Section 151 (1) of the Constitution states that "The local sphere of government consists of municipalities, which must be established for the whole territory of the Republic".

Section 152(1) of the Constitution states that: "The objects of local government area: (a) to provide democratic and accountable government for local communities; (b) to ensure the provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment; and (e) to encourage the involvement of communities and community organisations in the matters of local government."

Section 155(1) of the Constitution states that: "There are the following categories of municipality: (a) **Category A:** A municipality that has exclusive municipal executive and legislative authority in its area. (b) **Category B:** A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls. (c) **Category C:** A municipality that has municipal executive and legislative authority in an area that includes more than one municipality".

Section 155(2) of the Constitution states that: "National legislation must define the different types of municipality that may be established within each category."

## DISTRICT MANAGEMENT AREAS: LEGAL FRAMEWORK

The Local Government Municipal Structures Act (#117 of 1998) provides, among other things, for the establishment of municipalities, throughout the territory of South Africa, in accordance with the requirements relating to categories and types of municipality. The Act makes provision for the three types through providing criteria which allow only metropolitan areas to be declared as Category A municipalities, with the remainder of the country being divided into Category C (District) and Category B (Local) municipalities.

Section 6(2) of the Municipal Structures Act states that "The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned, may declare part of an area that must have municipalities of both category C and category B as a district management area if the establishment of a category B municipality in that part of the area will not be conducive to fulfilment of the objectives set out in section 24 of the Demarcation Act."

This provision was challenged in the Constitutional Court by the governments of Western Cape and KwaZulu-Natal who argued that District Management Areas (DMAs) are a fourth category of local government and thus unconstitutional. The judges held the view that a DMA does not form part of a fourth category of municipality but that a DMA is part of a District Municipality. The majority of judges, however, held that the establishment of district management areas impacts on the boundaries of municipalities and is accordingly a function to be performed by the Board. Sec 6(2) was found to be unconstitutional insofar as it attempted to give the Minister a discretion whether to accept a recommendation of the Board. The Court argued that the Board should have full power to determine DMAs.

If an area is determined as a DMA it does not have a category B (Local) municipality, but instead all municipal functions are carried out by the category C (District) municipality. The Minister of Environment and Tourism has indicated that this might create problems, particularly in areas which require strategic investment from national government and areas which fall under certain international laws and conventions. These difficulties could be overcome probably only through a constitutional amendment to Section 151(1) taking such DMAs out of the ambit of local government.

## DISTRICT MANAGEMENT AREAS: MUNICIPAL DEMARCATION BOARD POLICY

In considering the matter of District Management Areas, the Municipal Demarcation Board has decided that the areas which could qualify to be categorised as DMAs are:

- Deserts and semi-arid areas – approximately one-third of the territory of the Republic has less than 100000 people living in it. The Board believes that the objects of local government as defined in the constitution are unlikely to be met through establishing category B (Local) municipalities in these arid and semi-arid areas and they should be declared as DMAs.

- **State protected and conservation areas** – Throughout South Africa there are a number of conservation and environmentally-protected areas. Such areas are state-owned, privately-owned and communally-owned. The Board has decided that these areas may be declared as DMAs only if they fulfil the following criteria: (a) That they are owned by the state; (b) That they are commercially operated and owned areas directly linked to state-owned protected and conservation areas, which areas are managed as single entities together with the state-owned areas; (c) That they are privately-owned residential conservation communities which form part of government's strategic conservation and environmental plans; or (d) That they are privately-owned farms, communally-owned areas and the like which are part of the government's strategic conservation and environmental plans. If areas fulfil these criteria the Board may decide to determine them as District Management Areas.
- **Special Economic Areas:** These include areas which, for national strategic investment reasons, should not form part of category B (Local) municipalities.

After investigating areas which fulfil these criteria, the Board will declare DMAs on 15 December 1999. Draft DMA boundaries have been identified by the Board at its meeting of 18 November 1999.

## DISTRICT MANAGEMENT AREAS: POSSIBLE AREAS OF CONFLICT



Municipal functions and powers are listed in the constitution as:

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### Part B of Schedule 4:

- Air Pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in builtup areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems

### Part B of Schedule 5:

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public

- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

In addition, section 156(4) of the constitution states that: "The national government and the provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government."

Presently, in areas like the Greater Kruger National Park, for example, almost all municipal functions are carried out by the National Parks Board and/or privately-owned commercial operators. Given that these areas on their own would not fulfil the objects of local government and would be declared by the Board to be DMAs, they would have to be part of a category C (District) municipality. The Minister of Environment and Tourism has indicated that this could create potential conflicts between the operations of these major parks and the District municipality with which they would be associated. Also, this could frustrate national government's strategic focus on these areas within their southern African context. This would be the situation also for a number of World Heritage areas which are due to be declared in South Africa.


The only means of remedying this matter is to exclude specific DMAs from the constitutional obligation that the whole territory of the Republic must have local government. An amendment to Section 151(1) along the lines of the following could obviate these problems:

151(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic, excluding those areas specifically named in national legislation.

An Act of Parliament would then allow certain DMAs to be excluded from the provisions of Chapter 7 of the constitution, and they would then be administered by national government.

However, this is a matter national government should examine.

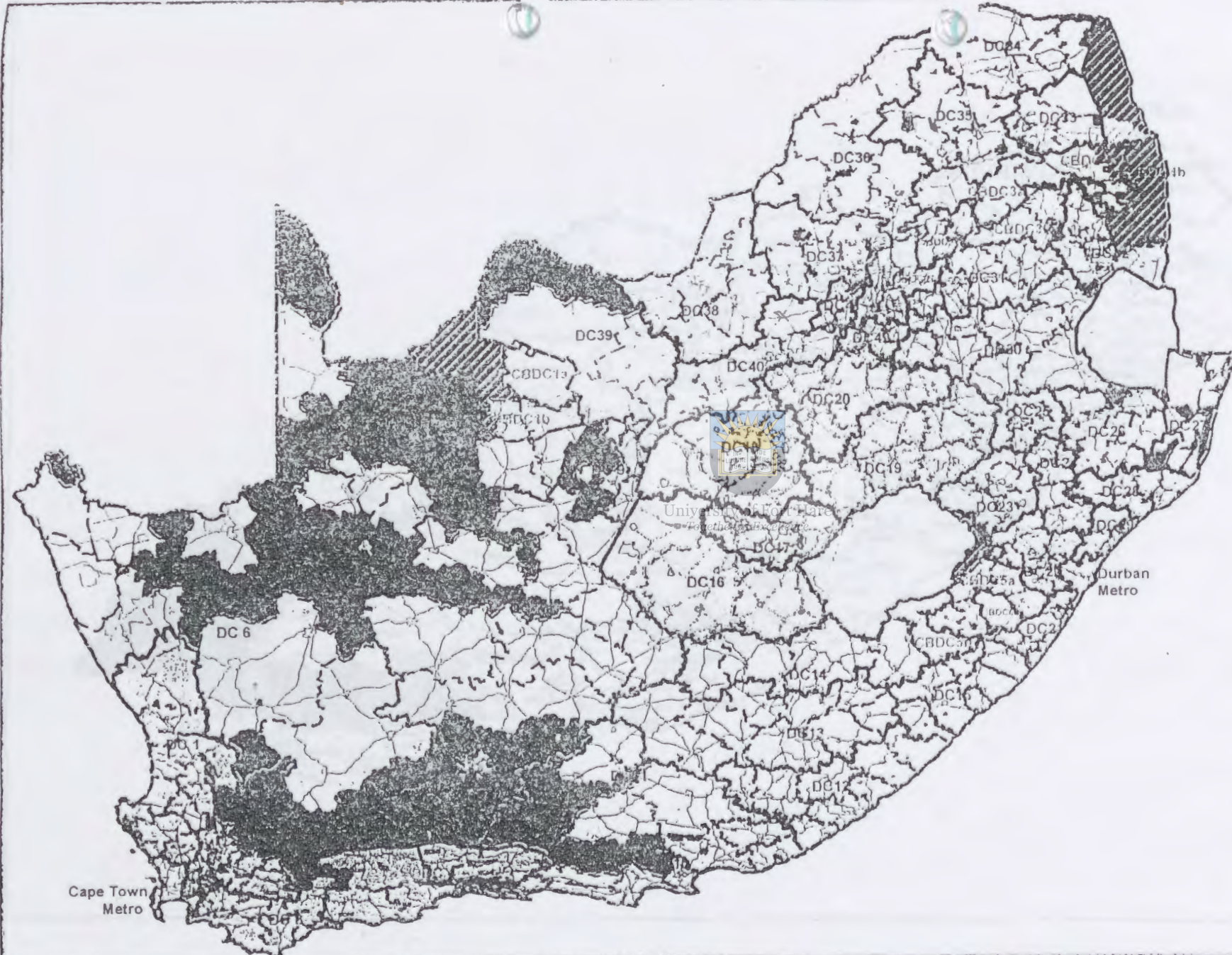
**Table 1 : Summary Statistics for District Councils**

	Area	Population	Density
<b>Western Cape</b>			
DC02	14,083	25,152	1.8
DC04	3,304	14,847	4.5
DC05	37,771	26,887	0.7
Total	55,157	66,886	1.2
<b>Northern Cape</b>			
DC06	30,561	2,928	0.1
DC07	32,949	4,614	0.1
DC08	71,986	16,874	0.2
DC09	6,561	5,941	0.9
CBDC1B	10,474	7,726	0.7
Total	152,532	38,083	0.2
<b>Eastern Cape</b>			
DC10	20,856	16,831	0.8
DC12	131	305	2.3
Total	20,987	17,136	0.8
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<b>KwaZulu-Natal</b>			
DC21	317	2,733	8.6
DC23	1,041	3,879	3.7
DC26	690	18,853	27.3
DC27	3,537	16,732	4.7
CBDC5a	1,320	2,175	1.6
Total	6,904	44,372	6.4
<b>Mpumalanga</b>			
DC32	1,818	43,495	23.9
CBDC3b	963	19,287	20.0
CBDC4b	19,400	1,977	0.1
Total	22,181	64,759	2.9
<b>Northern Province</b>			
DC35	1,356	1,820	1.3
DC36	819	390	0.5
CBDC4A*	11,960	4,230	0.4
Total	14,135	6,440	0.5

	Area	Population	Density
<b>North West</b>			
DC37	636	607	1.0
DC39	12,984	13,037	1.0
DC40	316	856	2.7
<b>Total</b>	<b>13,936</b>	<b>14,500</b>	<b>1.0</b>
<b>Gauteng</b>			
DC41	284	3,580	12.6
DC42	127	744	5.9
<b>Total</b>	<b>411</b>	<b>4,324</b>	<b>10.5</b>



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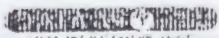


LEGEND

- DC's
- Proposed Municipalities
- Roads
- Mapped Cr.
- DMA's



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PROJECT

**Proposed District Management Areas**

DRAWING TITLE

**National Map**

DRAWING NUMBER	DATE
	25-11-99
REVISION	SCALE



CBDC5a

CBDC5b

EC06R1

EC06R7

EC152

EC161

DC14

DC15

DC13

DC12

DC10

EC103

EC102

EC104

EC106

EC109

EC108

EC107

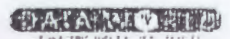
EC105

LEGEND

- TICs
- - - Proposed Municipalities
- Roads
- Mapped EC
- Data



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PROJECT

Proposed District Management Areas

DRAWING TITLE

Eastern Cape

DRAWING NUMBER	DATE
REVISION	25-11-09
	SHEET



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## CATEGORY B (LOCAL) SECTION 26 SUBMISSIONS SUMMARY EVALUATION

### 1 INTRODUCTION



The section 26 notice calling for submissions was published on the 11 October 1999 with the closing date on the 2 November 1999. A preliminary guideline document and questionnaire were made available on the Demarcation Board web site and on request. By the 15 November 1999, the Hatfield office had received 219 submissions.

The purpose of this report is to provide a brief evaluation per province and district council of the submissions. The evaluation will be carried out using the criteria outlined below. These criteria were established in order to ensure consistency in the evaluation:

Table 1 - Evaluation Criteria for Submissions

Category	Type	Criteria
1	Non Compliant Submission	<ul style="list-style-type: none"> <li>No or very little data provided</li> <li>Unjustified arguments</li> <li>No or very limited application of Section 24 and 25 municipal demarcation criteria</li> <li>No or very limited compliance to national framework for category B as published on 2 November 1999</li> </ul>
2	Technical Information Submission	<ul style="list-style-type: none"> <li>Contains useful information for demarcation purposes</li> <li>But insufficient application of the section 24 and 25 demarcation criteria</li> <li>Insufficient argument provided</li> <li>Does not conform to the national framework</li> </ul>

Category	Type	Criteria
3	Compliant Submission	<ul style="list-style-type: none"> <li>• Good application of the Section 24 and 25 criteria</li> <li>• Contains useful and verifiable data</li> <li>• Difficult to provide a counter argument</li> <li>• Conforms to the national framework</li> </ul>
4	Other	<ul style="list-style-type: none"> <li>• Category 1-3 do not apply</li> <li>• Organisations such as Ratepayers who do not have access to technical information but have attempted to provide a rational argument</li> <li>• Limited compliance to the national framework</li> </ul>

## 2 NATIONAL OVERVIEW

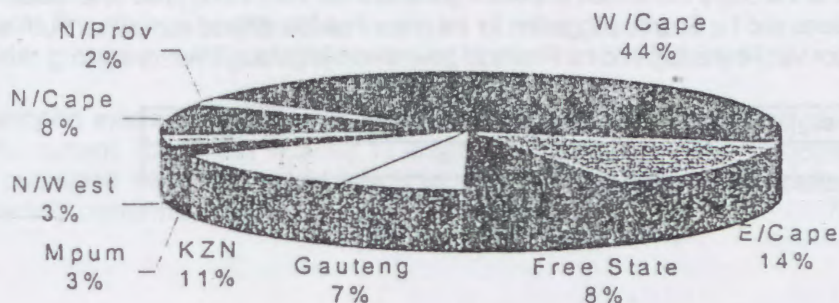
There are a number of general comments, which should be made with respect to the submissions. On the whole, a substantial effort was made on the part of the applicants to complete the questionnaire, consult stakeholders and provide the requested information. As a result, the Board will be able to capture significant information on financial and staffing aspects for the purpose of municipal modelling and the drafting of the establishment proclamations.

It would appear that in areas where strong feelings exist about the demarcation of category B municipalities, submissions were received from a wide range of organisations. A good example here would be the Sedgefield Wilderness area. A further trend noticed was that wealthy or "elite" municipalities tended not to provide information on financial and staffing matters. A surprising number of municipalities requested to remain as stand alone areas or merely to absorb the immediate rural areas with no or little acknowledgement of the need for the rationalisation of municipalities. Again, it would appear the tendency was more apparent in the currently well-resourced or elite municipalities.

A number of Farmers/Agricultural Unions expressed concern about the incorporation of rural into urban areas. They argued that an "urban" based municipality would not address the specific needs of rural communities. On the other hand, a number of urban areas or small towns suggested the amalgamation of towns but excluded the incorporation of the surrounding rural areas. Some villages indicated that they would prefer to be excluded from a category B municipality and be administered by the district council as part of a DMA.

A further observation, which should be mentioned, is that the vast majority of applications emanated from fairly well resourced areas. Only a few were received from local municipalities or stakeholder organisations in areas of high social and economic need in the country.

Percentage submissions per province



When examining the distribution of category B section 26 submissions, an interesting pattern emerges. The largest number were received from the Western Cape 44%, followed by the Eastern Cape 14%, KwaZulu/ Natal 11%, Northern Cape 8% and Gauteng 7%. However, the response from Mpumalanga, Northern Province and North West was significantly low. The overall trend is similar to that for the section 26 submissions for the Category A and C process.

### 3 PROVINCIAL EVALUATIONS

#### 3.1 Western Cape

##### General

As is indicated in the table below, the majority of the submissions received were from DC4 in which Sedgefield/ Knysna/Wilderness TLCs are found. In addition, a significant number of submissions were obtained from DC1 and DC3, which contain the coastal areas within which a number of small retirement or holiday towns are found.

Province	DC	Total	%
Western Cape	DC1	15	15.8
Western Cape	DC2	16	16.8
Western Cape	DC3	19	20.0
Western Cape	DC4	37	38.9
Western Cape	DC5	5	5.3
Western Cape	Other	3	3.2
Western Cape	Subtotal – N	95	43% of National



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##### District Council 1

There were a number of good submissions in the DC1 area with an acknowledgement of the need for the amalgamation of municipalities in, for example, the West Coast Peninsula TLC and Darling submissions. A number of the proposals are similar to those proposed by the Board and contain information which can be used to finalise Category B arrangements in these areas.

However, an equal number of submissions were received which contended that they should remain separate municipalities. Submissions were received from Aurora, Citrusdal, Langebaan and Moorreesburg. Using the national framework as a guide there was no justification for keeping these municipalities as separate entities. In most cases the justification provided was scant.

A number of submissions were received from municipalities which took into account the national framework and provided arguments to amalgamate themselves and surrounding municipalities into new Category B municipalities. While the Board found merit in these arguments there were found to be other factors which also had to be considered and the Board's suggestion for the areas therefore differed somewhat. Such submissions were received from Van Rhyndorp and the Provincial government (regarding Villiersdorp).

District Council	Category 1	Category 2	Category 3	Category 4
DC1	4	4	4	3

## District Council 2

The submissions for category B municipalities within the DC2 area were a mixture of those wanting to be stand-alone municipalities with the incorporation of the immediate surrounding rural areas as well as substantial submissions which indicated good rationalisation options.

Most submissions requesting a continuation of their present arrangements or amalgamation with their immediately surrounding areas could not justify an argument in terms of the national framework. Examples of such submissions were received from Bonnievale, Montagu, Wellington, Ranzadale Residents Association and the NNP Wellington.

Substantial proposals tended to be similar to those proposed by the Board. It is interesting to note that a number of organisations apart from existing municipalities, such as residents associations and political parties, made submissions. This is indicative of the high interest shown in demarcation issues in the area.

District Council	Category 1	Category 2	Category 3	Category 4
DC2	1	7	2	6

## District Council 3

A significant number of the TLCs within DC3 have requested to remain stand-alone towns with, in most cases the incorporation of the surrounding rural areas. The suggested category B municipality proposed in the submission, in almost all instances, do not conform to the national framework.

Municipalities such as Gansbaai, Infanta, Naiper, Suijdrak and the Overberg DC simply requested they be stand-alone municipalities with little substantiation of such a request or stated that their current viability implied they deserved to continue as separate municipalities. These submissions did not meet the imperatives of the national framework and as such could not be considered. This is not to say that the viability of a Category B municipality is not a critical factor, the point is rather the number of different factors making up the municipality's viability.

The submissions received from the Botriver Parents Association, De Doorns Municipality, Hangklip-Kleinmond Municipality, Lower Breede River Local Government Steering Committee and Worcester were found to have merit and provided useful information to the Board but did not justify a boundary change. Most of these submissions suggested either stand alone municipalities or the areas suggested for amalgamation were too narrow or small to be justified in the national framework.

The submissions from the Bredasdorp TLC and Greyton Municipality were found to comply with the national framework and both influenced the Category B boundaries in these areas.

District Council	Category 1	Category 2	Category 3	Category 4
DC3	6	7	2	4

## District Council 4

Submissions were received from a wide range of municipalities and stakeholder groups in DC4. The most notable were from the following areas:

- Wilderness/Sedgefield
- The Greater Riverdale/Albertina area
- Stakeholder groups in the Groot Brak area

Substantial support exists in the Greater Riverdal/Albertina area for the amalgamation of a number of the current TLC/TRCs in order to create a more sustainable municipality. Each municipality submitted individual submissions with varying amalgamation scenarios. The proposal generally conforms to an option proposed by the Board.

It would appear that there is significant concern from the surrounding municipalities about the possible amalgamation with the Knynsa TLC. The dominant reason would appear to be the TLCs current approach to development

The GrootBrak community has requested to amalgamate with George, again because of concerns with respect to the administration of the current GrootBrak TLC.

District Council	Category 1	Category 2	Category 3	Category 4
DC4	12	9	7	9

### District Council 5

There were a significantly low number of submissions from the DC5 area compared to those received from the rest of the Western Cape, only 5%.

Whilst a number of submissions requested the area to be administered by the district council, there was no clear mention of a DMA. It would appear that limited knowledge exists in the area with respect to the types of municipalities.

Again, there were a few towns, which requested to remain stand-alone areas such as Laingsburg and Prince Albert TLCs. However, the proposals do not conform to the national framework both in terms of geographic size and population and are more aligned to the criteria set for the establishment of DMAs.

District Council	Category 1	Category 2	Category 3	Category 4
DC5	2	3		0



## 3.2 Northern Cape

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### General

As the table below indicates, most of the submissions from the Northern Cape came from DC6, followed by DC 7. This was to be expected, given that areas such as Hantam and the Karoo, which are the two district councils, actively participated in the demarcation process.

Province	DC	Total	%
Northern Cape	DC6	6	33.3
Northern Cape	DC7	5	27.8
Northern Cape	DC8	3	16.7
Northern Cape	DC9	2	11.1
Northern Cape	CBDC1	1	5.6
Northern Cape	Other	1	5.6
Northern Cape	Subtotal - N	18	8.2% of national

### District Council 6

There was a particularly interesting submission from the Namaqualand Surplus People Project, which brought out the land complexities in parts of the Northern Cape. These people, who occupy a land under the commonage system, are raising concern that if they were to be amalgamated with another ordinary municipality, their rights to occupy and use the commonage land could be jeopardised. This issue definitely requires a legal investigation. Furthermore, a hearing will be necessary there.

The other proposals tended to call for the amalgamation of neighbouring municipalities, thus becoming narrow and failing to meet the specifications of the national framework in terms of municipal area size and threshold population.

The Springbok Municipality submission requested the amalgamation Carolusberg, Concordia, Okiep, Occ-Nabeep and Springbok. However, the population density in the proposed area would be prohibitively small.

District Council	Category 1	Category 2	Category 3	Category 4
DC6	3	1	1	1

#### District Council 7

In many cases the submissions were either narrow, calling for the amalgamation of a few towns and some villages, or they wanted to be stand-alone municipalities. Most of them did not conform to the national framework.

The submission received from Rawsonville Municipality was the exception complying with the national framework specifically noting the rationalisation of municipalities. The amalgamation of Camarvon, Vannykevei, Vosburg, Loxton, Kareeberg and Lorrion was proposed. The Board's proposal for Category B municipalities took note of this submission.

District Council	Category 1	Category 2	Category 3	Category 4
DC7	4	0	1	0

#### District Council 8

Submissions were received from Barkley West, Kathu and Upington Municipalities. None of the submissions complied with the national framework. The submissions from Kathu and Upington proposed maintaining the current boundaries with little justification for this.



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District Council	Category 1	Category 2	Category 3	Category 4
DC8	3	0	0	0

#### District Council 9

A submission received from a small municipality, which called for the amalgamation of Pampierstad, Hartswater and some farms in the area, was not too far off the provisions of the national framework. And will be noted in the finalisation of the relevant boundaries.

The second submission, from a traditional authority Consultative Forum, called for a cross border category B municipality comprising the traditional area of the Ba-ga-Mothibi in the North West, and the current Diamond Veld DC in the Northern Cape. The submission did not meet the provisions of the national framework and the Board found insufficient grounds to warrant a cross border municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC9	1	0	1	0

#### Cross Border District Council 1

A submission was received from Kuruman Municipality requesting that Kuruman and Mothibstad be in one municipality. The submission contained useful local information, which will be used by the Board to finalise the respective boundaries in this area.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC1	0	1	0	0

### 3.3 Eastern Cape

#### General

As would be expected, the majority of the submission were obtained from DC10 and 12 which contain the large urban areas of Port Elizabeth and East London respectively. As with the Western Cape, a number of small retirement or holiday towns made submissions.

It is a matter of concern to the Board that so few submissions were received from the DCs containing the areas of highest unemployment and poverty, such as DC15 (1 submission) and CBDC5 (0 submissions).

Province	DC	Total	%
Eastern Cape	DC10	13	41.9
Eastern Cape	DC11	3	9.7
Eastern Cape	DC12	10	32.3
Eastern Cape	DC13	0	0.0
Eastern Cape	DC14	4	12.9
Eastern Cape	DC15	1	3.2
Eastern Cape	CBDC 5	0	0.0
Eastern Cape	Subtotal - N	31	14.1% of National



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#### District Council 10

The most significant submissions came for the municipalities of Uitenhage and Port Elizabeth, who conformed to the national framework quite well and supplied useful technical information, which will assist the Board in the finalisation of the respective boundaries.

The submission from Kenton On Sea Municipality proposing the amalgamation of Kenton, Bushmans River Mouth, Bokness and Cannon Rocks was also found to adhere to the national framework and is in line with what has been suggested for this area.

Some other submissions received were found to have merit but were too narrow in their amalgamation proposals. Examples include submissions received from: Cape St. Francis Rate Payers Association and the St Francis Bay Council.

Of the remainder, most submissions indicated they preferred the status quo in regard to local boundaries. This would simply not be viable within the national framework.

It is significant that some submissions proposed their areas become District Management Areas (DMAs) under direct representation of the DC. But again this option would have to meet the stipulations of the national framework which none of these proposals did.

It is thought that some of these submissions were proposing to be DMAs to avoid the perceived threat of amalgamation with other areas. Submissions proposing DMAs in their areas were received from the Kromme River Mouth Share Block and the Rivertide Share Block.

It is notable from the above discussion that many of the submissions received were from property owners' associations, rate payers associations and the like. This is an indication of the interest demarcation generated among such groups.

District Council	Category 1	Category 2	Category 3	Category 4
DC10	5	3	3	2

#### District Council 11

Three submissions were received from DC11, namely Cradock Municipality, Pearston TLC and Willowmore Municipality. All three requested expressed reservations about being amalgamated with other municipalities and proposed they remain stand-alone municipalities. It was found that their proposals did not comply with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC11	3	0	0	0

#### District Council 12

A number of submissions, mainly from rural villages and small towns such as Kubusie, Cengu, and Cenylands in the Stutterheim area, and Debe Nek, applied for DMA status. Although some of the proposals were found to have merit, it was thought that they did not meet the criteria of the national framework in regard to DMAs.

The submission from East London was found to comply with the national framework and its proposal to include the areas of Kaysers Beach, Kidds Beach, Winterstrand, East London TLC, Cinsta Beach, Haga Haga, Kei Mouth, Mooiplaas, Kwelera, Newlands and Mdantsane within a Category B conform with the Board's proposals.

An interesting issue concerning the municipal area of East London was raised by a Land Owners Association, which contended that their inclusion into the municipal area of East London was as a result of an error by the planner who drew the municipal boundary in 1995/96.

Some municipalities provided a number of amalgamation options for a category B municipality in their areas, but none of them seemed to meet the geographic size and population criteria. These include submissions received from: Boknes/ Cannon Rocks, Fort Beaufort and Port Alfred Municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC12	4	1	1	4

#### District Council 14

The submission received from Macdear Municipality proposed the amalgamation of Macdear, Ugies plus other areas in the Qumu, Tsolo and Mount Fletcher districts. The proposal was found to be reflective of the national framework.

The submissions from Burgersdorp and Lady Grey proposed the status quo be maintained in regard to these areas. This was clearly not in line with the national framework.

The forth submission was found to comply to an extent with the national framework, although not entirely - Maluti TLC proposed it be part of Matatiele in KZN, within the proposed CBDC arrangement.

District Council	Category 1	Category 2	Category 3	Category 4
DC 14	2	1	1	0

#### District Council 15

The submission from DC15 was received from Umtata TLC and suggested amalgamating Umtata, Tsolo, Libode, Ngqeleni, and Mqanduli or, in addition, Port St Johns and Qumbu. However, the proposal was not in accordance with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC 15	1	0	0	0

### 3.4 Free State

#### General

As the table below indicates, there was a good spread of submissions from most regions in the Free State with the highest number coming from DC20. No submissions were received from DC16.

Most submissions contained proposals for Category B municipalities much smaller than envisaged in the national framework and, as in other provinces, a significant amount of requests to be stand alone municipalities. There were also however a significant amount of submissions that met the requirements of the national framework and will impact on the Category B demarcations locally.

It is notable that no submissions were received from DC16.

Province	DC	Total	%
Free State	DC16	0	0
Free State	DC17	3	16.7
Free State	DC18	4	22.2
Free State	DC19	4	22.2
Free State	DC20	5	27.8
Free State	Other	2	11.1
Free State	Sub Total - N	18	8.2% of National

#### District Council 17

The submissions received regarding DC17 all proposed amalgamation of a small number of current municipalities into a single Category B municipality. In all cases the national framework had made provision for much larger areas. Submissions were received from Bloem Area DC, Bloemfontein TLC and Excelsior Municipality.

Bloemfontein TLC also submitted that they do not support FRELOGA's submission. FRELOGA's submission states that it does not support DMAs in the province, that there is no reason why there should be a municipality that is completely rural in character, and that current magisterial district boundaries should be used as a basis for category B municipal boundaries.

District Council	Category 1	Category 2	Category 3	Category 4
DC17	3	0	0	0

#### District Council 18

Most submissions here proposed remaining stand-alone Category B municipalities but did not meet the requirements of the national framework. Among other criteria, the relatively small population and land areas proposed were not seen as viable in the national framework. Such submissions were received from Bothaville and Theunissen TLCs.

A notable exception was the submission from the Sandrivers Landelike Oorgansraad. This organisation proposed the amalgamation of Allenridge, Odendaalsrus, Welkom, Virginia, Hennenmahn, Ventersburg, Theunissen and Winburg into a single category B municipality. The argument met the criteria of the national framework and the submission contained useful information, which will be taken into account in the determination of the Category B boundaries in the area.

District Council	Category 1	Category 2	Category 3	Category 4
DC18	3	0	1	0

## District Council 19

The submissions from Clarens and Petrus Steyn requested that they from stand-alone municipalities but provided little substantiation, although the Clarens submission did contain useful information on the local area. The submissions did not conform to the national framework, specifically in regard to criteria governing the population and size of an area. Similarly, the submission from Rosendal proposed a municipal area that was simply too small to conform to the national framework.

The submission from Bethlehem TLC requested the amalgamation of Bethlehem, Clarens, Paul Roux, Fouriesburg and Arlington. This submission complied largely with the national framework and the information contained there-in will be used to finalise the local boundaries.

District Council	Category 1	Category 2	Category 3	Category 4
DC19	2	1	1	0

## District Council 20

Again most of the submissions from DC20 were from municipalities apprehensive over their amalgamation with other municipalities in the rationalisation of category B municipalities.

The submissions received from Parys, Sasolburg and Villiers Municipalities, while containing good information on their localities, did not however take into account the imperatives of the national framework and specifically the need to rationalise the number of municipalities. In terms of this, their proposals for each respective municipality to be a single municipality are simply unrealistic.

The information and technical detail in these submissions will, however, help to finalise the boundaries in these areas.

District Council	Category 1	Category 2	Category 3	Category 4
DC20	0	4	1	0

## 3.5 KwaZulu/ Natal

### General

The submissions received from KwaZulu/ Natal mirrored the trends in the other provinces, with many municipalities expressing apprehension at the prospect of amalgamation with other municipalities. To this end, many submissions were received requesting maintenance of current arrangements or suggesting amalgamating with one or two adjoining areas.

It is significant that no submissions were received from DC21, DC24 and DC25.

Province	DC	Total	%
KwaZulu Natal	DC21	0	0
KwaZulu Natal	DC22	8	33.3
KwaZulu Natal	DC23	2	8.3
KwaZulu Natal	DC24	0	0
KwaZulu Natal	DC25	0	0
KwaZulu Natal	DC26	3	12.5
KwaZulu Natal	DC27	1	4.2
KwaZulu Natal	DC28	2	8.3
KwaZulu Natal	DC29	3	12.5
KwaZulu Natal	CBDC5	4	16.7
KwaZulu Natal	Other	1	4.2
KwaZulu Natal	Sub Total - N	24	10.9% of National

## District Council 22

Again the submissions from this DC reflected the trend of proposing stand-alone municipalities or narrow proposals for the amalgamation of small towns with one or two adjoining areas.

Submissions received from Camperdown TLC, Dalton TLC, Mooiriver TLC, and Wartburg TLC proposed the status quo remain. However, little substantiation was provided, nor did any of the proposals meet the criteria of the national framework. The Demarcation Board did not therefore feel that any of the proposals warranted the suggested changes.

Ashburton TLC, Wartburg TLC (second option) and Cool Air TLC all proposed amalgamation with surrounding areas. Although there was limited compliance to the national framework, the proposals did not conform to the geographic size and population size envisaged in the national framework.

There were two submissions that did meet the criteria of the national framework. The most significant from Howick TLC proposed amalgamating Howick, Lions River, Lidgetton, Nottingham Road, Dargie and Hilton into one Category B municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC22	5	1	2	0

## District Council 23

Submissions were received from Weenen TLC and Cathkin Park. Both submissions requested that the respective municipalities remain as stand alone municipalities. Neither submission was seen to comply with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC23	2	0	0	0



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## District Council 26

A number of submissions were received from stakeholders regarding Vryheid. Submissions from Emondlo township and political parties from Emondlo requested that Emondlo be integrated with Vryheid, while the Vryheid TLC proposed Vryheid remain a separate municipality. Taking the national framework into account it seems that Emondlo should be included with Vryheid in a larger municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC26	1	0	1	1

## District Council 27

A useful submission was received from St Lucia TLC explaining the environmentally sensitive nature of the area and its surrounds. However, the area proposed in the submission is considerably smaller than that proposed in the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC27	0	1	0	0

## District Council 28

Submissions were received from Empangeni TLC and Mturzini TLC. Both submissions proposed remaining stand-alone municipalities and neither met the criteria of the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC28	1	1	0	0

## District Council 29

The submission received from Kwa-Dukuza Municipality, which proposed the amalgamation of the municipalities of Kwa-Dukuza/Stanger, Nkwazi and Dolphin Coast, was found to comply largely with the national framework and will be used to determine the finalisation of these boundaries.

The other submissions from the Dolphin Coast TLC and the Hlomendlini Ngcobo Tribe were found to be non-compliant with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC29	1	0	1	1

## Cross Boundary District Council 5a

Four submissions were received from CBDC5a. Although useful information was gained from the submissions on local conditions and characteristics of areas, none of the submissions was seen to comply fully with the national framework.

The submissions from Underberg TLC and Himeville TLC while having merit and complying somewhat with the national framework, were seen as proposing a much smaller area than envisaged by the Board. In this sense these submissions did not seem to account fully for national imperatives such as geographical area or population size.

The submissions from Xopo and Matatiele were seen as largely non-compliant with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC5a	2	1	0	1

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## 3.6 Mpumalanga

### General

The response from the Mpumalanga area was limited reflecting only 2.7% of the total national submissions received. No contribution was made from the CBDC2, CBDC4 and the DC31 areas.

Province	DC	Total	%
Mpumalanga	DC30	1	16.7
Mpumalanga	DC31	0	0.0
Mpumalanga	DC32	3	50.0
Mpumalanga	CBDC2	0	0.0
Mpumalanga	CBDC3	2	33.3
Mpumalanga	CBDC4	0	0.0
Mpumalanga	Sub Total - N	6	2.7% of National

## District Council 30.

As is indicated in the table below, only one submission was received, from Leandra TLC. The application received acknowledged the need for rationalisation but requested to be linked to TLCs of a similar size. This was a fairly common trend and implicit in a number of other submissions. Small towns appear to be concerned that linking with larger and more resourced municipalities will result in them losing their identity. However, the imperatives of the national framework mean that Leandra TLC must form part of a larger municipality.

District Council	Category 1	Category 2	Category 3	Category 4
DC30	1	0	0	0

## District Council 32

The submissions from Marloth Park TLC and White River were found to be non-compliant with the national framework. Marloth Park's request to remain a stand-alone municipality was not seen to be viable. The submission from White River envisaged an area too small to comply with the imperatives of geographical size and population envisaged in the national framework.

A submission received from the Greater Kruger National Park Conservation Complex proposed that the Kruger Park be a separate DMA and include the adjoining private conservation areas. While the proposal is in line with the national framework, the exact arrangements will be finalised by the Board after consulting other national stakeholders.

District Council	Category 1	Category 2	Category 3	Category 4
DC32	1	1	1	0

## Cross Boundary District Council 3a

As is indicated below, two submissions were received from the CBDC3 area.

A descriptive application was obtained from a community based organisation requesting incorporation of certain villages into the Marble Hall category B municipality. Given the complexity of the area, a detailed investigation should be undertaken to assess the possible category B options/configurations.

Groblerdsdal proposed that the existing boundary be maintained with minor amendments. This was clearly unfeasible within the national framework.



District Council	Category 1	Category 2	Category 3	Category 4
CBDC3	1	0	0	1

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## 3.7 Northern Province

### General

The least number of submissions were received from the Northern Province that is only 2.2%. As mentioned earlier in the report, submissions were mainly received from well resourced communities as opposed to those of a similar composition to the Northern Province such as DC15 in the Eastern Cape.

As in a number of other provinces, a general submission was received from the Agricultural Union requesting that farm/ rural areas not be amalgamated with urban areas but rather exclusive rural category B municipalities be established.

As indicated in the table below, no submissions were obtained from DC33, DC35, CBDC3, and CBDC4.

Province	DC	Total	%
Northern Province	DC33	0	0.0
Northern Province	DC34	1	20.0
Northern Province	DC35	0	0.0
Northern Province	DC36	3	60.0
Northern Province	CBDC3	0	0.0
Northern Province	CBDC4	0	0.0
Northern Province	Other	1	20.0
Northern Province	Sub Total – N	5	2.2

### District Council 36

Three submissions were received, two focusing on specific concerns by local stakeholders. These submissions asked for the transfer of individual land parcels into specific municipalities, one across the border into Pretoria Metro. Unless these concerns are shared by the majority of a community or meet the imperatives of the national framework, it is difficult for the Board to prioritise them above the best interests of entire areas. As such, it was found that neither complied with the national framework.

A third submission proposed that Elisas TLC remain a stand-alone municipality. This clearly did not conform to the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC36	1	1		1

### 3.8 North West Province

#### General

Only 7 submissions or 3.1% of the national total were received from North West Province. No submissions were received from DC39.

Province	DC	Total	%
North West	DC37	2	28.6
North West	DC38	1	14.3
North West	DC39	0	0.0
North West	DC40	3	42.9
North West	CBDC1	1	14.3
North West	Sub Total – N	7	3.1% of National

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### District Council 37

Both submissions from DC37 were seen as not complying with the national framework: A submission was received from an individual in the area just north of the Magaliesberge, opposing amalgamation with Hartebeespoort TLC and proposing instead amalgamation with Brits. Little information was supplied and the submission does not have any motivation.

Swartruggens Municipality proposed they remain a stand-alone municipality but this was not seen as viable.

District Council	Category 1	Category 2	Category 3	Category 4
DC37	2	0	0	0

### District Council 38

A submission was received from Lichtenburg TLC containing useful information on local conditions and will assist to inform a decision on the final boundary determination for the area.

District Council	Category 1	Category 2	Category 3	Category 4
DC38	0	1	0	0

### District Council 40

Submissions were received from Fochville and Potchefstroom TLCs neither complied with the national framework. Potchefstroom, for example, wants to retain the status quo, while the national framework provides for a much larger area, including New Machavie, Boskop and many areas beyond.

The information provided in the Fochville submission will inform the Board on further boundary determinations in the area.

District Council	Category 1	Category 2	Category 3	Category 4
DC40	1	1	0	1

### Cross Boundary District Council 1b

The single submission here is from a village called Glen Red, which wants to be in the Vryburg magisterial district, and not in Kudumane as is presently the case. Arguments were seen to be emotive.

District Council	Category 1	Category 2	Category 3	Category 4
CBDC1	0	0	0	1

### 3.9 Gauteng

#### General

As is clear from the table below, Gauteng accounted for 6.8% of the national total. No submissions were received on CBDC2.

Submissions were received largely from the well-resourced municipalities outside the metropolitan areas. A significant number of proposals received were found to be largely compliant with the national framework.

Province	DC	Total	%
Gauteng	DC41	9	60.0
Gauteng	DC42	6	40.0
Gauteng	CBDC2	0	0.0
Gauteng	Sub Total – N	15	6.8% of National

#### District Council 41

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A number of useful proposals complying with the national framework were received from DC41. Submissions received from Krugersdorp TLC, Westonaria and Randfontein TLC proposed a Category B municipality around Krugersdorp, Randfontein, Westonaria and Carltonville. The submissions were found to comply largely with the national framework.

The submission received from the Hartebeespoort Local Council proposed an amalgamation of Hartebeespoort, Skeerpoort and a portion of the Eastern District Council in the North West. The proposal was found to be too narrow in focus in terms of the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC41	2	2	5	0

#### District Council 42

A number of submissions compliant with the national framework were received.

The submission from the Vereeniging/Kopanong MLC proposed dividing DC42 into three Category B municipalities around Vereeniging, Heidelberg and Vanderbijlpark. This submission was found to comply largely with the national framework. Submissions from Randvaal and others suggesting the amalgamation of Walkerville, Randvaal, De Deur and Meyerton into a single category B municipality were also found to be compliant with the national framework.

The submissions from the Western Vaal MLC, the Vaal River RC and the Crocodile River RC contained some useful information but were largely non-compliant with the national framework.

District Council	Category 1	Category 2	Category 3	Category 4
DC42	2	1	3	0



## MUNICIPAL DEMARCATION BOARD

### THE BOARD'S APPROACH TO THE DETERMINATION OF CATEGORY B MUNICIPALITIES

# DRAFT

NOVEMBER 1999

## INTRODUCTION

On 6 October 1999, the Municipal Demarcation Board proclaimed its boundary determination for five category A (Metropolitan) and fifty-three category C (District) municipalities. The Board then commenced with the process toward the determination of category B (Local) municipalities within the category C (District) municipalities. On 11 October 1999, a Section 26 notice was issued inviting the public to submit within 21 days, their views and representations on the boundaries of these Category B (Local) Municipalities, to the Board. Subsequently, and as a result of the ruling of the Constitutional Court on the Municipal Structures Act, the Board issued Section 26 notices inviting comment on boundaries for Category A (Metropolitan) and C (District) Council boundaries.

In order to begin the process of demarcating B-municipalities, the Board developed a set of broad guidelines which were issued together with the Section 26 notices. The Board continued with its own investigations and also arranged provincial meetings with stakeholders to discuss their broad approach to the rationalisation of municipalities. These meetings generally recognised that: (i) the number of municipalities should be rationalised into anything from 300 to 500 municipalities; and (ii) there would be wall-to-wall municipalities throughout the territory of South Africa.

This report details the Board's approach to the rationalisation of B-Municipalities and District Management Areas.

## 2 LEGAL CONSIDERATIONS FOR CATEGORY B MUNICIPALITIES

In the development of the Municipal Demarcation Board's approach to category B municipalities, it is important to gain an understanding of the legal framework provided for the determination thereof. Chapter 7, Section 152 of the Constitution of the Republic of South Africa, Act #108 of 1996 describes the objects for local government whilst Section 155 deals with the establishment of municipalities. More specifically, Section 155 (1)(b) describes a category B (Local) municipality as one that shares municipal executive

and legislative authority in its area with a category C (District) municipality in whose area it falls.

The Local Government: Municipal Structures Act #117 of 1998 provides more guidance for category B (Local) municipalities. Section 3 states:

*An area that does not comply with the criteria set out in section 2 (that is for category A municipalities) must have municipalities of both category C and category B.*

The Constitution and the Municipal Structures Act are silent on the concept of urban and rural when describing Category B municipalities. However, the White Paper of Local Government correctly points out that, "in some cases, the separation of rural areas from cities and towns has imposed artificial political and administrative boundaries between areas that are otherwise functionally integrated. It also creates inequity for rural residents who contribute to the towns economy but don't benefit from its resources". The inclusion of rural areas in with urban areas in the demarcation of category B municipalities is not only allowed for in law but should also be regarded as appropriate. The re conceptualization of local municipalities will obviously result in a wide range of local municipal types such as highly urbanised to areas that are predominately rural in nature. Such diversity is facilitated with the application of chapter 5 of the Municipal Structures Act which, deals with the powers and functions of municipalities.

Chapter 5, Section 85(4) of the Act states that the Demarcation Board must consider the capacity of a district or local municipality to perform the functions and exercise powers vested in the municipality when determining or re determining the boundaries thereof. The MEC for Local Government for the province must on the advise from the Demarcation Board adjust the powers and functions between the district and local municipality within a prescribed policy framework. In addition, the MEC must regularly review the capacity of the municipality and if it has acquired the capacity to perform a power or function, then the MEC should reallocate the power and function accordingly. It is therefore possible to have a range of category B municipalities with significantly different levels of powers and functions.

The relationship between district councils and local municipalities is assisted through the application of section 88 of the Act and again allows for flexibility within the system of local government. The section states that:

- 88(1) *A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other.*
- 2(a) *A district council on request by a local municipality within its area may provide financial, technical and administrative support services to that municipality to the extent that that district municipality has the capacity to provide those support services.*
- (b) *A local municipality on the request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support*


service to that district municipality to the extent that that local municipality has the capacity to provide those support services

- (c) A local municipality may provide financial, technical and administrative support services to other local municipality within the area of the same district municipality to the extent that that it has the capacity to provide those support services, if the district municipality or that local municipality so requests.
- (3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.

In addition to the legal flexibility for the range of category B municipalities, Section 6 of the Act, does make provision for the declaration of District Management Areas. Such areas are defined as those that will not be conducive to fulfillment of the objectives set out in section 24 of the Demarcation Act.

Section 24 of the Local Government: Municipal Demarcation Act #27 of 1998 indicates the objectives for demarcations by stating that:

*When the Board determines a municipal boundary its objective must be to establish an area that would-*

- (a) enable the municipality for that  area to fulfil its constitutional obligations, including-
- (i) the provision of democratic and accountable government for the local communities;
- (ii) the provision of services to the communities in an equitable and sustainable manner
- (iii) the promotion of social and economic development; and
- (iv) the promotion of a safe and healthy environment;
- (b) enable effective local governance
- (c) enable integrated development; and
- (d) have a tax base as inclusive as possible of the users of municipal services in the municipality.

While the determination of DMAs will be done after further research and investigation, the Board believes the following areas might well fulfil these criteria:

- State-owned national and provincial parks and protected areas
- Deserts and semi-desert areas in which a combination of low population density over an extended area would make fulfilling the objects of local government quite difficult.

The Board would like to indicate, however, that it will only consider the declaration of District Management Areas in exceptional circumstances.

### 3. THE RATIONALE FOR WALL-TO-WALL CATEGORY B'S

To summarise the broad legal and policy framework, it will be recollected that the Constitution of the Republic of South Africa states that "the local sphere of government

consists of municipalities, which must be established for the whole of the Republic". This statement could be interpreted to apply more to Category A and C, rather than Category B municipalities, but on closer inspection it also has implications for Category Bs.

At a policy level, the White Paper on Local Government observed that there are only "a few, very expansive sparse settlements in the country where no municipal services are provided, and no sustainable category B municipality is possible". The inference is that most of the country would be covered, wall-to-wall, by a mix of what the White Paper described as urban Category B municipalities, amalgamated urban-rural Category B municipalities, and rural Category B municipalities.

The same White Paper and the Demarcation Board also concluded that there were too many municipalities in South Africa, many of the smaller of which lacked the capacity for effective delivery, and which also had little in the way of economies of agglomeration and scale. The implication, in this case, can only be that the configuration of future Category B municipalities would require some amalgamation of existing TLCs/TRCs. Moreover, the territories between such amalgamated TLC's/TRCs would become eligible for incorporation into the new Category B municipality.

In a South African context, this implied mix of 'urban' and 'rural' areas within a single municipality may appear relatively novel, but there are both local and international precedents. Moreover, at a conceptual level, the distinction between urban and rural has always been more of a matter of defining poles on a continuum of settlement forms, rather than an either/or concept capable of capturing all possibilities. Thus for example, even large metropolitan areas or cities will usually have need for expansion into a functionally-linked peri-urban fringe, and this has been taken into account in the Board's approach towards the demarcation of Category A municipalities. In the case of smaller towns, the relationship between these towns and their surrounding rural areas (for which the towns usually function largely as service centres) is even more intimate.

The approach that becomes necessary towards amalgamation and the demarcation of Category Bs in such a context is as follows:

- (i) In the first instance, there are numerous city/large town candidates for Category B municipal status which share several of the features of the metropolitan areas (Category A), but which lack the overall size and multi-nodal character of the metros. The demarcation of these areas can follow much the same principles as the demarcation of the metros – that is, the demarcation of a boundary which makes some provision for the incorporation of peri-urban areas relevant to future urban growth, and which also incorporates any of the hitherto excluded functionally-linked suburbs which were the product *inter alia* of apartheid-era displacement.
- (ii) Once these 'urban' Category Bs have been defined in this way, the settlements in the remaining areas of the country need to be allocated into amalgamated rural/urban Category B municipalities, and/or rural Category B municipalities. Some quantitative norms for the approximate population and geographical sizes of

such Category Bs need to be derived, given the Board's objective of arriving at about 350 municipalities. It was determined that a typical geographical size for Category Bs would be about 3500 km<sup>2</sup> and a typical population size about 80 000 people (the latter figure emerges bearing in mind that the metropolitan populations must be extracted from the national total).

Only where there are obvious exceptions to the possibilities that arise from such a procedure, can District Management Areas be contemplated.

#### 4. GUIDING PRINCIPLES FOR CATEGORY B.

##### 4.1 Rationalisation of Municipalities

The demarcation of Category B municipalities needs to proceed in terms of the factors as described in terms of Section 25 of the Municipal Demarcation Act. Moreover, as has been observed in 3 above, some degree of rationalisation of municipalities is required. It is the Board's view that, in the light of this, key principles for the rationalisation (and/or amalgamation) of municipalities include the following:

- 4.11 Geographical contiguity: Because municipal government is so closely tied to local identity and accessibility to local representatives, rationalisation should generally follow 'nearest-neighbour' principles – that is, there should be geographically coherent consolidated Category B municipalities, and not 'leap frog' amalgamations of areas. Not only are geographically fragmented municipalities impractical from a service delivery perspective, but the important function of local government in building a local, developmental identity and sense of common civic purpose, is undermined.
- 4.12 Capacity development: Another objective of rationalisation /amalgamation should be to develop a minimum 'critical mass' of municipal capacity (staff, assets, finances), especially where vulnerable and under-capacitated TLCs and TRCs currently exist. Very small municipalities lack the potential to develop the specialised and dedicated capacity that is necessary to effect good town planning, engineering and development management, and general service delivery, in a country which is undergoing significant modernisation and change in its settlement systems. Moreover, accessing capital markets, and the ability to provide 'higher order' services (such as libraries) is considerably weakened especially in small town and rural contexts where municipalities are too small.
- 4.13 Resource sharing: Wherever possible, current TLCs, TRCs and/or other areas should be combined with a view to realising fiscally sustainable units, with 'weaker' areas being paired with 'stronger' areas so as to achieve a sharing of existing or potential resources. Unless this is done there is every possibility that many of the smaller or weaker authorities will collapse; or 'islands, of exclusive development may emerge, up against which under-serviced and unplanned

settlements are likely to emerge. Neither the likely waste of the infrastructure of collapsed local authority areas, nor the preservation of islands of privilege abutted by under-serviced areas, will contribute towards a rational settlement landscape and use of scarce national development resources.

## 4.2 Manageable Size

In section 3 a statistically-derived indicator of 3 500 km<sup>2</sup> and 80 000 persons was suggested as the probable norm for Category B municipalities. However, deviations from such a norm are possible, given the uneven geographical distribution of population and economic activity throughout the country. Illustratively, there are some cities/large towns which need to be treated as functional units with populations in excess of 1 million. At the other end of the scale, there are sparsely settled rural/small town areas where arriving at a population of 80 000 would require undesirably extensive geographical areas. The Board's empirical research suggests that populations of less than 20 000 are generally undesirable for Category B municipalities, given the objectives of realising economies of agglomeration and scale in municipalities. On the other hand, given the need for geographical coherence and local identity, areas greater than 10 000 Km<sup>2</sup> are also undesirable.



It should however also be recognised that there will often be an inverse relationship between the geographical size and population size of Category B municipalities. Sparsely settled areas of the country will have Category Bs of relatively large geographical area, but relatively small population size. Densely settled areas (eg cities) will be relatively small in geographical size, but large populations. This is a logical result of the uneven pattern of population distribution and settlement sizes that occurs throughout the world.

## 4.3 Functionality

Category B municipalities should be aggregates of places with significant internal functional linkages. Such linkages are evident in shopping and work travel patterns, patterns of social interaction, economic interdependencies, and shared transportation networks amongst other considerations. However, functional linkages are never entirely discrete, and there will always be some degree of functional linkage across Category B municipal boundaries. The idea is to maximise the internal linkages whilst minimizing the external linkages.

It is therefore recognised that in any alignment of wall-to-wall (or near wall-to-wall) boundaries for Category B municipalities, tradeoffs must arise as to whether some place 'X' might be allocated to adjacent municipal areas 'Y' or 'Z'. In such circumstances, a most important consideration is the functional links between places – that is to say, whether such a place 'X' is interdependent, or interacts, more with the places in areas 'Y' or 'Z'.

To some extent functional interdependence is a result of geographical proximity (or distance), but not always. Illustratively, the alignment of transportation routes and physical features (such as a coast) can alter patterns of functional interdependence of some places into a more linear than a circular pattern. In yet other cases, places which may be close together 'as the crow flies' are divided by an impassable mountain range. As a result they interact very little. Maximising the internal functional linkages between places can therefore mean a different matter than simple distance between places.

For this reason, the 'jig-saw puzzle' of boundaries which make up the logical Category B pattern will not necessarily be geometrically similar from District council to District Council, and from Province to Province. But having said this, functionality is usually an additional qualifying factor to, or an elaboration upon, the principle of geographical coherence as described in 4.2 above.

## 5. KEY INDICATORS FOR THE IDENTIFICATION OF CATEGORY B MUNICIPALITIES.

There are several suggested indicators for Category B municipalities:

- (i) A geographical size less than 10 000 km<sup>2</sup> and preferably smaller in the order of 3 500 km<sup>2</sup>.
- (ii) A population size greater than 20 000 persons, and preferably larger in the order of 80 000 persons.
- (iii) A mix local government capacity derived from more than one pre-existing local authority (in cases outside of the largest non-metropolitan urban areas).
- (iv) Geographical contiguity and coherence, as is qualified by functional linkages.



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## 6 AREAS FOR FURTHER INVESTIGATION

### 6.1 Financing Category B Municipalities

The financial viability of municipalities is a key criterion in the determination of municipal boundaries. It is evident from the number of current municipalities, which are deemed unviable and the extent of social and economic disparities in South Africa, that the financing of category B municipalities requires close scrutiny. In preparation for the final determination of category C municipalities, the Board prepared a discussion paper for the Department of Provincial and Local Government Affairs and the Department of Finance on the financing thereof. Similarly it is necessary to develop a document which outlines possible mechanisms for the financing of local municipalities.

The investigation will at least cover the following:

- an examination of the current mechanisms for financing the operating expenditure of local municipalities in particular providing a national perspective on the variations in income sources, credit ratings, tendencies in expenditure patterns, per capita patterns etc

- the provision of a national overview of capital income sources and expenditure patterns for local municipalities;
- an evaluation of current financing mechanisms between district and local councils, and
- the provision of possible alternative mechanisms for the financing of local municipalities.

## 6.2 Mechanism for Municipal Administrative re Organisation

The proposed demarcation of category B municipalities is likely to result in the significant rationalisation of local municipalities. In order to prevent the disruption in the delivery of services, it is important that transformation strategies be implemented once the final determination of category B municipalities is complete. Given that the demarcation of municipal boundaries is a process driven by national guidelines and strategies, it would follow then that the reorganisation of municipalities should be informed by a national approach. Furthermore, administrative capacity to perform municipal functions efficiently and effectively is a key consideration for the demarcation of municipal boundaries.

The investigation to inform the Board's approach to the re-organisation of administrations will at least cover the following aspects:



- Identification of the key aspects and the prioritisation thereof for administrative re-organisation such as organisational structure, delegated authorities, financial systems, human resources systems, operation of service delivery centres etc;
- Identify the possible administrative and political structure/s for managing the administrative re- organisation process – such as Transformation committees;
- Process and legal mechanism for the establishment of the committee/s;
- Powers and functions of such committees;
- Estimated financial implications for the administrative re organisation, and
- Proposed phasing and necessary timeframes for the reorganisation.

## 6.3 Category B Typologies and Powers and Functions

In terms of section 85 (4) of the Local Government: Municipal Structures Act No 117 of 1998, the Municipal Demarcation Board is charged with the following responsibility:

- (a) *Consider the capacity of a district and local council to perform the functions and exercise the powers vested in the municipality in terms of section 84(1) and (2) when –*
  - (i) *determining or re determining the boundaries of district and local municipalities;*  
*or*
  - (ii) *requested in terms of subsection (2)9b) by the MEC for local government in the province concerned to do so; and*
- (b) *convey its assessment in writing to the relevant MEC.*

In order for the Municipal Demarcation Board to meet its statutory requirement, the investigation will examine the following aspects:

- an evaluation of the existing division of powers and functions between district councils and local municipalities and the current capacity for performing such functions;
- an evaluation of the capacity of proposed district and local councils;
- an approach to the division of powers and functions between the district and local councils, and
- to provide a framework for the division of powers and functions between district councils and the type of category B. In this instance the type of municipality does not correspond to type as anticipated in the Municipal Structures Act but rather the range of category B municipalities proposed for demarcation by the Board.

#### 6.4 Traditional Authorities

The approach taken by the Municipal Demarcation Board in the determination of category B municipalities will result in the incorporation of traditional authority areas within local municipalities. The implication for the role of traditional leaders requires examination to ensure that the concerns of the leaders are **circumvented**.



The investigation will include at least the following aspects:

- examples of the inclusion of traditional authorities in existing municipalities and the implications thereof (for example Durban Metro)
- the legal framework governing traditional authorities specifically highlighting roles and responsibilities
- the anticipated participation of traditional leaders in local government structures.

#### 6.5 Establishment Notices

*(a national meeting of ALG legal advisors to be convened to discuss about with them)*

For each new demarcated area an establishment notice will have to be drafted which must specify -

- (a) the category of municipality that is to be established;
- (b) the type of municipality that is to be established;
- (c) the boundaries of the municipal area;
- (d) the name of the municipality;
- (e) the number of councillors as determined in terms of section 20;
- (f) which councillors of the municipality (if any) may be designated as full-time in terms of section 18(4);
- (g) any adjustments in the division of functions and powers in terms of section 85 affecting the municipality;
- (h) any provisions of this Act from which the municipality has been exempted in terms of section 91; and
- (i) any other relevant detail.

*decide so whether would be a matter determine nes*

*specific investigations*  
*PT - metro*  
*Pretoria (Tumba)*  
*Durban metro (traditional authorities)*  
*East Rand (modderfontein)*

Over and above the matters that must be addressed in the notice, such notice must where necessary –

- (a) provide for the disestablishment of the existing municipality or, if only part of the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and
- (b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including – (i) the vacation of office by councillors of the existing municipality; (ii) the transfer of staff from the existing municipality to the superseding municipality; (iii) the transfer of assets, liabilities and administrative and other records from the existing municipality to the superseding municipality, taking into account the interests of creditors of the existing municipality; and (iv) the continued application of any by-laws, regulations and resolutions of the existing municipality to or in that area, and the extent of such application.

Although the responsibility for the establishment notices vests with the nine MEC's responsible for local government, the Board has been requested to obtain all the required information which must be contained in the notices and to assist in the process of regulating all the consequences of the disestablishment of existing municipalities and the establishment of new municipalities. It is necessary to ensure that all the establishment notices have been finalised within the time required to ensure that elections take place by 11 November 2000.

*(6.6) → mission stations (CRAs - WC)*

## 7 CONCLUSION: TIME FRAMES

Finally, it should be noted that Category A, B and C will be considered simultaneously and the Board has adopted the following time frames to complete the demarcation process:

- 2 November: Board workshop to finalise policy framework for B Municipalities;
- 12 November: Board workshop to finalise draft boundary options for Category B municipalities and DMAs;
- 18 November: Board meeting to: (i) determine Category A and C municipalities, and (ii) finalise draft boundary options for B Municipalities and DMAs, including investigation process to be followed;
- 19 November: National stakeholder workshop to present determinations and draft boundaries;
- 8 December: Board workshop to consider B municipality boundary options; and
- 15 December: Board meeting to determine B municipalities and DMAs.



## MUNICIPAL DEMARCATION BOARD

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### DRAFTING OF NOTICES IN TERMS OF SECTION 12 OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998

DRAFT



#### TERMS OF REFERENCE: BRIEF DESCRIPTION

The Local Government: Municipal Structures Act envisages that each new municipality will be established through the proclamation of a notice (Section 12 of the Act). The responsibility to establish municipalities by notices in Provincial Gazettes vests with the MEC responsible for local government. The Municipal Demarcation Board has been requested to provide draft Section 12 proclamations for each new municipality to the MECs concerned.

The project entails the drafting of notices envisaged in section 12 of the Structures Act, establishing a municipality in each area which the Demarcation Board demarcates, and the provision of assistance to the newly established municipality, or ensuring that the municipality has sufficient capacity to implement the establishment notice.

#### BACKGROUND

It is envisaged that the current 843 municipalities will be reduced to a lesser number (between 300 and 350) as contemplated in section 25(1) of the Demarcation Act. It is however not possible to indicate how many new municipalities will have to be established, as this depends on the outcome of the demarcation process.

However, for each new demarcated area a establishment notice will have to be drafted which must specify -

- the category of municipality that is to be established;
- the type of municipality that is to be established;

- the boundaries of the municipal area;
- the name of the municipality;
- the number of councillors as determined in terms of section 20;
- which councillors of the municipality (if any) may be designated as full-time in terms of section 18(4);
- any adjustments in the division of functions and powers in terms of section 85 affecting the municipality;
- any provisions of this Act from which the municipality has been exempted in terms of section 91; and
- any other relevant detail;

In addition, Section 14(2) states that the Section 12 notice must:

- provide for the disestablishment of the existing municipality or, if only part of the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and
- regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including –
  - (i) the vacation of office by councillors of the existing municipality;
  - (ii) the transfer of staff from the existing municipality to the superseding municipality;
  - (iii) the transfer of assets, liabilities and administrative and other records from the existing municipality to the superseding municipality, taking into account the interests of creditors of the existing municipality; and
  - (iv) the continued application of any by-laws, regulations and resolutions of the existing municipality to or in that area, and the extent of such application.



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## PHASE 1: MODELLING FUNCTIONS, POWERS, FINANCES AND ADMINISTRATIVE CAPACITY:

The main aim of the first phase is to collect such information as is necessary to undertake the following tasks:

- assemble a data base for each of the existing 843 municipalities which providing current data on functions, powers, finances and human resources available;
- categorise limitations on existing capacity for each new Local and District municipality, which might affect their ability to exercise its powers in terms of Sections 84(1) or (2) of the Municipal Structures Act;
- analyse ways in which existing personnel might best be deployed and the legal procedures which would need to be followed in order to achieve this;
- provide a model or set of models which will allow the Board to make recommendations on the most effective and efficient split of functions and powers between District and Local municipalities.

**TIME FRAMES:** Base information has been collected by the Board since February 1999. It is expected that by 15 January 2000, the most current data base will be

available for modelling and testing various options. The data base will be updated on a continual basis.

**OUTPUTS:** Workshop to be held on 24 January 2000 including Board and national stakeholders (Minister, MECs, SALGA, Houses of Traditional Leaders) to explore broad options to be considered on functional split, as well as recommendations on finance and administration.

## PHASE 2: SETTING UP TRANSITIONAL COMMITTEES:

The Board believes that in order to ensure local areas are properly empowered to be involved in the establishment process, that Transitional Committees are established for each new municipal area. These Transitional Committees would initially work directly with the Board and later with the MEC to ensure all legal provisions around the disestablishment and establishment process are properly catered for.

**TRANSITIONAL COMMITTEES:** In order to facilitate the work to be undertaken in establishing the new municipalities, it is suggested that the MECs establish transitional teams for each of the new municipalities. This may be accomplished through a Section 14(5) notice:

14(5) the MEC for local government in a province, by notice in the Provincial Gazette, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality. The MEC must consult the existing municipality before publishing the notice.



The Board suggests that such Transitional Committees have at least the following functions and powers:

- to advise the MEC, after allowing for public comment, on the proposed name of the municipality;
- to advise the MEC, after allowing for public comment, on the proposed type of municipality;
- to advise the MEC, after allowing for public comment, on the designation of full-time/part-time councillors, the division of functions and powers, the legal, practical and other consequences of demarcation, etc.
- to provide to the Municipal Demarcation Board all relevant information necessary for the development of a draft establishment notice for the new municipality;
- to take such steps as necessary, and with the concurrence of the MEC, to ensure the objects of the Municipal Structures Act are met and there is a smooth transition to the new democratic order; and
- to assist the IEC in carrying out its electoral mandate.

The MECs would need to determine a formula for representation on these committees (multiparty political representation would probably be easier than getting representation from specific councils) and included should be the establishment of a

technical committee (possibly including all CEOs) which would act as secretariat to the Transitional Committee.

**TIME FRAMES:** Transitional Committees should have their first meeting before 15 March 2000.

**OUTPUTS:** Draft notices for publication in Provincial Gazettes to be discussed with MECs by 1 February 2000 for publication by the end of February 2000.

### **PHASE 3:**

#### **TESTING THE SPLIT OF FUNCTIONS AND POWERS:**

During the month of February 2000, specific modelling of how the functional split could work for each District Council and its Local Councils must be carried out. This would allow a set of recommendations to be provided to the Board on how best the constitutional and legislative objectives for local government could be met throughout the country.

**TIME FRAMES AND OUTPUTS:** Report to be made available to Board by 29 February 2000. The document to serve before the Board at its meeting on 5-6 March 1999. These recommendations will then serve at the inaugural meetings of the Transitional Committees to be held on or around 15 March 2000.

### **PHASE 4:**

#### **PROVINCIAL INPUTS ON TYPES, NAMES AND NUMBER OF COUNCILLORS:**

Provincial legislation on types of municipalities should be finalised by early March 2000. This would then allow the Transitional Committees to undertake the following:

- Debate their preferred type of municipality;
- Allow for public comment on a proposed name; and
- Debate Full-time/Part-time breakdown of councillors if applicable.

**OUTPUTS AND TIME FRAMES:** Recommendations on each of these matters must be provided to the MEC and Municipal Demarcation Board by 7 April 2000.

### **PHASE 5:**

#### **DRAFTING OF ESTABLISHMENT PROCLAMATIONS:**

Work would begin almost immediately on drafting the Establishment Proclamations and may easily be divided into three stages:

- Identification of what is required to go into the proclamation – December 1999 until end January 2000;
- Coordination with investigation teams to ensure information is collected in a useable form – February – March 2000; and

- Final drafting April 2000.

The Establishment Proclamations would then be provided to MECs at the end of April and they would then publish the notices at the end of May 2000 after consulting organized local government in the province and the affected existing municipalities in terms of Section 12(4).

## PHASE 6: DRAFTING PROFORMA BY-LAWS

Arising out of the analysis and work, it is suggested that the legal team also begin to draft a set of proforma by-laws. These could be provided to each new municipality, so that, instead of rationalising existing by-laws, the municipalities could simply adopt this new set of by-laws.

This project would have two parts to it:

- in the first stage, the consultants would explore the feasibility of such an approach and
- in the second stage actual sets of by-laws would be drafted.



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# ADDENDUM

**ANNEXURE A:** Category A (Metropolitan) & C (District) submissions summary evaluations.

**ANNEXURE B:** Category B (Local) Section 26 submissions summary evaluation.

**ANNEXURE C:** Policy on District Management Areas



**ANNEXURE D:** The Boards approach to the determination of category B Municipalities.

**EASTERN CAPE**

District Council	Category B Municipality Option	Geographic Size (km)	Population	Density	African	Coloured	Indian	White	Other	Male	Female	No. of Households	Average Annual Household Income	Annual Income Per Capita
CBDC5b	EC05B1	2,440	164,167	67	162,953	409	51	31	723	72,075	91,996	29,142	9,286	1,648
CBDC5b	EC05B2	5,351	375,600	70	373,150	551	130	239	1,530	168,209	207,233	76,169	7,588	1,539
DC10	EC101	7,237	44,268	6	9,985	28,619	63	5,408	193	21,178	23,101	8,900	25,643	5,155
DC10	EC102	10,295	35,075	3	19,807	11,910	27	3,209	122	16,860	18,195	7,671	18,798	4,111
DC10	EC103	6,215	14,940	2	4,639	8,793	9	1,451	48	7,087	7,849	3,320	17,931	3,985
DC10	EC104	2,991	72,310	24	52,172	9,077	790	10,000	271	34,226	38,058	13,973	29,542	5,709
DC10	EC105	2,007	47,688	24	38,014	3,133	23	6,113	405	22,418	25,220	9,913	22,016	4,577
DC10	EC106	4,664	45,718	10	32,267	9,151	23	4,022	255	22,927	22,774	8,727	18,516	3,535
DC10	EC108	2,246	64,968	29	21,600	29,713	61	13,078	516	32,073	32,873	13,921	33,454	7,168
DC10	EC109	3,532	28,579	8	5,529	19,016	23	3,629	382	14,316	14,255	6,805	24,920	5,934
DC10	ECDMA10	19,508	16,205	1	1,646	12,929	7	1,390	233	7,944	8,255	3,481	21,832	4,690
DC12	EC121	3,182	255,991	80	254,310	249	71	110	1,251	113,530	142,343	47,499	8,556	1,588
DC12	EC122	3,371	294,054	87	291,650	378	298	579	1,149	132,986	160,969	57,437	10,970	2,143
DC12	EC123	1,746	40,607	23	37,339	474	23	2,622	149	18,882	21,698	8,152	14,850	2,981
DC12	EC124	3,473	124,264	36	120,661	1,127	29	1,980	467	58,643	65,546	24,685	11,472	2,279
DC12	EC125	2,705	688,758	255	573,979	38,101	4,647	67,536	4,495	325,509	362,947	147,727	27,582	5,916
DC12	EC126	1,961	77,652	40	77,255	135	9	87	166	35,912	41,740	16,700	9,103	1,958
DC12	EC127	4,178	136,554	33	130,085	4,182	71	1,625	591	64,291	72,181	26,181	13,166	2,524
DC12	EC128	2,393	23,717	10	17,097	4,989	22	1,429	180	11,160	12,547	4,543	14,027	2,687
DC12	ECDMA12	1	302	243	83	0	0	219	0	157	145	87	76,331	21,989
DC13	EC131	11,660	57,574	5	30,224	20,536	49	6,558	207	28,012	29,529	12,014	20,624	4,304
DC13	EC132	5,074	12,130	2	9,179	1,820	12	1,068	51	5,801	6,313	2,838	16,925	3,960
DC13	EC133	3,596	19,434	5	17,225	803	3	1,374	29	9,127	10,306	4,084	14,314	3,008
DC13	EC134	5,821	206,663	36	190,583	7,661	429	6,990	1,000	95,454	111,101	38,627	17,107	3,197
DC13	EC135	4,226	240,864	57	239,700	218	36	33	877	108,037	132,727	47,364	8,410	1,654
DC13	EC136	2,997	108,181	36	106,199	625	23	783	551	49,351	58,774	20,551	10,087	1,916
DC13	EC137	2,343	154,858	66	153,786	176	72	100	724	69,919	84,888	28,226	9,458	1,724
DC13	EC138	2,122	43,789	21	42,352	314	80	871	172	20,276	23,480	8,573	12,331	2,414
DC14	EC141	5,537	156,949	28	154,369	910	47	862	761	70,151	86,733	32,535	8,528	1,768
DC14	EC142	8,787	133,569	15	129,812	1,652	28	1,684	393	61,970	71,512	28,000	10,519	2,205

District Council	Category B Municipality Option	Geographic Size (km)	Population	Density	African	Coloured	Indian	White	Other	Male	Female	No. of Households	Average Annual Household Income	Annual Income Per Capita
DC14	EC143	6,342	45,203	7	35,104	4,886	26	4,873	314	20,981	24,187	8,491	23,216	4,361
DC14	EC144	4,928	13,376	3	8,955	3,085	3	1,199	134	6,160	7,213	2,478	18,060	3,346
DC15	EC151	2,491	246,169	99	243,548	398	130	612	1,481	108,653	137,452	41,628	7,881	1,333
DC15	EC152	1,322	115,852	88	115,167	166	41	13	465	51,987	63,805	21,113	11,321	2,063
DC15	EC153	2,461	240,580	98	238,372	1,061	182	27	938	107,625	132,908	42,411	8,713	1,536
DC15	EC154	913	96,292	106	95,272	408	27	89	496	42,764	53,458	16,884	8,072	1,415
DC15	EC155	2,986	316,509	106	314,079	631	83	85	1,631	144,688	171,666	57,426	8,424	1,528
DC15	EC156	2,678	179,328	67	178,254	308	29	100	637	81,220	98,060	34,412	10,382	1,992
DC15	EC157	2,789	374,969	134	369,025	2,122	830	1,459	1,533	170,710	204,094	71,837	15,815	3,030



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### CIRCULAR

**TO: THE MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT, GOVERNMENT DEPARTMENTS, MEC'S RESPONSIBLE FOR LOCAL GOVERNMENT, SALGA AND AFFILIATES, ALL MUNICIPALITIES, MAGISTRATES, HOUSES OF TRADITIONAL LEADERS, IEC, MEDIA AND OTHER DEMARCATION STAKEHOLDERS.**

22 NOVEMBER 1999

At its meeting of 18 November 1999, the Board made a number of key decisions which need to be brought to your notice.

#### 1. THE DETERMINATION OF CATEGORY A (METROPOLITAN) AND C (DISTRICT) COUNCIL AREAS

In reacting to the Constitutional Court's judgement, the Board published afresh Section 26 Notices inviting comment from the public at large around the determination of Category A and Category C municipalities.

At its meeting on November 18 1999, the Municipal Demarcation Board applied the relevant criteria in Section 2 of the Municipal Structures Act and determined that the following areas would be category A areas:

- Greater Johannesburg
- Greater Cape Town
- Greater Durban
- Greater East Rand
- Greater Pretoria
- Greater Port Elizabeth

All other areas in South Africa would have both Category B and C municipalities.

## 2. DETERMINATION OF CATEGORY A AND C MUNICIPAL BOUNDARIES

The Board further determined the boundaries of all Category A and C municipalities and the applicable Section 21 notice will be published in the provincial Gazettes on Monday 22 November 1999.

A report (Report 1) dealing with all submissions made to the Board is available and it indicates particularly the adjustments made by the Board in arriving at its final boundary determinations.

## 3. DRAFT BOUNDARIES FOR B-CATEGORY (LOCAL) MUNICIPALITIES

The Board has received a number of submissions and these have been summarised in a report (Report 2) to be made available.

In the interests of transparency, the Board has made available its views on draft boundaries for Category B municipalities. These will be published and sent to affected municipalities during the week beginning 22 November 1999.

It is important to note that there will be a significant rationalisation of municipalities and the following table indicates likely municipal arrangements:

PROVINCE	EXISTING	A/C	B
Eastern Cape	182	7	40-45
Free State	100	5	20-25
Gauteng	51	6	8
KwaZulu-Natal	75	11	50-55
Mpumalanga	81	6	20-25
North-West	53	6	25-30
Northern Cape	112	5	30-35
Northern Province	53	6	30-35
Western Cape	136	6	30-35
	843	58	250-280

## 4. INVESTIGATION PROCESS

In order to ensure that the boundary determination for local municipalities is completed effectively and efficiently, multidisciplinary teams of consultants have been engaged to undertake detailed investigations of all the proposed boundaries.

## 5. PUBLIC HEARINGS

The Board will be conducting public hearings into the proposed boundaries and these hearings have been scheduled throughout the country from 29 November 1999 until 3 December 1999:

PROVINCE	# HEARINGS
KWAZULU-NATAL	46
FREE STATE	13
MPUMALANGA	9
NORTHERN PROVINCE	12
GAUTENG	7
WESTERN CAPE	20
NORTH WEST	10
NORTHERN CAPE	12
EASTERN CAPE	23
TOTAL	152

The Board will make its determination on B-Municipalities on 15 December 1999.

## 6. DISTRICT MANAGEMENT AREAS

In considering the matter of District Management Areas, the Municipal Demarcation Board has decided that the areas which could qualify to be categorised as DMAs are:

- **Deserts and semi-arid areas**
- **State protected and conservation areas**
- **Special Economic Areas**

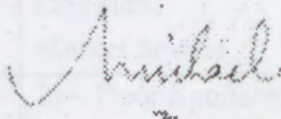
After investigating areas which fulfil these criteria, the Board will declare DMAs on 15 December 1999. Draft DMA boundaries have been identified by the Board at its meeting of 18 November 1999. A report dealing with this policy and proposed boundaries is available.

The reports, maps and further information is also available on the Board's website: [www.demarcation.org.za](http://www.demarcation.org.za).

Could you please bring these matters to the attention of as many people as possible?

Thank you very much in anticipation.

Sincerely,



**Dr. Michael O. Sutcliffe**  
**CHAIRPERSON**

Cellular: 0824405203 Home Fax: 031 2670395 e-Mail: [msmdb@mweb.co.za](mailto:msmdb@mweb.co.za)

Eastern Cape Province

TLC	VENUE	DATE	TIME
Bathurst	Nolokanyo Town Offices Nolokanyo Hall.	29/11/99	14h00
Bizana	Bizana Hotel Conference Room, 14 Main Street.	29/11/99	09h00
Butterworth	Msobomvu Community Hall.	01/12/99	09h00
Cala	Cala Town Hall, 458 Umtata Road.	30/11/99	09h00
Cradock	Lingelihle Community Hall, Sikulu Street	30/11/99	09h00
East London	Cambridge Hall, Mayfair Road	01/12/99	14h00
Elliot	Masibambane Town Hall.	29/11/99	14h00
Flagstaff	Flagstaff Municipal Hall, 135 Main Street	29/11/99	14h00
Fort Beaufort	Old Age Home; 840 Ponono Street, Bhofolo Township.	03/12/99	09h00
Grahamstown	City Hall, Church Square	29/11/99	09h00
King Williams	Schornville Community Hall, Fourth Avenue, Schornville.	02/12/99	14h00
Middleburg	Siyabulela Community Hall, Cetyiwe Street, Kwa – Nobuhle.	30/11/99	14h00
Mount Fletcher	Mount Fletcher Town Hall. Back Street.	29/11/99	09h00
Mt Ayliff	Call 0800-111-006 for confirmation	30/11/99	09h00
Mt Frere	Roman Catholic Hall, 229 Hospital Street	30/11/99	14h00
Port Elizabeth	City Hall, Market Square	01/12/99	14h00
Queenstown	In – Door Sporting Centre Victoria Road.	02/12/99	09h00
Qumbu	Call 0800-111-006 for confirmation	01/12/99	14h00
St Frances Bay	Seavister Hall, Steenbrag Street, Seavister Township.	02/12/99	09h00



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Tsolo	Tsolo Town Hall, 128 Thurston Street	01/12/99	09h00
Tsomo	Call 0800-111-006 for confirmation	30/11/99	14h00
Uitenhage	BAPS Matlakane Hall, Matanzima and Jabavu Roads, Kwa – Nobuhle.	01/12/99	09h00
Umtata	PRD Auditorium, 96 Sutherland Street	02/12/99	09h00

### Oos-Kaap Provinsie

TLC	VENUE	DATE	TIME
Bathurst	Nolokanyo Munisipale kantore Nolokanyo Saal.	29/11/99	14h00
Bizana	Bizana Hotel Konferensiekamer, Hoofstraat 14	29/11/99	09h00
Butterworth	Msobomvu Gemeenskapsaal.	01/12/99	09h00
Cala	Cala Stadsaal, Umtataweg 485	30/11/99	09h00
Cradock	Lingelihle Gemeenskapsaal, Sikulustraart	30/11/99	09h00
East London	Cambridgesaal, Mayfairweg	01/12/99	14h00
Elliot	Masibambane Stadsaal	29/11/99	14h00
Flagstaff	Flagstaff Municipal Hall, Hoofstraat 135	29/11/99	14h00
Fort Beaufort	Ouetehuis Pononostraat 840, Bhofolo.	03/12/99	09h00
Grahamstown	Stadsaal, Kerkplein	29/11/99	09h00
King Williams	Schorntville Gemeenskapsaal, Vierde Laan Schornville.	02/12/99	14h00
Middleburg	Siyabulela Gemeenskapsaal, Cetyiwestraat Kwa – Nobuhle.	30/11/99	14h00



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Mount Fletcher	Mount Fletcher Stadsaal. Backstraat.	29/11/99	09h00
Mt Ayliff	Skakel 0800-111-006 vir bevestiging	30/11/99	09h00
Mt Frere	Rooms Katolieke saal Hospitaalstraat 229	30/11/99	14h00
Port Elizabeth	Stadsaal, Markplein	01/12/99	14h00
Queenstown	In – Door Sportsentrum Victoriaweg	02/12/99	09h00
Qumbu	Skakel 0800-111-006 vir bevestiging	01/12/99	14h00
St Frances Bay	Seavister Saal, Steenbragstraat, Seavister.	02/12/99	09h00
Tsolo	Tsolo Stadsaal, Thurstonstraat 128	01/12/99	09h00
Tsomo	Skakel 0800-111-006 vir bevestiging	30/11/99	14h00
Uitenhage	BAPS Matlakane Saal, Matanzima & Jabavu Weg, Kwa – Nobuhle.	01/12/99	09h00
Umtata	PRD Oditorium, Sutherlandstraat 96	02/12/99	09h00



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PAGE 3				
Joubertina TLC	DC10	EC109	Clarkson	
Kareedouw TLC	DC10	EC109	Coldstream	
			Jagersbos	
			Kammiebos	
			Kleinbos	
			Krakeelrivier	
			Louterwater	
			Marrenburg	
			Misgund	
			Sanddrift	
			Stormsrivier	
			Stormsriviermond	
			Thornham	
			Twee Riviere	
			No villages	
<b>POSSIBLE DMA'S IN THE FORMER WESTERN DISTRICT COUNCIL</b>				
Willowmore TLC	DC10(11)	ECDMA10	Aberdeen Road	Towns are unconfirm=
Steytlerville TRC	DC10	ECDMA10	Barakke	ed as none are
			Behulpsaam	idicated on the map.
			Fern	
			Kasouga	
			Vilier	
			Oatlands	
			Rietbrom	
			Volstruisleegte	
			Vondeling	
			No villages	
			Cambria	
			Colekeplaas	
			Glenconnor	
			Kleinpoort	
			Sandvlakte	
			Smitskraal	
			Studtis	
			Wolwefontein	
			No villages	
<b>FORMER AMATOLA DISTRICT COUNCIL</b>				
Idutywa TLC	DC12	EC121	No towns.	
Willowvale TLC	DC12	EC121	Many villages.	
Xhora/E Dale TLC	DC12	EC121		
Butterworth TLC	DC12	EC122	Nqamakwe	
Kentani TLC	DC12	EC122	Many villages	
Nqamakwe TLC ??	DC12	EC122		Not shown as a TLC



FORMER STORMBERG DISTRICT COUNCIL			
Cradock TLC	DC13	EC131	Agter sneeuberg
MiddelBurg TLC		EC131	Baroda
			Drennan
			Elandsdrif
			Halesowen
			Marlow
			Mortimer
			Post Chalmers
			Visrivier
			Conway
			Grootfontein
			Heydon
			Ludlow
			Rooihogte
			Rosmead
			Schoombee
			Sherborne
			Spitskopvlei
			Tafelberg
			No villages
Hofmeyer TLC	DC13	EC132	Elandsrivier
Tarkastad TLC	DC13	EC132	Spring Valley
			Waverley
			Traditional areas nl.
			Miford & Thornhill
Molteno TLC	DC 13	EC133	Halseton
Sterkstroom TLC	DC13	EC133	Stormberg
			Syfergat
			No villages
Queenstown TLC	DC13	EC134	Bailey
Whittlesea/Sada TLC	DC13	EC134	Bede
			Bowkers Park
			Ilinge
			Lesseyton
			Imvani
			Sada
			Tylden
			Many villages
Cofimvaba TLC	DC13	EC135	Bolotwa
Tsomo TLC	DC13	EC135	Kudonga
			Kungcuka
			Ngcuka
			Qamata
			Many villages.
Dordrecht TLC	DC13	EC136	Ida
Indwe TLC	DC13	EC136	Many villages
Lady Frere TLC	DC13	EC136	

Engcobo TLC	DC13	EC137	Clarkebury Coghlan Many villages
Cala TLC	DC13	EC138	Nkwenkwezi
Elliot TLC	DC13	EC138	Cala Road Quiba Many villages
<b>FORMER DRAKENSBERG DISTRICT COUNCIL</b>			
Maclear TLC	DC14	EC141	Elands Heights
Mt. Fletcher TLC	DC14	EC141	Halcyon Drift
Ugie TLC	DC14	EC141	Many villages
Barkley East TLC	DC14	EC142	Bluegums
Lady Grey TLC	DC14	EC142	Clanville
Wes TLC	DC14	EC142	Entsimkeni
Wetterspruit TLC	DC14	EC142	Clifford Herschel Karringmelkspruit Morristown Mosheshs Ford New England Rhodes Rossouw Tugela Many villages
Aliwal North TLC	DC14	EC143	Swemport
Jamestown TLC	DC14	EC143	Vineyard Witkop No villages
Steynsberg TLC	DC14	EC144	Koffiebus
Weserstad TLC	DC14	EC144	Teebus
Burgersdorp TLC	DC14	EC144	Knapdaar No villages
<b>FORMER KEI AND WILD COAST DISTRICT COUNCIL</b>			
Bizana TLC	DC15	EC151	Ludeke Many villages
Tabankulu TLC	DC15	EC152	No Towns Many villages
Lusikisiki TLC	DC15	EC153	Cross Mission
Flagstaff TLC	DC15	EC153	Many villages
Umzimvubu TLC/Port St Johns	DC15	EC154	Holy Cross Mission Many villages

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PAGE 7				
Libode TLC	DC15	EC155	Ngangelizwe ????	Could be EC 155 or 157
Nqgeleni TLC	DC15	EC155	Many villages	
Qumbu TLC	DC15	EC156	Tina Falls	
Tsolo TLC	DC15	EC156	Many villages	
Mqanduli TLC	DC15	EC157	No small towns	
Umtata TLC	DC15	EC157	Many villages	

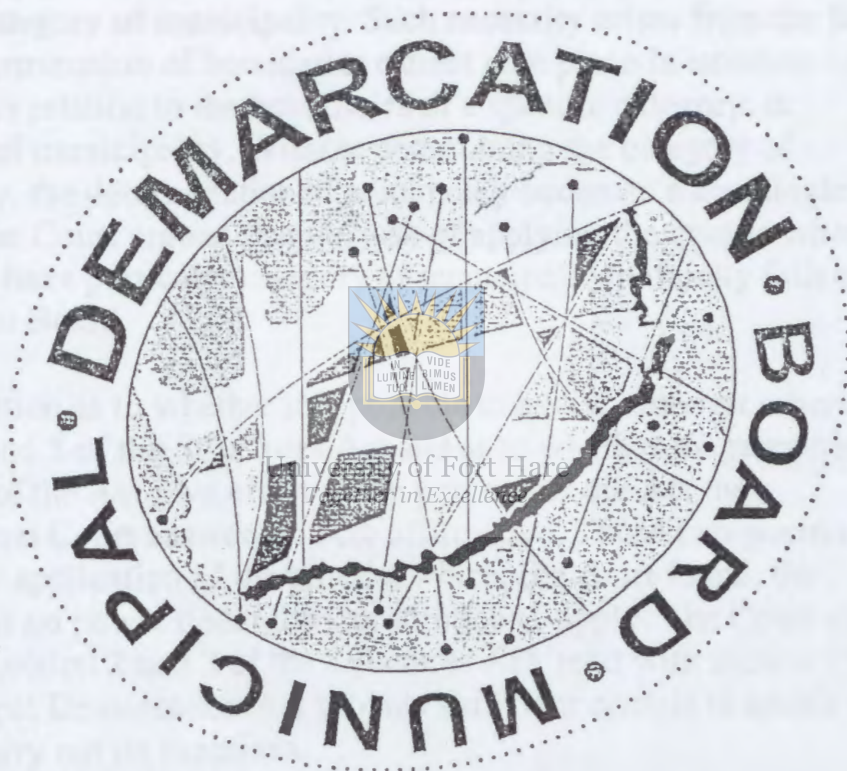



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*Map of Fort Hare*

~~003 4922506~~

THE DETERMINATION OF CATEGORY A (METROPOLITAN) AND CATEGORY C (DISTRICT) COUNCIL BOUNDARIES, THE PUBLICATION OF DRAFT BOUNDARIES FOR CATEGORY B (LOCAL) MUNICIPALITIES AND THE BOARD'S APPROACH TO DISTRICT MANAGEMENT AREAS



18 November 1999

## THE DETERMINATION OF CATEGORY A (METROPOLITAN) AND C (DISTRICT) COUNCIL AREAS

The recent Constitutional Court judgement clearly stated that, in fulfilling its constitutional obligation to determine the boundaries of the categories of municipalities, the Municipal Demarcation Board must not only apply the criteria for determining municipal boundaries, but it must of necessity, apply the criteria for determining when an area should have a particular category of municipality. Such necessity arises from the fact that the determination of boundaries cannot take place in isolation – it can only occur in relation to the boundaries of a specific category, or categories, of municipality. Without determining the category of municipality, the determination of a boundary becomes a meaningless exercise. The Court argued that the task of applying the criteria when an area should have particular category of municipality naturally falls on the Demarcation Board.



On the question as to whether it is possible to excise amongst others sections 4 and 5 of the Structures Act and as to whether the remaining provisions of the Act give effect to the purpose of the Act the Constitutional Court answered in the affirmative. These two questions relate to the application of the criteria, which, the court found, the Minister has no power under the Constitution to apply. The Court also found that section 2 and 3 of the Structures Act, read with section 25 of the Municipal Demarcation Act provide sufficient criteria to enable the Board to carry out its functions.

In reacting to the court's judgement, the Board published afresh Section 26 Notices inviting comment from the public at large around the determination of Category A and Category C municipalities.

Based on its earlier research, the Board's presently believed that only the following areas were real contenders as category A (Metropolitan) municipalities:

- Definites: Johannesburg, Cape Town and Durban;
- Probables: Pretoria and East Rand
- Possible: Port Elizabeth.

The Board commissioned a specific study into whether or not Port Elizabeth meets the criteria as laid down in the Municipal Structures Act, which study indicated it did meet the criteria. The Board also consulted with its major stakeholders around the decision on which areas should be metropolitan areas

At its meeting on November 18 1999, the Municipal Demarcation Board applied the relevant criteria in Section 2 of the Municipal Structures Act and determined that the following areas would be category A areas:

- Greater Johannesburg
- Greater Cape Town
- Greater Durban
- Greater East Rand
- Greater Pretoria
- Greater Port Elizabeth

All other areas in South Africa would have both Category B and C municipalities.



## DETERMINATION OF CATEGORY A AND C MUNICIPAL BOUNDARIES

The Board further determined the boundaries of all Category A and C municipalities and the applicable Section 21 notice will be published in the provincial Gazettes on Monday 22 November 1999.

A report dealing with all submissions made to the Board will be made available and which indicates particularly the adjustments made by the Board in arriving at its final boundary determinations.

## DRAFT BOUNDARIES FOR B-CATEGORY (LOCAL) MUNICIPALITIES

### POLICY:

The Board believes:

- (i) In the first instance, there are numerous city/large town candidates for Category B municipal status which share several of the features of the metropolitan areas (Category A), but which lack the overall size and multi-nodal character of the metros. The demarcation of these areas can follow much the same principles as the demarcation of the metros – that is, the

demarcation of a boundary which makes some provision for the incorporation of peri-urban areas relevant to future urban growth, and which also incorporates any of the hitherto excluded functionally-linked suburbs which were the product inter alia of apartheid-era displacement.

- (ii) Once these 'urban' Category Bs have been defined in this way, the settlements in the remaining areas of the country need to be allocated into amalgamated rural/urban Category B municipalities, and/or rural Category B municipalities. Some quantitative norms for the approximate population and geographical sizes of such Category Bs need to be derived, given the Board's objective of arriving at about 350 municipalities. It was determined that a typical geographical size for Category Bs would be about 3500 km<sup>2</sup> and at least 20000 people (with an average of around 80000 people).

Only where there are obvious exceptions to the possibilities that arise from such a procedure, can District Management Areas be contemplated.

## GUIDING PRINCIPLES

### Rationalisation

The Board's view is that key principles for the rationalisation (and/or amalgamation) of municipalities include the following:



- Geographical contiguity: Because municipal government is so closely tied to local identity and accessibility to local representatives, rationalisation should generally follow 'nearest-neighbour' principles – that is, there should be geographically coherent consolidated Category B municipalities, and not 'leap frog' amalgamations of areas. Not only are geographically fragmented municipalities impractical from a service delivery perspective, but the important function of local government in building a local, developmental identity and sense of common civic purpose, is undermined.
- Capacity development: Another objective of rationalisation /amalgamation should be to develop a minimum 'critical mass' of municipal capacity (staff, assets, finances), especially where vulnerable and under-capacitated TLCs and TRCs currently exist. Very small municipalities lack the potential to develop the specialised and dedicated capacity that is necessary to effect good town planning, engineering and development management, and general service delivery, in a country which is undergoing significant modernisation and change in its settlement systems. Moreover, accessing capital markets, and the ability to provide 'higher order' services (such as libraries) is considerably weakened especially in small town and rural contexts where municipalities are too small.
- Resource sharing: Wherever possible, current TLCs, TRCs and/or other areas should be combined with a view to realising fiscally sustainable units, with 'weaker' areas being paired with 'stronger' areas so as to achieve a sharing of existing or potential resources. Unless this is done there is every possibility that many of the smaller or weaker authorities will collapse; or 'islands, of exclusive development may emerge, up against which under-serviced and unplanned settlements are likely to emerge. Neither the likely waste of the infrastructure of

collapsed local authority areas, nor the preservation of islands of privilege abutted by under-serviced areas, will contribute towards a rational settlement landscape and use of scarce national development resources.

### Manageable Size

While the Board has developed a statistically-derived indicator of 3500 km<sup>2</sup> and 80000 persons as the probable norm for Category B municipalities, deviations from such a norm are possible, given the uneven geographical distribution of population and economic activity throughout the country. Illustratively, there are some cities/large towns which need to be treated as functional units with populations in excess of 1 million. At the other end of the scale, there are sparsely settled rural/small town areas where arriving at a population of 80 000 would require undesirably extensive geographical areas. The Board's empirical research suggests that populations of less than 20 000 are generally undesirable for Category B municipalities, given the objectives of realising economies of agglomeration and scale in municipalities. On the other hand, given the need for geographical coherence and local identity, areas greater than 10000 Km<sup>2</sup> are also undesirable.

It should however also be recognised that there will often be an inverse relationship between the geographical size and population size of Category B municipalities. Sparsely settled areas of the country will have Category Bs of relatively large geographical area, but relatively small population size. Densely settled areas (eg cities) will be relatively small in geographical size, but large populations. This is a logical result of the uneven pattern of population distribution and settlement sizes that occurs throughout the world.

### Functionality

Category B municipalities should be aggregates of places with significant internal functional linkages. Such linkages are evident in shopping and work travel patterns, patterns of social interaction, economic interdependencies, and shared transportation networks amongst other considerations. However, functional linkages are never entirely discrete, and there will always be some degree of functional linkage across Category B municipal boundaries. The idea is to maximise the internal linkages whilst minimizing the external linkages.

## DRAFT BOUNDARIES

The Board has received a number of submissions and these have been summarised in a report to be made available.

In the interests of transparency, the Board has made available its views on draft boundaries for Category B municipalities.

It is important to note that there will be a significant rationalisation of municipalities and the following table indicates likely municipal arrangements:

40

PROVINCE	EXISTING	A/C	B
Eastern Cape	182	7	40-45
Free State	100	5	20-25
Gauteng	51	6	8
KwaZulu-Natal	75	11	50-55
Mpumalanga	81	6	20-25
North-West	53	6	25-30
Northern Cape	112	5	30-35
Northern Province	53	6	30-35
Western Cape	136	6	30-35
	843	58	250-280

## INVESTIGATION PROCESS

In terms of the Municipal Demarcation Act (No27 of 1998), when the period for the written representations and views has expired, the Board:

- must consider all representations and views submitted to it, and
- may take a decision on the decision on the determination or before it takes such a decision:
  - (i) hold a public meeting
  - (ii) conduct a formal investigation,
  - (iii) do both.



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In order to ensure that the boundary determination for local municipalities is completed effectively and efficiently, multidisciplinary teams of consultants have been engaged to undertake detailed investigations of all the proposed boundaries.

## PUBLIC HEARINGS

The Board will be conducting public hearings into the proposed boundaries and these hearings have been scheduled throughout the country from 29 November 1999 until 3 December 1999:

PROVINCE	# HEARINGS
KWAZULU-NATAL	46
FREE STATE	13
MPUMALANGA	9
NORTHERN PROVINCE	12
GAUTENG	7
WESTERN CAPE	20
NORTH WEST	10
NORTHERN CAPE	12
EASTERN CAPE	23
TOTAL	152

The Board will make its determination on B-Municipalities on 15 December 1999.

## DISTRICT MANAGEMENT AREAS

### LEGAL FRAMEWORK:

The Local Government Municipal Structures Act (#117 of 1998) provides, among other things, for the establishment of municipalities, throughout the territory of South Africa, in accordance with the requirements relating to categories and types of municipality. The Act makes provision for the three types through providing criteria which allow only metropolitan areas to be declared as Category A municipalities, with the remainder of the country being divided into Category C (District) and Category B (Local) municipalities.

Section 6(2) of the Municipal Structures Act states that "The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned, may declare part of an area that must have municipalities of both category C and category B as a district management area if the establishment of a category B municipality in that part of the area will not be conducive to fulfilment of the objectives set out in section 24 of the Demarcation Act."

This provision was challenged in the Constitutional Court by the governments of Western Cape and KwaZulu-Natal who argued that District Management Areas (DMAs) are a fourth category of local government and thus unconstitutional. The judges held the view that a DMA does not form part of a fourth category of municipality but that a DMA is part of a District Municipality. The majority of judges, however, held that the establishment of district management areas impacts on the boundaries of municipalities and is accordingly a function to be performed by the Board. Sec 6(2) was found to be unconstitutional insofar as it attempted to give the Minister a discretion whether to accept a recommendation of the Board. The Court argued that the Board should have full power to determine DMAs.

If an area is determined as a DMA it does not have a category B (Local) municipality, but instead all municipal functions are carried out by the category C (District) municipality. The Minister of Environment and Tourism has indicated that this might create problems, particularly in areas which require strategic investment from national government and areas which fall under certain international laws and conventions. These difficulties could be overcome probably only through a constitutional amendment to Section 151(1) taking such DMAs out of the ambit of local government.

### POLICY

In considering the matter of District Management Areas, the Municipal Demarcation Board has decided that the areas which could qualify to be categorised as DMAs are:

- **Deserts and semi-arid areas** – approximately one-third of the territory of the Republic has less than 100000 people living in it. The Board believes that the objects of local government as defined in the constitution are unlikely to be met

through establishing category B (Local) municipalities in these arid and semi-arid areas and they should be declared as DMAs.

- **State protected and conservation areas** – Throughout South Africa there are a number of conservation and environmentally-protected areas. Such areas are state-owned, privately-owned and communally-owned. The Board has decided that these areas may be declared as DMAs only if they fulfil the following criteria: (a) That they are owned by the state; (b) That they are commercially operated and owned areas directly linked to state-owned protected and conservation areas, which areas are managed as single entities together with the state-owned areas; (c) That they are privately-owned residential conservation communities which form part of government's strategic conservation and environmental plans; or (d) That they are privately-owned farms, communally-owned areas and the like which are part of the government's strategic conservation and environmental plans. If areas fulfil these criteria the Board may decide to determine them as District Management Areas.
- **Special Economic Areas:** These include areas which, for national strategic investment reasons, should not form part of category B (Local) municipalities.

After investigating areas which fulfil these criteria, the Board will declare DMAs on 15 December 1999. Draft DMA boundaries have been identified by the Board at its meeting of 18 November 1999.



## POSSIBLE AREAS OF CONFLICT

Municipal functions and powers are listed in the Constitution as:

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### Part B of Schedule 4:

- Air Pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in builtup areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems

### Part B of Schedule 5:

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing

- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

In addition, section 156(4) of the constitution states that: "The national government and the provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government."

Presently, in areas like the Greater Kruger National Park, for example, almost all municipal functions are carried out by the National Parks Board and/or privately-owned commercial operators. Given that these areas on their own would not fulfil the objects of local government and would be declared by the Board to be DMAs, they would have to be part of a category C (District) municipality. The Minister of Environment and Tourism has indicated that this could create potential conflicts between the operations of these major parks and the District municipality with which they would be associated. Also, this could frustrate national government's strategic focus on these areas within their southern African context. This would be the situation also for a number of World Heritage areas which are due to be declared in South Africa.

The only means of remedying this matter is to exclude specific DMAs from the constitutional obligation that the whole territory of the Republic must have local government. An amendment to Section 151(1) along the lines of the following could obviate these problems:



151(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic, excluding those areas specifically named in national legislation.

An Act of Parliament would then allow certain DMAs to be excluded from the provisions of Chapter 7 of the constitution and they would then be administered by national government. However, this is a matter national government should examine.

The Board will finalise all DMAs on 15 December 1999.



LEGEND

-  Cross Boundary District
-  Proposed District Council



30 0 30 60 Kilometers

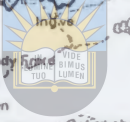
DISTRICT COUNCILS

Eastern Cape

DATE 18-11-99



193 St Andrew Road  
 Durban  
 Tel: (031) 362 6620  
 Fax: (031) 362 6620  
 e-mail: info@dataworld.co.za  
 Web site: www.dataworld.co.za





LEGEND

- Towns/Settlements
- 20 Mainroads
- 20 Metropolitan Council



METRO COUNCILS

Port Elizabeth

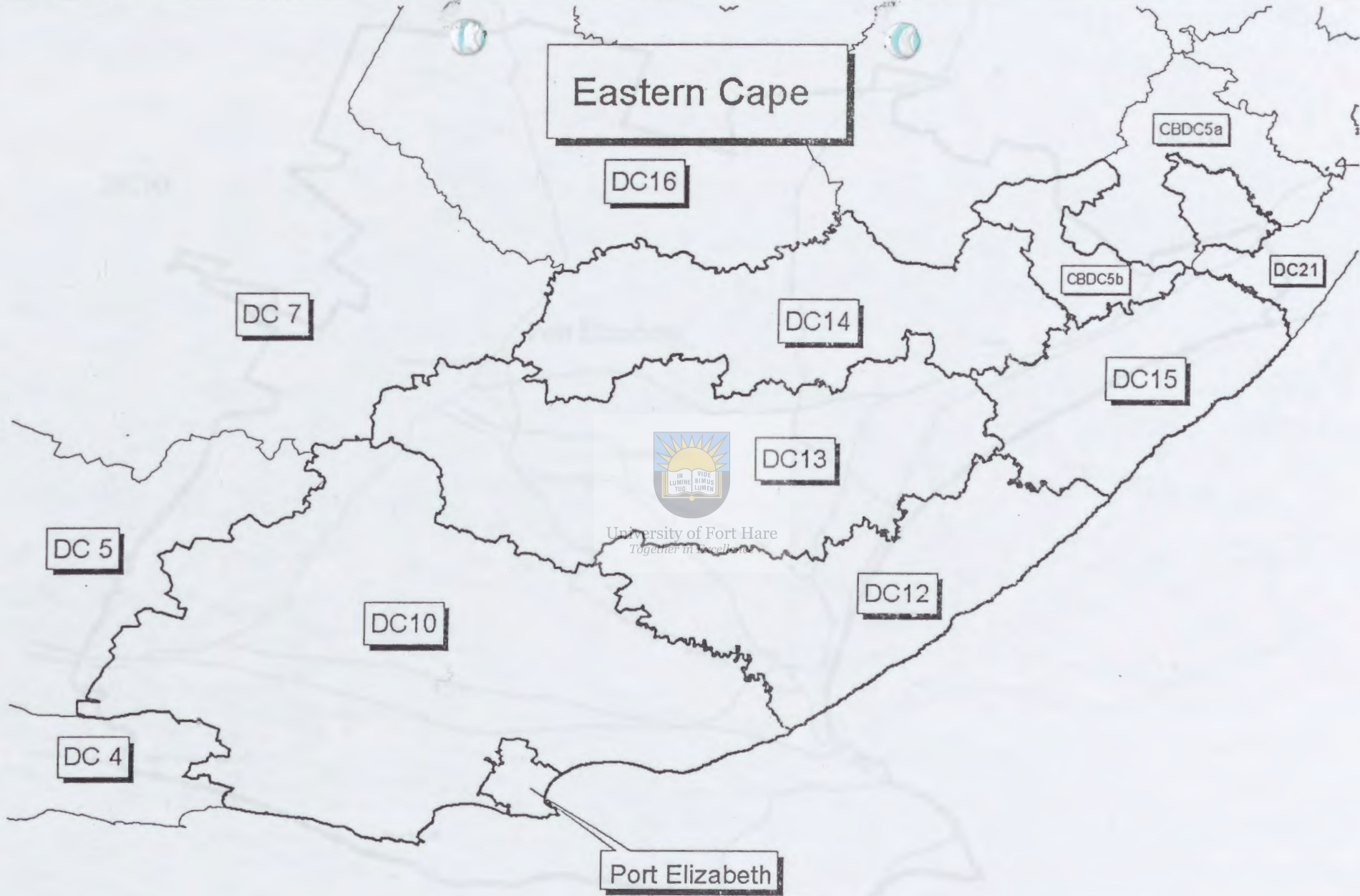
DATE 18-11-99



153 Stuurman Rd  
Durban  
4001

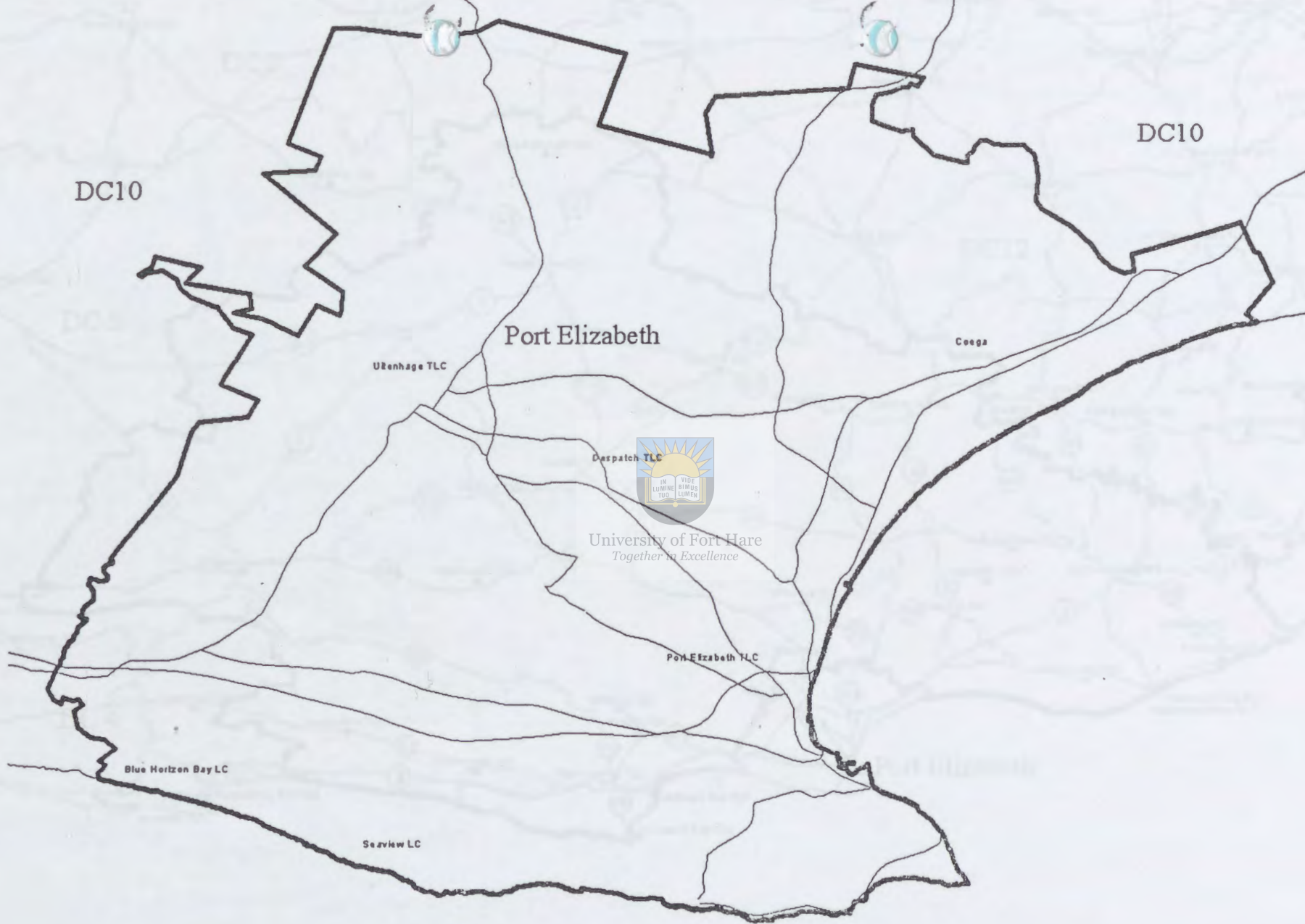
Tel : (031) 203 0000  
Fax : (031) 203 0000  
e-mail : info@dataworld.co.za  
Internet : www.dataworld.co.za



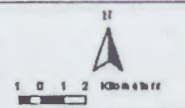


Enclosure H.2

		<p>Determination of the outer boundaries of Metropolitan and District Municipalities in terms of Section 21 of the Local Government : Municipal Demarcation Act, No 27 of 1998.</p>	<p>Date : November 1999</p> <p>Map No. 2 Kaart Nr. 2</p>	<p>Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:</p> <p>Tel: 012-3422481      Toll-free : 0800-111-000</p> <p>Fax: 012-3422480      email: mdb@datawefd.co.za</p> <p>Internet: www.demarcation.org.za</p> <p>Postal : Private Bag X28, Hatfield, 0028</p>	
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Legend  
 - - - - - Existing TLC boundary  
 = = = = = Main Road  
 - - - - - New Boundary

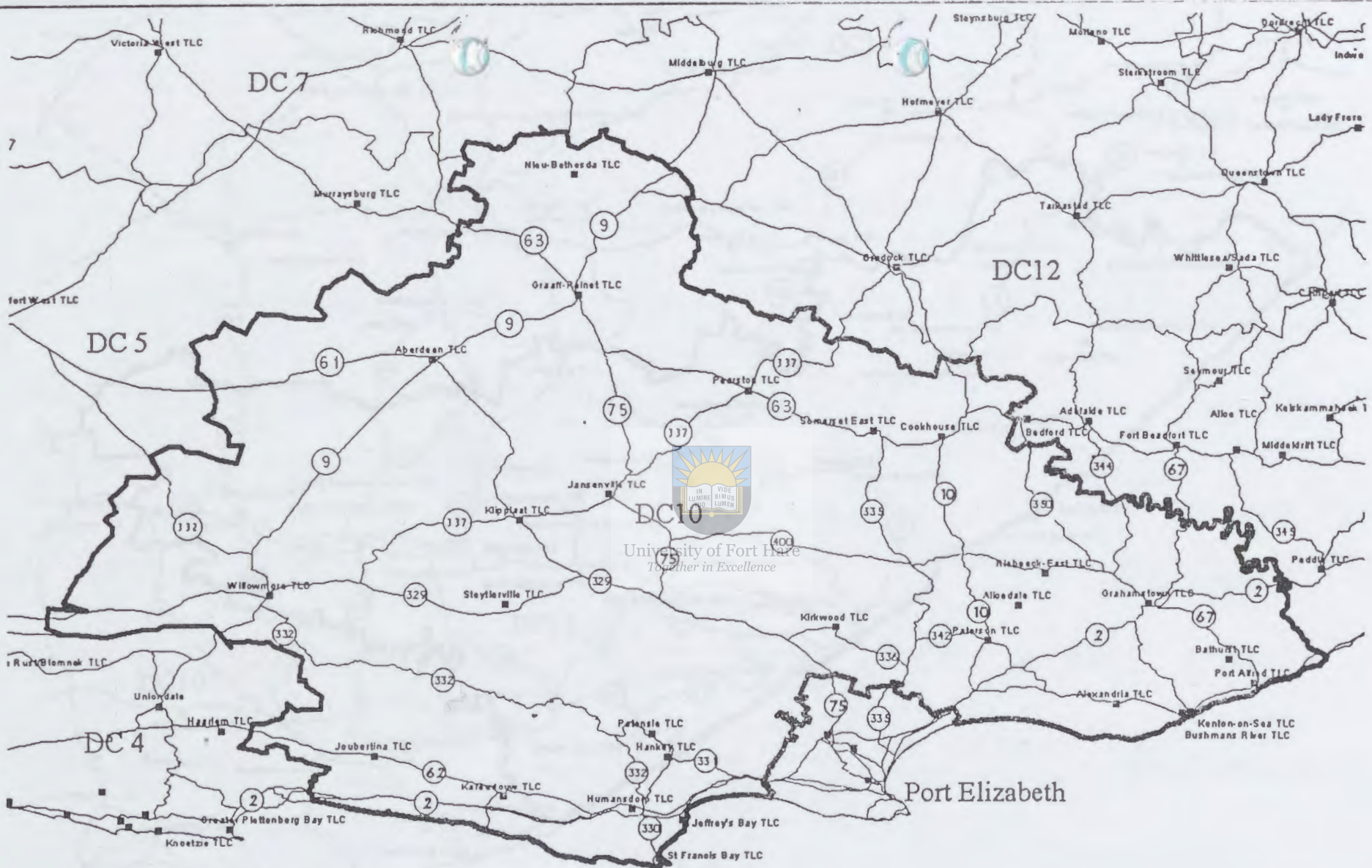


Determination of outer boundary of the Metropolitan Municipality of Port Elizabeth in terms of Section 21 of the Local Government : Municipal Demarcation Act, No 27 of 1998.

Date : December 1999  
 Map No. 2  
 Kaart Nr. 2

Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free: 0800-111-008  
 Fax: 012-3422480      email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal: Private Bag X28, Hatfield, 0028





Determination of the outer boundary of District Municipality DC10  
 in terms of Section 21 of the Local Government :  
 Municipal Demarcation Act, No 27 of 1998.

Legend

- Existing Townships
- Main Roads
- New Boundary

N

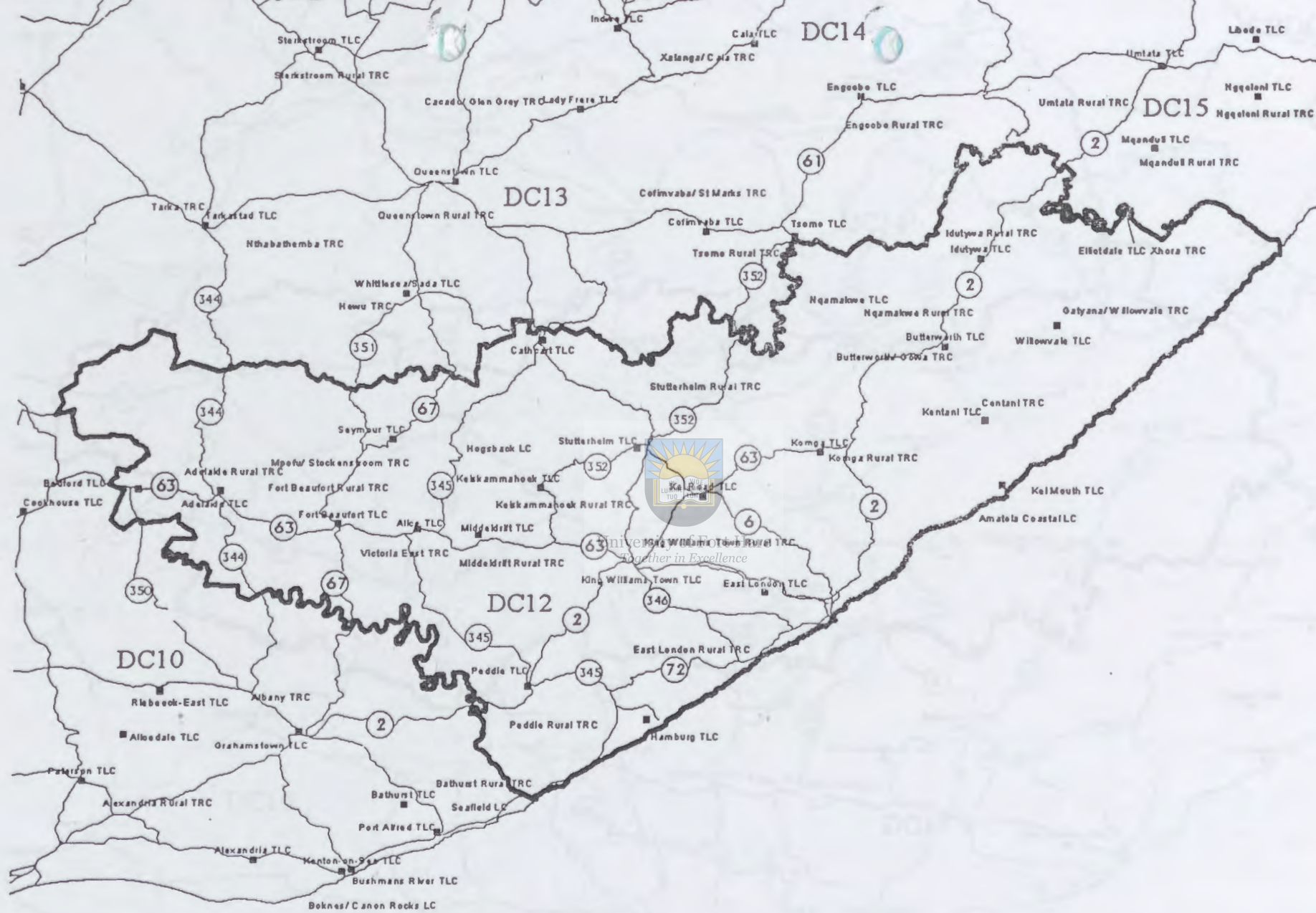
0 9 Kilometers

Date : December 1999

Additional Information relating to this map can be obtained by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481 Tel-free : 0800-111-008  
 Fax: 012-3422480 email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal: Private Bag X29, Hatfield, 0028

Map No. 3  
 Kaart Nr. 3





02

- Legend
- Existing TLC/TRC's
  - Main Roads
  - New Boundary



Determination of the outer boundary of District Municipality DC12  
 in terms of Section 21 of the Local Government :  
 Municipal Demarcation Act, No 27 of 1998.

Date : December 1999

Map No. 4  
 Kaart Nr. 4

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free : 0800-111-008  
 Fax: 012-3422480      email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal : Private Bag X28, Hatfield, 0028





Legend

- Existing TLU/WTRD's
- Non Road
- New Boundary

Scale: 1:100,000

North Arrow

**Determination of the outer boundary of District Municipality DC13 in terms of Section 21 of the Local Government : Municipal Demarcation Act, No 27 of 1998.**

Date : December 1999

Map No. **5**

Kaart Nr. **5**

Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:

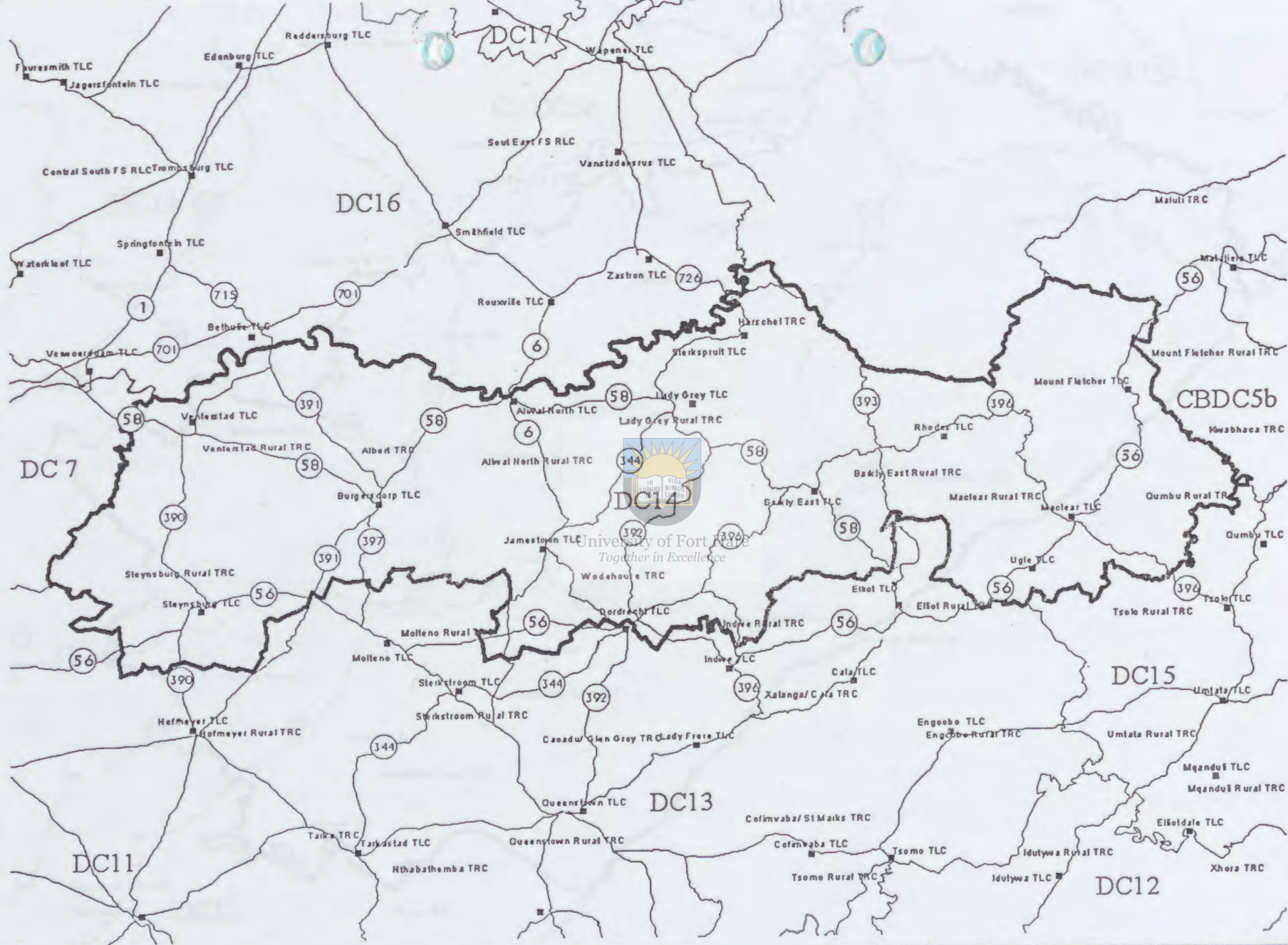
Tel: 012-3422481      Toll-free : 0800-111-000

Fax: 012-3422480      email: mdb@dataworld.co.za

Internet: www.demarcation.org.za

Postal : Private Bag X28, Hatfield, 0028





Determination of the outer boundary of District Municipality DC14  
 in terms of Section 21 of the Local Government :  
 Municipal Demarcation Act, No 27 of 1998.

Date : November 1999  
 Map No. 7  
 Kaart Nr. 7

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422401 Fax: 012-3422400  
 Tol-free : 0800-111-008 email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal : Private Bag X28, Hatfield, 0028



20  
 Legend  
 \* Existing TLC/TRC  
 Main Roads  
 New Boundary





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Legend  
 ■ New TLC or Rural TLC  
 — Main Road  
 - - - New Boundary



Determination of the outer boundary of District Municipality DC15  
 in terms of Section 21 of the Local Government :  
 Municipal Demarcation Act, No 27 of 1998.

Date : November 1999  
 Map No. 8  
 Kaart Nr. 8

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free : 0800-111-008  
 Fax: 012-3422480      email: mdb@dataw.orfd.co.za  
 Internet: www.demarcation.org.za  
 Postal : Private Bag X78, Hatfield, 0028





20

- Legend
- Existing TLCs/Rural TLCs
  - Main Roads
  - New Boundary



Determination of the outer boundary of District Municipality CBDC5b  
 in terms of Section 21 of the Local Government :  
 Municipal Demarcation Act, No 27 of 1998.

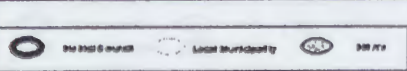
Date : November 1999  
 Map No. 9  
 Kaart Nr. 9

Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481 To8-free : 0800-111-000  
 Fax: 012-3422480 email: mdb@dataworld.co.za  
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District Management Areas

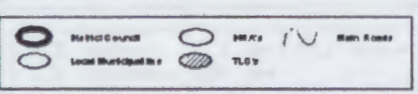
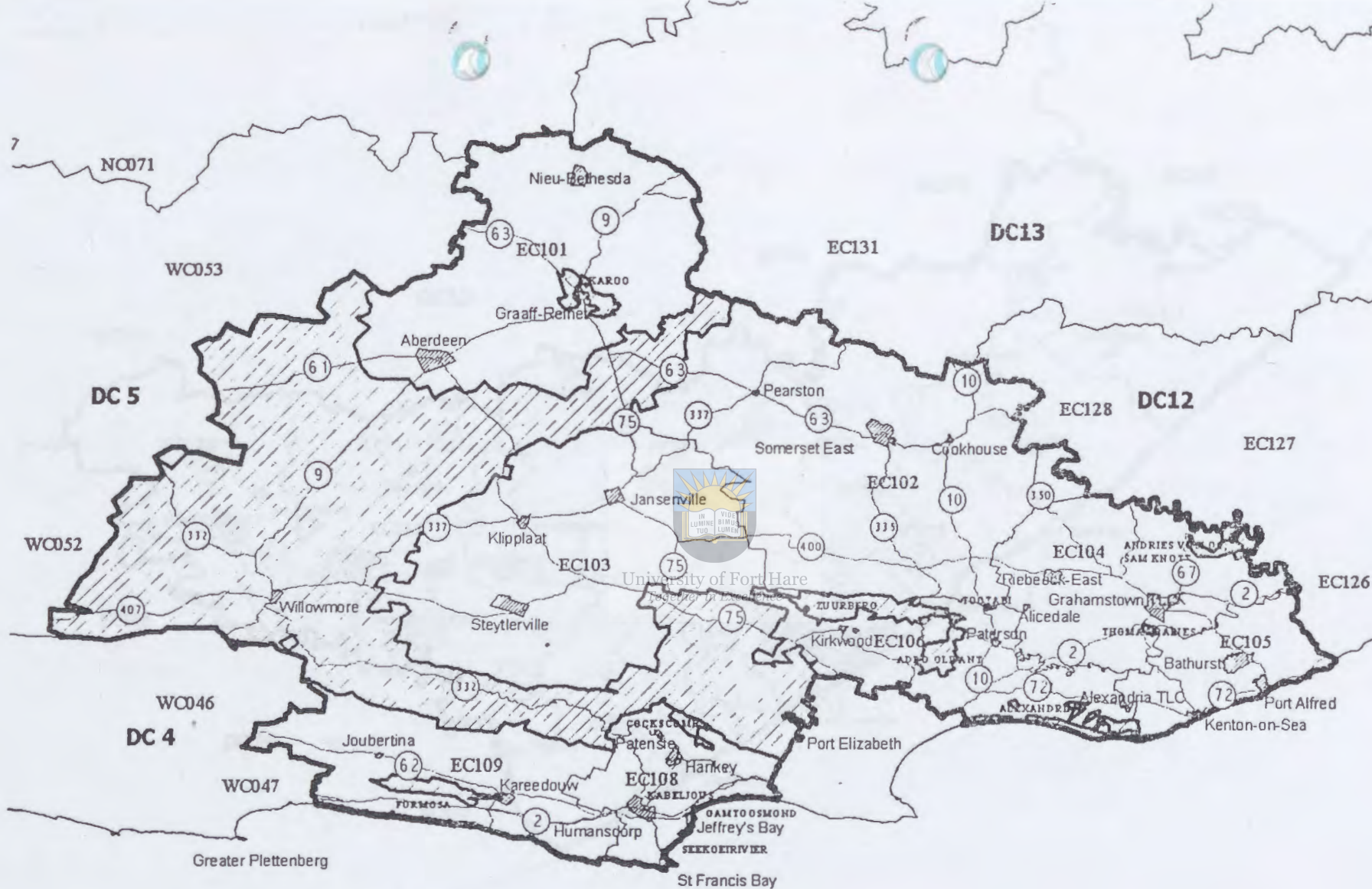


**Declaration of District Management Areas of Eastern Cape**  
 in terms of Section 6 of the Local Government : Municipal Structures Act,  
 No 117 of 1998, as amended.

Date : December 1999  
 Map No. : 12  
 Kaart Nr. : 12

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free : 0800-111-008  
 Fax: 012-3422480      email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal : Private Bag X28, Hatfield, 0028



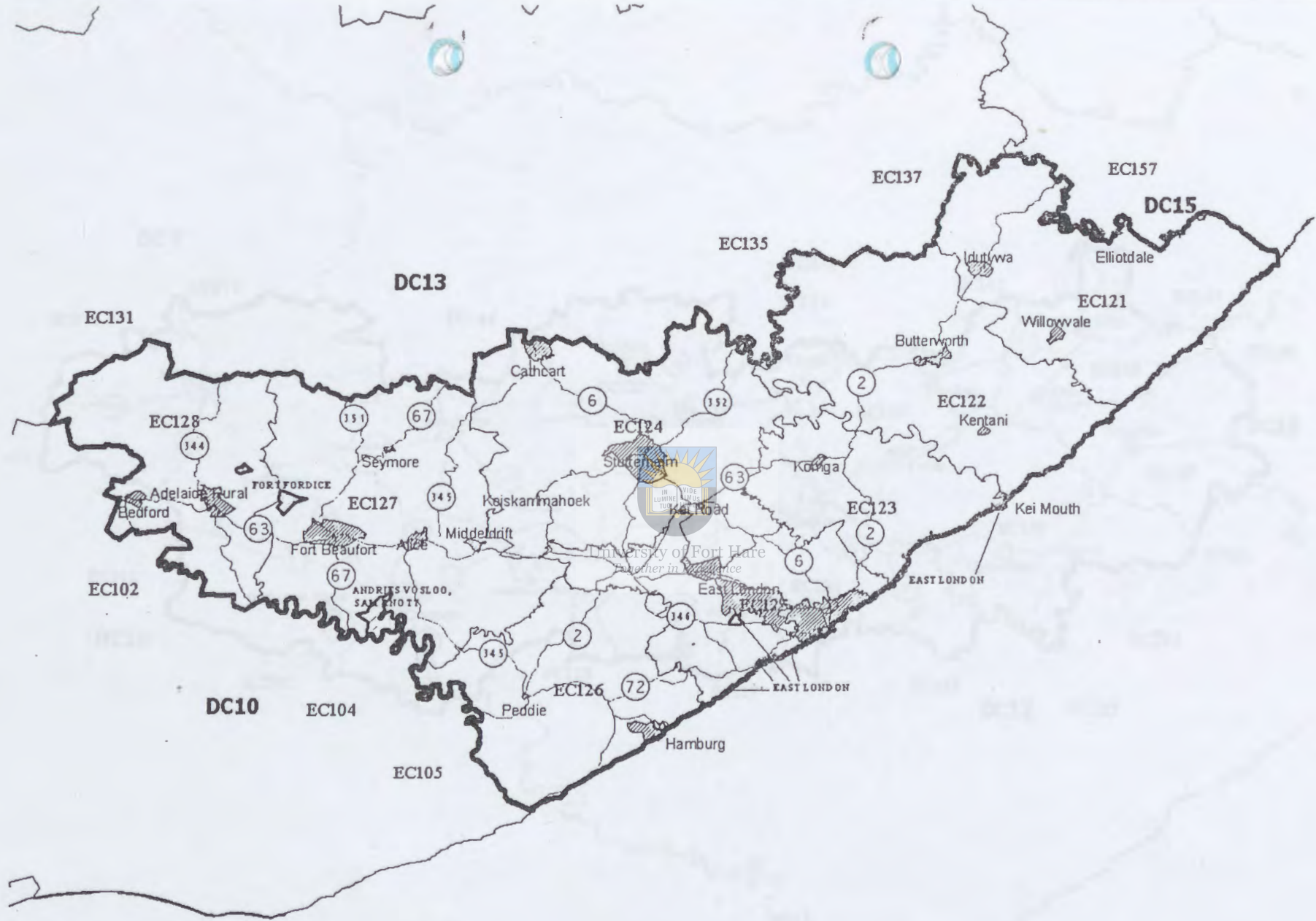


**Declaration of District Management Area of District Municipality DC10**  
 in terms of Section 6 of the Local Government : Municipal Structures  
 Act, No 117 of 1998 as amended.

Date : December 1999  
 Map No. 13  
 Kaart Nr. 13

Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481 Toll-free: 0800-111-006  
 Fax: 012-3422480 email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal: Private Bag X28, Hatfield, 0028





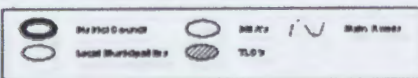
**Declaration of District Management Area of District Municipality DC12**  
 in terms of Section 6 of the Local Government : Municipal Structures  
 Act, No 117 of 1998 as amended.

Date : December 1999  
 Map No. 14  
 Kaart Nr.

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free : 0800-111-008  
 Fax: 012-3422480      email: mdb@dateworld.co.za  
 Internet: www.demarcation.org.za  
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	MUNICIPAL BOUNDARY		LOCAL MUNICIPALITY BOUNDARY		Main Roads
	LOCAL MUNICIPALITY BOUNDARY		TOWN		Water Bodies



**Declaration of District Management Area of District Municipality DC13**  
 in terms of Section 6 of the Local Government : Municipal Structures  
 Act, No 117 of 1998 as amended.

Date : December 1999  
 Map No. 15  
 Kazer Nr.

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481      Toll-free : 0800-111-000  
 Fax: 012-3422480      email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
 Postal : Private Bag X26, Hatfield, 0028





**Declaration of District Management Area of District Municipality DC14**  
 in terms of Section 6 of the Local Government : Municipal Structures  
 Act, No 117 of 1998 as amended.

Date : December 1999  
 Map No. 16  
 Kaart Nr. 16

Additional information relating to this map can be obtained  
 by contacting the Municipal Demarcation Board at:  
 Tel: 012-3422481 Tel-free : 0800-111-008  
 Fax: 012-3422480 email: mdb@dataworld.co.za  
 Internet: www.demarcation.org.za  
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- 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
- Local Municipality
- TLO
- Main Road

# STRATEGIC PLAN

2000 - 2004



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THURS

# Department of Agriculture and Land Affairs PROVINCE OF THE EASTERN CAPE



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## STRATEGIC PLAN YEAR : 2000 - 2004

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## STRATEGIC PLAN 2000 - 2004

### PART ONE: INTRODUCTION

#### 1.1 PURPOSE

The Strategic Plan for the Department of Agriculture and Land Affairs is located primarily within the **Constitution**, the amended **Public Service Act**, 1994, the new **Public Service Regulations**, 1999. Within this framework the purpose of this document is to set the basis for future strategic management in the Department of Agriculture and Land Affairs and outline the way forward for the department.



#### 1.2 THE PROVINCIAL FRAMEWORK

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#### PROVINCIAL VISION AND MISSION

The **Provincial Vision** is:

**An Eastern Cape which is a united, democratic and peaceful Province where the inequalities of the past have been eliminated, with an integrated and sustainable economic growth, social and cultural development within the national and international context, providing an acceptable quality of life for all its people through optimal human and natural resource utilisation and people participation.**

The **Provincial Mission** is:

**To provide accessible, good governance through sound comprehensive and integrated development programmes so as to optimise the utilisation of the Eastern Cape's socio-economic and natural resources to enable all its present and future generations to enjoy a good quality of life.**

## PROVINCIAL GROWTH AND DEVELOPMENT STRATEGY

The Provincial environment is informed by the eight pillars of the Provincial Growth and Development Strategies:

- Job creation
- Investment in people
- Meeting basic needs
- Sustainable use of natural resources
- Rural development
- Redistribution of income
- Crime prevention
- Efficient and effective service



## INTEGRATED RURAL DEVELOPMENT

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Agriculture must be developed as an integral part of the Provincial Rural development strategies. This will require close co-operation in planning and implementation of projects, with Local Government, Traditional Chiefs and other Provincial and National Government role players. Integrated Development Planning and the development of Land Use Objectives should recognise the economic and social importance of agriculture. Agriculture is the primary source of income and livelihood in most rural areas. The further beneficiation of agriculture products through local processing, packaging and marketing should receive priority attention to increase the economic value and creation of rural jobs.

## SPATIAL DEVELOPMENT INITIATIVES

The increased production of Agriculture within the recognised SDI areas is anticipated in the current planning. This should receive special attention in order to maximise the potential revenue and jobs to be created through investment in Agricultural Projects in conjunction with Tourism, commercial and industrial development.

## ECONOMIC GROWTH NODES AND THE ROLE OF AGRICULTURE

Certain areas suitable for intensive agriculture production such as the large irrigation schemes, can form the basis for the development of economic growth nodes. These areas should be identified and featured in the Provincial Economic Development Plans.

### 1.3 THE REGULATORY FRAMEWORK

#### The Public Service Regulations (PSR), 1999

The requirements for Strategic Planning in departments are contained primarily in Part III B of the Public Service Regulations. The principles on which integrated planning, work organisation and reporting are based are the following (PSR III A):

*An executing authority shall, in order to provide services with the best value for money, set measurable objectives for her or his department, optimally utilise the department's human and other resources and apply fair labour practices. Within available funds, she or he shall, based on the department's and the Government's service delivery objectives and mandates, plan to execute functions with an efficient and effective internal organisation and well developed human resources. To permit oversight by the public and legislatures, the executing authority shall publish an annual report giving key information on her or his department.*

PSR III B.1 requires of an executing authority to prepare a strategic plan for her or his department -

- (a) stating the department's core objectives, based on Constitutional and other legislative mandates, functional mandates and the service delivery improvement programme mentioned in regulation III C;

- The following is a framework or model of Integrated Strategic Planning as envisaged
- (b) describing the core and support activities necessary to achieve the core objectives, avoiding duplication of functions;
  - (c) specifying the functions the department will perform internally and those it will contract out;
  - (d) describing the goals or targets to be attained on the medium term;
  - (e) setting out a programme for attaining those goals and targets; and
  - (f) specifying information systems to enable the executing authority to monitor the progress made towards achieving those goals, targets and core objectives.



PSR III B.2 notes that the department's organisational structure in terms of its core and support functions should be determined on the basis of the strategic plan.

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PSR III B.3 requires a head of department, in implementing the strategic plan, to -

- (a) promote the efficient, economic and effective use of resources to improve the functioning of the department; and
- (b) to that end, apply working methods such as the re-allocation, simplification and co-ordination of work, and eliminate unnecessary functions.

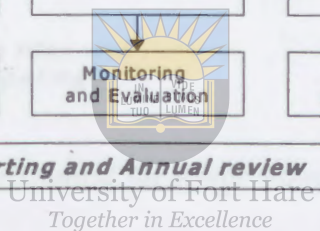
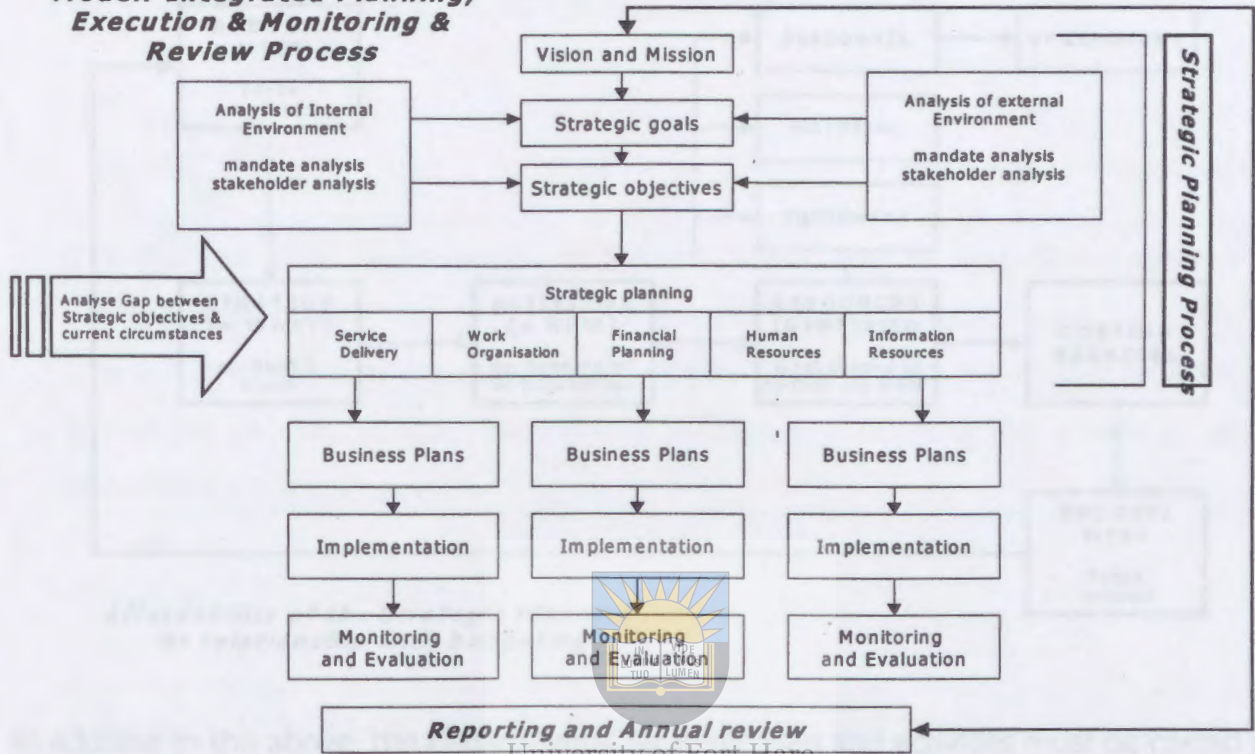
#### 1.4 THE FINANCIAL FRAMEWORK

Please refer to details on following page.

### 1.5 THE PROCESS

The following is a framework or model of Integrated Strategic Planning as envisaged in the new Public Service Management Framework:

**Model: Integrated Planning, Execution & Monitoring & Review Process**

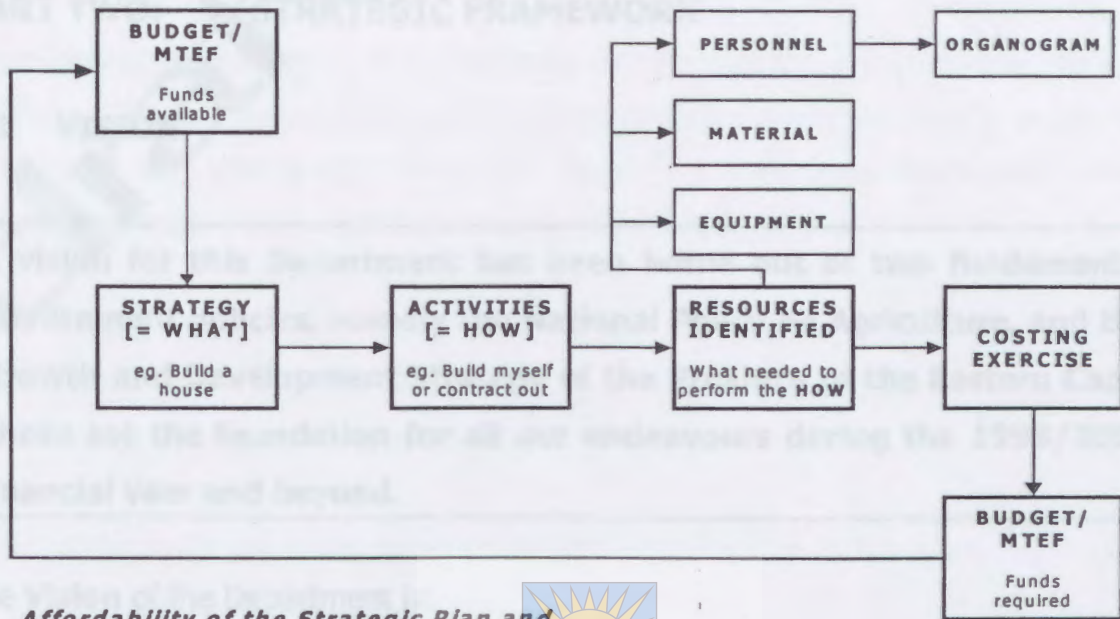


The Strategic Plan for the Department of Agriculture and Land Affairs is further informed by factors as set out in the diagram below:

**Departmental Strategic Plan in the National & Provincial Context**



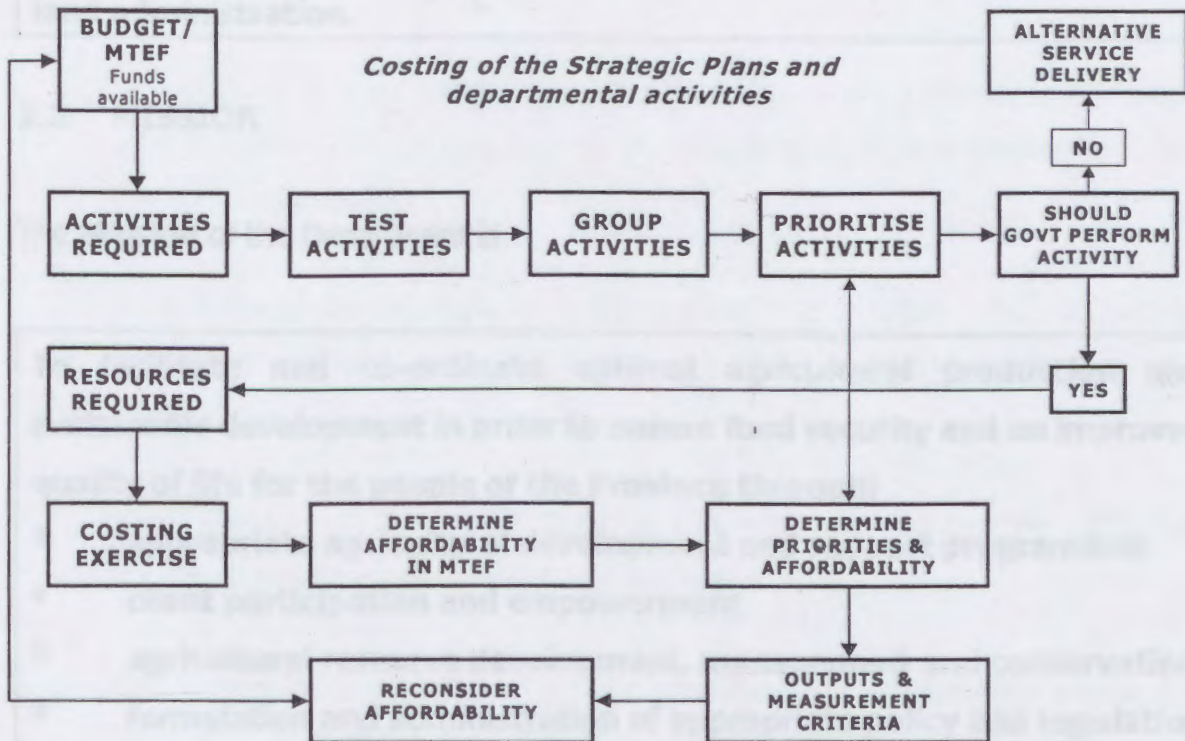
In terms of the affordability of the Strategic Plan and its relationship with budgeting, the following process and factors should be taken into consideration:



*Affordability of the Strategic Plan and its relationship with budgeting*



In addition to the above, the departmental Strategic Plan and activities must be costed in line with the following process:



*Costing of the Strategic Plans and departmental activities*

## **PART TWO: STRATEGIC FRAMEWORK**

### **2.1 VISION**

**A vision for this Department has been borne out of two fundamental Government policies, namely the National Policy on Agriculture, and the Growth and Development Strategy of the Province of the Eastern Cape. These set the foundation for all our endeavours during the 1999/2000 financial year and beyond.**

The **Vision** of the Department is:



**A dynamic agricultural support service provider which stimulates, catalyses and promotes rapid sustainable agricultural growth and economic development within the framework of resource conservation and equitable land administration.**

### **2.2 MISSION**

The **Mission** of the Department is:

**To facilitate and co-ordinate optimal agricultural production and sustainable development in order to ensure food security and an improved quality of life for the people of the Province through:**

- \* **appropriate agricultural development and support programmes**
- \* **client participation and empowerment**
- \* **agricultural resource development, management and conservation**
- \* **formulation and administration of appropriate policy and legislation**
- \* **effective and efficient administration and management.**

## 2.3 GUIDING PRINCIPLES

The following guiding principles, which take into account the experiences of the past, help us to sharpen our strategic focus within the realms of the agricultural milieu, and provide us with mechanisms to realise, monitor and evaluate measurable service deliverance in the Province. These guiding principles are:

- Growth in the Agriculture industry will be achieved by servicing existing commercial agriculture and promoting a shift from subsistence to economically viable commodity production.
- Agricultural Support Services to be accessible to small scale as well as commercial farmers.
- Ensure that the Service Delivery Improvement Plan is utilised to transform service delivery to our clients in the agricultural sector.
- Youth and Women in Agriculture should be specifically targeted.
- Introduction of new technologies should build on the indigenous knowledge already exists amongst the farming communities, eg animal traction and other low cost technologies.
- Land suitable for Agriculture is diminishing and a need exists to increase productivity per unit area by promoting high value crops and intensive livestock production.
- Integrated rural development planning should be implemented and will include the promotion of game farming and land care.
- Monitoring and evaluation of the implementation of this strategy should take place at regular intervals by the utilisation of appropriate management tools.



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## 2.4 MANDATES

The following Acts govern the functions of the Department of Agriculture

### AGRICULTURE

Abattoir Hygiene Act, 1992, Act 121 of 1992

South African Abattoir Corporation Act, 1992, Act 120 of 1992

Animal Diseases Act, 1984, Act no 35 of 1984

Animal Protection Act, 1962, Act no 71 of 1962

Livestock Improvement Act, 1997, Act no 25 of 1997

Limitation, Control and Improvement of Livestock and of Pastoral and Agricultural Resources in Black Areas, 1927, Act 38 of 1927

Animal Diseases Act (Ciskei), 1986, Act 21 of 1986

Animal Protection Act (Ciskei), 1986, Act 20 of 1986

Animal Slaughter Meat and Animal Products Hygiene Act (Transkei), 1981

Transkei Agricultural Development Act, 1966

Livestock Brands Act, 1962, no 87 of 1962

Transkeian Animal Husbandry Improvement Account Act, 1965

Animal Diseases and Parasites Act (Transkei), 1978

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947, Act 36 of 1947

Fencing Act, 1963, Act no 31 of 1963

Designated Areas Development Act, 1979, Act 87 of 1979

Agricultural pests Act, 1983, Act 36 of 1983

Conservation of Agricultural Resources Act, 1983, Act 43 of 1983

**LAND**

Location Regulations: Unsurveyed Districts: Transkeian Territories, Act 26 of 1936

Upgrading of Land Tenure Rights Act 1991, no 112 of 1991

Proclamation (Transkei) No 174 of 1921

Land Use Regulation Act (Ciskei), 1987, Act No 15 of 1987

Black Communities Development Act, 1984, Act no 4 of 1984

Black Administration Act, 1927, Act No 38 of 1927

Development Facilitation Act, 1995, Act no 67 of 1995

Distribution and Transfer of certain State land Act, 1993, Act no 119 of 1993

Land Titles Adjustment Act, 1993, No 11 of 1993

Abolition of Racially Based land Measures Act, 1991, No 108 of 1991

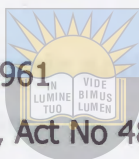
Fencing Act, 1963, Act no 31 of 1963

State land Disposal Act, 1961, 48 of 1961

State land Disposal Act (Ciskei), 1961, Act No 48 of 1961

Regulations Governing the Granting of Leasehold Issued in terms of the Black Communities Development Act, 1984, GN R2451 of 1 November 1985

Black Areas Land Regulations Issued in terms of Black Administration Act, 1927 Act No 38 of 1927, GN R188 of 1969



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**2.5 STAKEHOLDERS**

The following are stakeholders who participate in the Agricultural Sector:

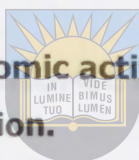
1. Farmers
2. Consumer
3. National and Provincial departments
4. Local Government, district councils and Traditional Leaders
5. Parastatals
6. NGO (NGO coalition)
7. Agricultural Produce Imports and Exports

8. Agro industries
9. Gender and Youth Commission
10. Research Institutes
11. Oversees partners
12. Financial Institutions and Chambers of Commerce

## 2.6 FUNCTIONS

The strategic objectives of the Department of Agriculture and Land Affairs are:

1. **To promote sustainable utilisation of natural resources**
2. **To encourage increased food and fibre production, thus contribution towards food security**
3. **To stimulate increased economic activity from agriculture**
4. **To provide enabling Legislation.**



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These Strategic Objectives will be implemented within the responsibilities prescribed by Legislation.

**PART THREE: STRATEGIC AIMS**

This section covers the following:

**3.1 STRATEGIC AIM 1:  
PROMOTE SUSTAINABLE UTILISATION OF NATURAL RESOURCES**

**3.2 STRATEGIC AIM 2  
ENCOURAGE INCREASED FOOD PRODUCTION**

**3.3 STRATEGIC AIM 3  
STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE**

**3.4 STRATEGIC AIM 4  
PROVIDE ENABLING LEGISLATION**



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<b>STRATEGIC AIM ONE: PROMOTE SUSTAINABLE UTILISATION OF NATURAL RESOURCES</b>				
<b>OBJECTIVE 1: PREPARE AN INVENTORY OF AGRICULTURAL PRACTICES AND IDENTIFY THOSE WHICH ARE NOT SUSTAINABLE AND CAUSE DEGRADATION OF RESOURCES FOR EACH DISTRICT BY MARCH 2002</b>				
KEY PERFORMANCE AREAS	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME	BUDGET
1. Identify those farming activities which are detrimental to resources	Cooperation of farming community and Soil Conservation Committees	Regional Directors	31 March 2002	
2. Written inventory of the utilisation of agricultural resources per district	Availability of data and processing thereof	Regional Directors	31 March 2000	
3. Awareness programme to eliminate detrimental practices	Effective coordination of divisions of the department	Regional Directors	31 March 2004	



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4. Resources data available to each district agricultural extension	Agricultural Scientists and Extension Officers	Director Agricultural Research	31 March 2001	
5. Planned and Zoned areas for different farming systems and conservation	Reliable and accurate GIS information, Inventory of soils and climate completed, Land Use Planners available	Director Land Use Planning		
6. Programmes and staff which encourage responsible utilisation of natural resources	Land Use Planners, Scientists, Extension Officers and Engineering Staff	Director Marketing and Land Use Planning Regional Directors		
7. Planned infrastructure to reduce the impact of land and water use and choice of enterprises	Engineers, Heads of Districts, Scientists, Extension Officers, Community Health Workers	Director Engineering Director Extension		

STRATEGIC AIM ONE: <b>PROMOTE SUSTAINABLE UTILISATION OF NATURAL RESOURCES</b>				
OBJECTIVE 2: IDENTIFY THE OPTIMAL AGRICULTURAL ENTERPRISES BEST SUITED TO THE NATURAL RESOURCES OF EACH DISTRICT, BASED ON CATCHMENT MANAGEMENT AND SUSTAINABLE FARMING UNITS, BY THE END OF 2000				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. A complete inventory on natural resource base incorporated into electronic data base	Availability of: - Land Use Planners - Veld Assessment Technicians - Soil Scientists/Technicians - Assistance from Extension Officers	Director Land Use Planning	31 March 2000	
2. Trained farmers in proper resource identification and utilisation.	Availability of : - Active Farmer Support Centres - Qualified Trainers - Training centres - Extension support	Director Training Regional Directors	31 March 2000	
3. Resource data available to select optimal agricultural enterprises.	Agricultural Scientists and Economists	Director Applied Research	31 March 2001	
4. Planned and Zoned areas for different farming systems and enterprise	Relevant and accurate GIS Information Inventory of soils and climate completed Land Use Planners available	Director Land Use Planning		
5. Programmes and plans which encourage responsible utilisation of natural resources	Land Use Planners, Economists, Scientists, Extension Officers and Engineering Staff.	Director Marketing and Land Use Planning Regional Directors		
6. Planned Infrastructure in relation to resource base and needs of community and choice of enterprise	Engineers, Needs of Clientele, Economists, Extension Officer, Community Needs Analysis	Director Engineering Director Extension		

STRATEGIC AIM ONE: PROMOTE SUSTAINABLE UTILISATION OF NATURAL RESOURCES				
OBJECTIVE 3: PROMOTE SUSTAINABLE AGRICULTURAL ENTERPRISES AND PRACTICES BY MARCH 2004				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Developed policy on Land Use leasing to legislation.	Implementation of legislation	Legal Advisor Director Land Use Planning	March 2001	
2. Comprehensive Land Care Programme	Functioning and willingness of farmers organisations to cooperate	Land Care Coordinator	March 2001	
3. Planned farming areas and farm units	GIS available	Director Land Use Planning	March 2004	
4. Planned and designed infrastructure for development and protection of resources	Identification and prioritising works Available personnel	Director Engineering Services	March 2004	
5. Plans and programmes to promote optimal enterprises and practices	Willingness of farmers to cooperate and technology transfer methods	Regional Director.	March 2004	

STRATEGIC AIM ONE: <b>PROMOTE SUSTAINABLE UTILISATION OF NATURAL RESOURCES</b>				
OBJECTIVE 4 <b>IMPLEMENT AND PROTECTION OF RESOURCES SCHEMES BEFORE MARCH 2004</b>				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME	BUDGET
1. Planned protection and reclamation works	Cooperation of Soil Conservation Committees and other Farmer Organisations	Regional Directors Director Engineering Services	March 2002	
2. Planned and designed works according to priorities		Director Land Use Planning	March 2003	
3. Prioritized works per district and region	Soil Conservation Committees	Regional Directors	March 2002	
4. Plans and programmes implemented to promote the construction, protection and reclamation works	Cooperation between divisions of the departments	Regional Directors	March 2004	



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STRATEGIC AIM TWO: <b>ENCOURAGE INCREASED FOOD PRODUCTION</b>				
OBJECTIVE 1: <b>INCREASE FOOD AND INCOME FROM ANIMALS BY 10% BY THE END OF 2004 FINANCIAL YEAR</b>				
KEY PERFORMANCE INDICATORS	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME SCHEDULE	BUDGET
1. Improved reproduction	1. Apply available scientific stock management principles 2. Adapt stocking rates to resource potential 3. Application of sound veld and fodder production and management 4. Improve genetic material. 5. Community / farmer and land needs 6. Disease and parasite control	Regional Directors and Director - Extension Services and Farm and Quality Control	31 March 2004	
2. Increased milk production				
3. Improved growth rates				
4. Animal fibre production increased				
5. Increased meat production				
6. Improved animal housing and handling facilities	Key personnel available to provide advice	Director Engineering Services	31 March 2004	
7. Increased Game Farming	Cooperation with Nature Conservation. Clear and well defined disease control policies	Director Veterinary Services	31 March 2004	
8. Improved health status of livestock. Reduced mortality rates	Application of disease control policies.	Director Veterinary Services	31 March 2004	



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STRATEGIC AIM TWO: <b>ENCOURAGE INCREASED FOOD PRODUCTION</b>				
OBJECTIVE 2: INCREASE FOOD PRODUCTION FROM CROPS BY 5% BY 2004				
KEY PERFORMANCE INDICATORS	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME SCHEDULE	BUDGET
1. Improved food from crops	1. Suitable cultivars	Director: Research and Training Director : Extension Services Farmers Plant and Quality control	2004	
2. Improved crop production	2. Availability of land			
3. Introduction of new crops	3. Use of adapted cultivars			
4. Adapted vegetable cultivars	4. Suitable production methods			
5. Market adapted fruit production	5. Demonstrate production methods			
6. Increased productivity at irrigation schemes	6. Pest and weed control			
	7. Evaluation of new crops			
	8. Local processing			
	9. Application of intensive food production technology			
	10. Improved storage of staple grains			
	11. Access to crop production requisites and farmer support centres			
	12. Availability of management for irrigation			

STRATEGIC AIM TWO: <b>ENCOURAGE INCREASED FOOD PRODUCTION</b>				
OBJECTIVE 3: INCREASE THE LOCAL AVAILABILITY OF FOOD WITHIN THE PROVINCE BY THE DEVELOPMENT OF EFFICIENT DISTRIBUTION SYSTEMS				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Developed village markets	Availability of suitable structures in village markets	Regional Directors	31 March 2004	
2. Improved local trade	Availability of transport			

STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 1: INCREASE ACCESSIBLE LOCAL AND EXPORT MARKETS FOR AGRICULTURAL PRODUCTS FROM THE EASTERN CAPE BY 15% OVER THE NEXT FIVE YEARS				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Increased export markets for crop and animal products	1. Availability of export market information 2. World Trade Agreements 3. Phyto-sanitary controls on exports 4. Competitive exchange rate	Director of Projects and Marketing.	31 March 2004	
2. Increased market share within SADC				

STRATEGIC AIM THREE: <b>TO STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 2: PROMOTE THE DEVELOPMENT OF HIGH VALUE CROPS WITH LOCAL MARKET AND EXPORT POTENTIAL IN IDENTIFIABLE AREAS OF THE EASTERN CAPE				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Market research on high value crops	1. Research information available 2. Staffing of the GIS unit 3. Marketing systems 4. Infrastructure to produce, market, process and store 5. Technology: availability/transfer 6. Budget 7. Short term interventions by our Twinning partners	Director Projects and Marketing	31 March 2004	
2. Maps for each of the high value crops				
3. Manuals for each high value crop				
4. Increased number of producers and their respective commodity groups				
5. Increased nett Farm Income				
6. New jobs created				

STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 3: TO ESTABLISH JOINT VENTURES FOR PROFITABLE CROP AND ANIMAL PRODUCTION BETWEEN SMALL SCALE FARMER AND LARGE COMMERCIAL UNITS				
KEY PERFORMANCE AREA	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME	BUDGET
1. Increased profitability production	1. Investors agree to invest 2. Security of Land Tenure 3. Maintenance of infrastructure	Regional Directors	31 March 2004	
2. Improved quality of crops and animal products				
3. Competent financial management				
4. Trained local communities				



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STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 4: ESTABLISH INTEGRATED FARM SYSTEMS DEMONSTRATION PLOTS IN EACH ECOLOGICAL ZONE BY END OF 2000				
KEY PERFORMANCE AREA	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME	BUDGET
1. Pilot plots established in each ecological zone.	Availability of land Cooperation of farmers Suitably qualified personnel	Director Research and Training	31 March 2000	
2. Participating partners identified				

STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 5: TO PROVIDE ACCESSIBLE PRODUCTION CREDIT FOR VIABLE AGRICULTURAL PROJECTS MANAGED BY SMALL FARMERS				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. A Consolidated Provincial Agricultural Bank	1. Interest rate at sustainable levels 2. Political stability 3. Access to finance 4. New banking procedure	Director Land Use Planning	31 December 2000	
2. Legislation in place				
3. Links established with other institutions e.g. Land Bank, DBSA, Post Office				
4. Public/Private Partnership operating				
5. Farmer trained in agri business management				



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STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 6 <b>TO ESTABLISH FARMER SUPPORT CENTRES (CO-OPERATIVES/ASSOCIATIONS) OWNED BY THE FARMING COMMUNITY BY DECEMBER 2001</b>				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Farmer Support Centres established in intensive agricultural production areas.	1. Centre provides affordable services 2. Private Sector participation 3. Finances available 4. Local management available	Regional Directors	December 2001	
2. Farmer Support Centres registered as legal entities, strongly supported by local farmers				
3. Farmer Support Centres are economically viable				
4. Suitable commodity groups are formed				



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IS REVIEWED AND EVALUATED BY LEGAL AND TECHNICAL EXPERTS, PARTNERS AND OTHER STAKEHOLDERS TO ASSESS STRENGTHS, WEAKNESSES AND SHORTAGES BY DECEMBER 1999

KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME SCALE	BUDGET
A report listing all current legislation is provided for the MEC, listing required new legislation.	Availability of all relevant acts	State Law Officers Contracts with regulatory organisations	December 1999	

STRATEGIC AIM THREE: <b>STIMULATE INCREASED ECONOMIC ACTIVITY FROM AGRICULTURE</b>				
OBJECTIVE 7: EFFECTIVE, EFFICIENT AND ECONOMIC ADMINISTRATIVE SYSTEM RESPONSIVE IN SUPPORTING THE FUNCTIONS OF THE DEPARTMENT AND IN PLACE BY DECEMBER 2002				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
1. Organogram in place suitable for the strategic intent of the Department.	1. Agreement by primary stakeholders	Permanent Secretary	31 December 2002	
2. Optimised revenue collection	2. Safe revenue collection centres and systems			
3. Critical posts filled	3. Budget and personnel available			
4. Effective personnel and administrative services established	4. Competent staff available			

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STRATEGIC AIM FOUR: <b>PROVIDE ENABLING LEGISLATION</b>				
OBJECTIVE 1: ALL EXISTING LEGISLATION EFFECTING AGRICULTURE IN THE PROVINCE OF THE EASTERN CAPE IS REVIEWED AND EVALUATED BY LEGAL AND TECHNICAL EXPERTS, PARTNERS AND OTHER STAKEHOLDERS TO ASSESS STRENGTHS, WEAKNESSES AND SHORTAGES BY DECEMBER 1999				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME SCALE	BUDGET
A report listing all current Legislation is provided for the MEC, listing required new Legislation.	Availability of all relevant acts	State Law Advisors Directors with regulatory responsibility	December 1999	

STRATEGIC AIM FOUR: PROVIDING ENABLING LEGISLATION				
OBJECTIVE 2: IDENTIFY REQUIRED NEW BILLS AND PRODUCE DRAFTS OF NEW BILLS BY DECEMBER 1999				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTORS	WHO RESPONSIBLE	TIME SCALE	BUDGET
Draft bills for: * Agricultural Development Finance * Eastern Cape Rural Finance Corporations * Market of Agricultural Products * Agricultural Research are circulated for comment within the Department	Obtain agreements from Departmental Directors	Departmental Directors and Transformation Units	December 1999	



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STRATEGIC AIM FOUR: PROVIDING ENABLING LEGISLATION				
OBJECTIVE 3: DRAFT BILLS ARE ACCEPTED BY DEPARTMENT AND PRESENTED TO THE MEC FOR AGRICULTURE AND LAND AFFAIRS BY END JULY 1999				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
MEC accepts draft Bills	MEC and advisors accept draft bills	Permanent Secretary	December 1999	

STRATEGIC AIM FOUR: <b>PROVIDING ENABLING LEGISLATION</b>				
OBJECTIVE 4: <b>DRAFT BILLS SENT TO STATE LAW ADVISORS FOR COMMENT BY AUGUST 1999</b>				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
<p>State Law Advisors certify legal status of Bills</p> <p>Explanatory memo prepared. Certificate indicating that all constitutional and legal requirements have been met and necessary approvals have been obtained.</p>	<p>Timeous response from State law Advisors</p>	<p>State Law Advisors Departmental Directors</p>	<p>December 1999</p>	



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STRATEGIC AIM FOUR: <b>PROVIDING ENABLING LEGISLATION</b>				
OBJECTIVE 6: <b>DRAFT BILLS WITH EXPLANATIONS AND CLAUSE ANALYSIS SUBMITTED TO STANDING COMMITTEE ON AGRICULTURE BEFORE END OF SEPTEMBER 1999</b>				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
<p>Acceptance obtained from the Standing Committee on Agriculture and Land Affairs to Publicize the Draft Bills</p>	<p>Standing Committee availability and acceptance for Legislature</p>	<p>Chairperson Standing Committee on Agriculture</p>	<p>December 1999</p>	

<b>STRATEGIC AIM FOUR: PROVIDING ENABLING LEGISLATION</b>				
<b>OBJECTIVE 7</b> DRAFT BILLS WITH EXPLANATIONS AND CLAUSE BY CLAUSE ANALYSIS ARE TRANSLATED INTO REQUIRED LANGUAGES AND PRINTED IN THE PROVINCIAL GAZETTE PUBLISHED IN ELECTRONIC AND PRINT MEDIA BY 30 OCTOBER 1999				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
Bills translated and printed in the Provincial Gazette and publicized in the electronic and print media	Translations completed satisfactorily. Publicity effective	Permanent Secretary Secretary to Legislature	December 1999	

<b>STRATEGIC AIM FOUR: PROVIDING ENABLING LEGISLATION</b>				
<b>OBJECTIVE 8:</b> DRAFT BILLS ARE INTRODUCED TO THE LEGISLATURE IN ACCORDANCE WITH RULE 153 BY NOVEMBER 1999				
KEY PERFORMANCE INDICATOR	KEY SUCCESS FACTOR	WHO RESPONSIBLE	TIME SCALE	BUDGET
Bills passed by Legislature and by the Premier	Bills accepted on legislative programme	MEC Agriculture and Land Affairs	End of Parliamentary Session	

# LIST OF LEGISLATION ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE



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## LIST OF LEGISLATION ADMINISTERED BY THE DEPARTMENT

### AGRICULTURE

ABATTOIR HYGIENE ACT, 1992, ACT 121 OF 1992  
 SOUTH AFRICAN ABATTOIR CORPORATION ACT, 1992, ACT 120 OF 1992  
 ANIMAL DISEASES ACT, 1984, ACT NO 35 OF 1984  
 ANIMAL PROTECTION ACT, 1962, ACT NO 71 OF 1962  
 LIVESTOCK IMPROVEMENT ACT, 1997, ACT NO 25 OF 1997  
 LIMITATION, CONTROL AND IMPROVEMENT OF LIVESTOCK AND OF PASTORAL AND AGRICULTURAL RESOURCES IN BLACK AREAS, 1927, ACT 38 OF 1927  
 ANIMAL DISEASES ACT (CISKEI), 1986, ACT 21 OF 1986  
 ANIMAL PROTECTION ACT (CISKEI), 1986, ACT 20 OF 1986  
 ANIMAL SLAUGHTER MEAT AND ANIMAL PRODUCTS HYGIENE ACT (TRANSKEI), 1981  
 TRANSKEI AGRICULTURAL DEVELOPMENT ACT, 1966  
 LIVESTOCK BRANDS ACT, 1962 NO 87 OF 1962  
 TRANSKEIAN ANIMAL HUSBANDRY IMPROVEMENT ACCOUNT ACT, 1965  
 ANIMAL DISEASES AND PARASITES ACT (TRANSKEI), 1978  
 FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947, ACT 36 OF 1947  
 FENCING ACT, 1963, ACT NO 31 OF 1963  
 DESEGNATED AREAS DEVELOPMENT ACT, 1979, ACT 87 OF 1979  
 AGRICULTURAL PESTS ACT, 1983, ACT 36 OF 1983  
 CONSERVATION OF AGRICULTURAL RESOURCES ACT, 1983, ACT 43 OF 1983

### LAND

LOCATION REGULATIONS: UNSURVEYED DISTRICTS: TRANSKEIAN TERRITORIES, 26 OF 1936  
 UPGRADING OF LAND TENURE RIGHTS ACT 1991, NO 112 OF 1991  
 PROCLAMATION (TRANSKEI) NO 174 OF 1921  
 LAND USE REGULATION ACT (CISKEI), 1987, ACT NO 15 OF 1987  
 BLACK COMMUNITIES DEVELOPMENT ACT, 1984, ACT NO 4 OF 1984  
 BLACK ADMINISTRATION ACT, 1927, ACT NO 38 OF 1927  
 DEVELOPMENT FACILITATION ACT, 1995 ACT NO 67 OF 1995  
 DISTRIBUTION AND TRANSFER OF CERTAIN STATE LAND ACT, 1993, ACT NO 119 OF 1993  
 LAND TITLES ADJUSTMENT ACT, 1993, NO 111 OF 1993  
 ABOLITION OF RACIALLY BASED LAND MEASURES ACT, 1991, NO 108 OF 1991  
 FENCING ACT, 1963, ACT NO 31 OF 1963  
 STATE LAND DISPOSAL ACT, 1961, 48 OF 1961  
 STATE LAND DISPOSAL ACT (CISKEI), 1961, ACT NO 48 OF 1961  
 REGULATIONS GOVERNING THE GRANTING OF LEASEHOLD ISSUED IN TERMS OF THE BLACK COMMUNITIES DEVELOPMENT ACT, 1984, GN R2451 OF 1 NOVEMBER 1985

**BLACK AREAS LAND REGULATIONS ISSUED IN TERMS OF BLACK  
ADMINISTRATION ACT, 1927 ACT NO 38 OF 1927, GN R188 OF 1969,**



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