



- CONSTITUTION -

**NATIONAL ECONOMIC DEVELOPMENT
AND LABOUR COUNCIL**

1. DEFINITIONS

In this constitution, unless the context otherwise indicates:

- 1.1. **“Act”** means the National Economic, Development and Labour Council Act, Act 35 of 1994;
- 1.2. **“Auditor-General, Executive Deputy President, and President,”** means those bodies or persons as defined in the Constitution of the Republic of South Africa Act, 1993;
- 1.3. **“constituent”** means organised business, or organised labour, or the State or organisations of community and development interests, and **“constituency”** shall bear the same meaning;
- 1.4. **“Council”** means the National Economic, Development and Labour Council;
- 1.5. **“Minister”** means the Minister of Labour;
- 1.6. **“Minister without portfolio”** means the Minister without portfolio in the office of the President;
- 1.7. **“member”** means the representative of any organisation save where the context indicates otherwise;
- 1.8. **“National Economic Forum”** means the body established in October 1992 to deal with economic and related socio-economic issues;
- 1.9. **“National Manpower Commission”** means the Commission established in terms of section 2A of the Labour Relations Act, 1956;
- 1.10. **“national summit”** means the annual meeting of interested parties called by the executive council in terms of clause 15;
- 1.11. **“organisations of community and development interest”** means those non-governmental organisations identified by the Minister without portfolio in terms of clause 9.2.4 of this constitution as representing community interests with an interest in development and reconstruction and which have been admitted as parties of the Council;
- 1.12. **“organised business”** means business as represented by the federation of

business associations and employer organisations that is the founding party of the Council and any new member that is admitted hereafter;

- 1.13. **“organised labour”** means labour as represented by the federations of trade unions that are the founding parties of the Council and any federation that is admitted hereafter;
- 1.14. **“party to the Council”** means any organisation which has members representing it on the Council;
- 1.15. **“social and economic policy”** includes financial, fiscal and monetary policy, socio-economic programmes, trade and industrial policy, reconstruction and development programmes and all aspects of labour market policy, including training and human resource development;
- 1.16. **“State”** means the government of the Republic of South Africa.

2. NAME, LEGAL NATURE AND CAPACITY

- 2.1. This is the constitution of the National Economic Development and Labour Council, in terms of section 2 of the Act.
- 2.2. The Council shall be a body corporate with perpetual succession constituted separately from its members, capable of acquiring rights and obligations, entering into legal transactions and to sue and be sued in its own name.
- 2.3. The Council alone is liable for its debt and commitments.
- 2.4. Any income or property of the Council shall be applied solely towards the promotion of its main or subsidiary objects and no proportion of the income or property shall be paid or transferred, directly or indirectly, to any members of the Council or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Council or any member of it in return for any services actually rendered.

3. COMPOSITION OF COUNCIL

The Council shall be composed of:

- 3.1. An executive council, which shall be the governing body of the Council;
- 3.2. Four chambers, namely:
 - (a) the Public Finance and Monetary Policy chamber;
 - (b) the Trade and Industry chamber;

- (c) the Labour Market chamber;
- (d) the Development chamber;
- 3.3. A management committee; and
- 3.4. A secretariat.

4. OBJECTS, POWERS AND FUNCTIONS OF THE COUNCIL

4.1. The Council shall -

- (a) strive to promote the goals of economic growth, increased participation in economic decision making and social equity;
- (b) seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
- (c) consider all proposed labour legislation before it is introduced into Parliament;
- (d) consider all significant changes to social and economic policy before it is implemented or, in the case of legislation, before it is introduced into Parliament;
- (e) encourage and promote the formulation of co-ordinated policy on social and economic matters.

4.2. For the purposes of clause 4.1, the Council -

- (a) may make such investigations as it may consider necessary;
- (b) shall continually survey and analyse social and economic affairs;
- (c) shall keep abreast of international developments in social and economic policy;
- (d) shall continually evaluate the effectiveness of social and economic legislation and policy;
- (e) may conduct research into social and economic policy;
- (f) shall work in close co-operation with departments of State, statutory bodies, programmes and other forums and non-governmental agencies engaged in the formulation and the implementation of social and economic policy.

4.3. Nothing in this section shall preclude the Council from considering any matter pertaining to social and economic policy.

4.4. The Council shall take over all the functions previously performed by the National Manpower Commission and the National Economic Forum unless specifically

excluded by this constitution.

- 4.5. The Council shall consider all issues pertaining to social and economic policy referred to it by the legislature, the Executive of Government and other bodies represented on the Council.

5. POWERS OF THE EXECUTIVE COUNCIL

5.1. The specific powers of the executive council shall be:

- (a) to exercise the powers and perform the functions referred to in clause 4;
- (b) to adopt the constitution of the Council and amend it from time to time but subject to the provisions of the Act;
- (c) to establish the chambers referred to in clause 3(2) of this constitution;
- (d) to establish the management committee referred to in clause 3(3) of this constitution and such other committees as may be necessary to assist it in the exercise of its powers and the performance of its functions and to delegate such powers and functions as it deems appropriate to such committees and the chambers contemplated in paragraph 5.1(c);
- (e) to conduct enquiries in the performance of its functions and the exercise of its powers;
- (f) to develop conventions to regulate its relationships with Parliament and provincial legislatures and their respective standing committees, ministries and departments affected by the decisions of the Council;
- (g) to draw up rules and procedures for all meetings of the executive council, chambers, management committee and committees;
- (h) to develop rules and protocols for the conduct of relations with other institutions engaged in the formulation or implementation of aspects of social and economic policy;
- (i) to develop codes of conduct to regulate the conduct of members and representatives;
- (j) to appoint a secretariat on such terms and conditions as it may determine;
- (k) to appoint auditors for purposes of annually auditing the accounts of the Council;
- (l) to exercise any other powers and perform any other functions as may be necessary for the Council to achieve its objectives.

5.2. Notwithstanding the foregoing, the Council's financial powers in respect of pub-

lic funds shall be restricted to its budget as approved by the Minister in terms of clause 14 and any other financial controls that may be required by the Auditor-General.

- 5.3. The Council shall be subject to all the provisions of the Act and in the event of a conflict between the provisions of this constitution and any provisions of the Act, the Act shall prevail.

6. THE COMPOSITION OF THE EXECUTIVE COUNCIL

- 6.1. The executive council shall consist of:
- 6.1.1. not more than 18 members who represent organised business appointed by the Minister on nominations made by organised business in terms of clause 9;
 - 6.1.2. not more than 18 members who represent organised labour, appointed by the Minister on nominations made by organised labour in terms of clause 9;
 - 6.1.3. not more than 18 members who represent the State appointed by the President;
 - 6.1.4. not more than 18 members who represent organisations of community and development interests, appointed by the Minister without portfolio in terms of clause 9; and
- 6.2. An equal number of members shall be appointed from each constituency save that the constituencies appointed in terms of clauses 6.1.1, 6.1.2 and 6.1.3 may exceed those appointed in terms of clause 6.1.4.
- 6.3. The executive council shall from time to time appoint constituency-based chairpersons nominated by each constituency.
- 6.4. The appointments referred to in clause 6.3 shall be in rotation. Any reference in this constitution to the chairperson shall refer to the chairperson then in office chairing meetings of the executive council and management committee.
- 6.5. The appointment of any chairperson may at any time be terminated during his or her period of office by:
- 6.5.1. the written resignation of the chairperson;
 - 6.5.2. the removal of the chairperson from office by a consensus vote of members of the executive council, provided that notice of a resolution to remove the chairperson shall be given in the manner provided for in clause 10 below and provided further that, before any such resolution is put to the vote, the chairperson is given an opportunity at that meeting to address the executive council;
- 6.6. The executive council shall meet at least four times in every financial year.

- 6.7. Any organisation may withdraw as a party to the Council by notice in writing delivered to the office of the secretariat. The effect of such resignation shall be that the organisation shall cease to have members representing it on the executive council.
- 6.8. The constituencies shall each appoint one of their members on the executive council as the overall convenor for that constituency on the Council.
- 6.9. Each constituency may appoint an alternate to a member. The appointments shall be done in terms of the criteria and procedures determined by each constituency. An alternate may only attend meetings of the executive council when the member to whom he/she is an alternate is:
 - 6.9.1. absent from the meeting;
 - 6.9.2. the chairperson of the Council.

7. THE CHAMBERS

- 7.1. Each chamber referred to in clause 3.2 shall be composed of the following members:
 - 7.1.1. not more than six members who are nominated by organised business and appointed by the Minister;
 - 7.1.2. not more than six members who are nominated by organised labour and appointed by the Minister;
 - 7.1.3. not more than six members who represent the State and are appointed by the President of the Republic of South Africa;
 - 7.1.4. in the case of the representatives of community and development interests in the Development chamber, such number of members as determined by the executive council and appointed by the Minister without portfolio.
- 7.2. An equal number of members shall be appointed from each of the constituencies referred to in clauses 7.1.1, 7.1.2, and 7.1.3.
- 7.3. The first meeting of each chamber shall be chaired by the chairperson of the executive council who shall preside until a chairperson has been elected by the chamber. The chairperson may be appointed on a permanent or temporary basis, or the position may be rotated amongst the constituents in terms of procedures agreed to by each chamber.
- 7.4. A chamber shall meet at least six times in every financial year.
- 7.5. A chamber shall consider issues relevant to that chamber, draft reports or make recommendations for agreements.

- 7.6. The chambers shall with the concurrence of the management committee, be entitled to have access to experts in such a manner as they deem fit, and to employ such experts or retain them on service contracts, for whatever time period deemed fit.
- 7.7. Each constituency in a chamber shall designate a convenor.
- 7.8. Each constituency may appoint an alternate to a member. An alternate may only attend meetings of a chamber when the member to whom he/she is an alternate is absent from the meeting, unless a chamber decides otherwise.
- 7.9. Each chamber shall have such further functions and terms of reference as may be decided by the executive council.
- 7.10. The chambers may interact with any government department in respect of issues that fall within that department's jurisdiction.
- 7.11. All reports, resolutions, policy documents and recommendations adopted by a chamber shall be submitted to the executive council. The executive council shall ratify consensus recommendations made by any chamber, except where by consensus the executive council decides to amend such recommendations.

8. MANAGEMENT COMMITTEE

- 8.1. The management committee shall, subject to clause 8.2, consist of 16 persons being:
 - 8.1.1. the four convenors on the executive council;
 - 8.1.2. the convenors from each constituent in each of the chambers, noting that the convenor of organisations representing community and development interests on the executive council shall also be that constituency's convenor in the development chamber. For purposes of the management committee, constituencies may choose to replace any convenor with another member.
- 8.2. The management committee shall have the power to co-opt not more than four additional members from amongst the membership of the constituencies, if deemed necessary.
- 8.3. The management committee shall be responsible for overseeing and co-ordinating the work of the Council, subject to the authority of the executive council.
- 8.4. The management committee shall have the responsibility, but not the exclusive jurisdiction, to prepare the agenda and any notices for executive council meetings, in terms of this constitution.
- 8.5. The chairperson of the executive council shall be chairperson of the management committee in terms of section 6.3 of this constitution.

- 8.6. The overall constituency convenors and management committee members may attend any meeting of the chambers, subject to 8.7. below.
- 8.7. The management committee shall develop guidelines for flexibility in the attendance of chamber meetings by management committee members. Such attendance shall be aimed at enhancing the consensus-seeking process in the chamber concerned.

9. ADMISSION OF MEMBERS

- 9.1. The State, organised business and organised labour shall nominate not more than 18 representatives as members of the executive council and not more than six representatives as members of each chamber.
- 9.2. Unless otherwise agreed within each constituency, representation at the inaugural meeting shall be determined as follows:
 - 9.2.1. for organised business, by Business South Africa;
 - 9.2.2. for the State, by the President of the Republic of South Africa;
 - 9.2.3. for organised labour, by proportional representation according to paid-up membership of the founding trade union federations - Cosatu, Fedstal and Nactu;
 - 9.2.4. for the organisations representing community and development interests, by the Minister without portfolio in consultation with organised business, organised labour and the Minister.
- 9.3. Applications for admission to membership by organised business, organised labour and the State after the inaugural meeting shall be made to the secretariat, in writing, in the form required by the executive council. Such applications shall be considered according to the process outlined in 9.4 - 9.6 below.
- 9.4. The secretariat on receiving such an application, shall submit such application to the convenor of the affected constituency on the executive council.
- 9.5. The convenor shall, within one (1) month of receipt of an application from the secretariat, convene a meeting within the affected constituency to consider the application. This shall be done in terms of the procedures and criteria determined by each constituency.
- 9.6. In the event that members of the affected constituency decide to approve a nomination, then that nomination shall be forwarded to the Minister who shall appoint the representatives to the executive council and/or chambers.
- 9.7. Applications for admission to membership by any organisation representing community and development interests after the inaugural meeting shall be made to the secretariat, in writing, on the application form required by the executive coun-

cil. Such applications shall be considered according to the process outlined in 9.9 - 9.11 below.

- 9.8. The secretariat shall submit such applications to the Minister without portfolio.
- 9.9. The Council shall, in accordance with the provisions of this constitution, take into account whether the applicant:
- (a) represents a significant community interest on a national basis; and
 - (b) has a direct interest in development and reconstruction; and
 - (c) is constituted democratically and has a constitution which provides for democratic decision making procedures; and
 - (d) is able to seek mandates from its own members and to obtain compliance from its members in regard to resolutions and policies of the Council;
- 9.10. After the Council has approved the initial members of organisations representing community and development interests, any further applications from this constituency shall be considered by the members representing community and development interests. They shall submit their recommendation regarding the application to the Minister without portfolio, who shall, in consultation with the executive council decide the following:
- 9.10.1. whether to admit the nominees as parties to the Council; and
 - 9.10.2. in that event, the re-allocation of members from organisations representing community and development interests on the executive council and/or chamber to comply with clauses 6.1 and 7.1.

10. TERMINATION OF MEMBERSHIP

- 10.1. The membership of any member of any constituency may be terminated by that constituency in the following circumstances:
- 10.1.1. where member(s) who represent the organisation have failed to attend meetings of the executive council on three consecutive occasions without good cause, provided that where an organisation is represented by more than one member and the remaining members are not in default of this requirement, the executive council may request the secretariat to bring the matter to the attention of the affected constituency.
 - 10.1.2. where the organisation no longer meets the criteria determined by each constituency; or
 - 10.1.3. where the organisation has ceased to function as provided for in terms of its own constitution and/or the law.

11. PROCEEDINGS AT MEETINGS

- 11.1. All meetings, in terms of this constitution, shall be conducted in accordance with the rules and procedures as determined or amended by the executive council.
- 11.2. Unless otherwise provided for, decisions of any meeting shall be by consensus.
- 11.3. All meetings shall be convened by the secretariat, acting on the instructions of the relevant chairperson.
- 11.4. The quorum necessary for meetings of the executive council or chambers shall be one third of the number of members of the executive council or chamber, provided that amongst those present, at least one third of the number of members representing each of the constituents are present.
- 11.5. The quorum necessary for the transaction of business of the management committee shall be eight members provided that organised business, organised labour and the state shall each have at least two members present.
- 11.6. The decisions taken at such a meeting will not be binding unless ratified by the next meeting or in writing.
- 11.7. Organisations shall be entitled at any time and entirely within their own discretion, to replace any of the members representing them on the executive council or chambers, by other persons provided that due notice of such replacement is given in writing to the chairperson prior to the replacement members being entitled to take a seat on the executive council or chamber.

12. MINUTES

- 12.1. Written minutes shall be kept of all meetings of the executive council, management committee, chambers and committees. Once confirmed, such minutes shall be entered into a bound book and kept as a permanent record by the secretariat.
- 12.2. An attendance register of all members who attend any meeting shall be kept.

13. REPORTS

- 13.1. Any report of the Council, including the annual report or report on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the Minister and to the convenors of each constituency. Every such report shall as soon as practicable be laid upon the Table of the Senate and of the National Assembly.
- 13.2. The executive council shall as soon as possible after 31 March in each year furnish the Minister with an annual report in respect of its activities and the state of social and economic matters in the Republic during the year ending on that date.

- 13.3. A report, other than the annual report of the Council, shall not be deemed to be a report of the Council for the purpose of section 8 of the Act unless two thirds of each of the constituencies on the executive council, subject to clause 7.11 of this constitution, have endorsed such a report. In the event of dissenting views these shall be included in all reports.

14. FINANCES

- 14.1. The financial year end of the Council shall be 31 March.
- 14.2. The executive council shall prepare an annual budget for the financing of the Council, including the national summit, for submission to the Minister by 1 September in each year for his/her approval and the concurrence of the Minister of Finance.
- 14.3. The activities of the Council, including the national summit and the provision of the secretariat and research services, shall be funded from the budget of the Department of Labour.
- 14.4. The executive director shall ensure that proper records and books of account of the administration of the Council, consistent with generally accepted accounting practices, are kept in such manner and form as is necessary in order, that at all times, the records and books shall fairly reflect the position of the Council and may engage and pay for such services as may be required for such purposes.
- 14.5. The accounts of the Council shall be audited annually by such auditors as shall be appointed from time to time by the executive council.
- 14.6. The Auditor-General or his/her duly authorised representative shall be entitled to inspect the books of account of the Council, at all reasonable times.
- 14.7. The Council shall be entitled to receive monies from private or public bodies, other than the State, provided that such funds are:
- (a) maintained in a separate bank account kept for that purpose;
 - (b) accounted for separately in the books of the Council.
- 14.8. The secretariat shall cause quarterly income and expenditure statements to be prepared for executive council meetings.
- 14.9. Members of the executive council and management committee shall be entitled to receive copies of the annual and quarterly income and expenditure statements of the Council but only members of the management committee shall be entitled to other financial records of the Council.

15. NATIONAL SUMMIT

- 15.1. The executive council shall convene an annual meeting of members and interested parties, called the national summit, to report on and consider the activities of the Council.
- 15.2. The national summit shall be a consultative forum and will not form part of the Council itself.
- 15.3. The function of the national summit will be to:
 - 15.3.1. involve as many relevant group(s) as possible in order to give feedback on Council activities;
 - 15.3.2. obtain inputs from organisations or persons not normally involved in Council activities;
 - 15.3.3. obtain broader consultation on issues being deliberated upon in the Council.
- 15.4. The national summit shall be chaired by the President or Executive Deputy President or such equivalent person as the Constitution of the Republic of South Africa may provide for. If the President, Executive Deputy President or such equivalent persons are not available to chair a national summit, the parties on the Council shall themselves decide on a replacement chairperson.
- 15.5. The executive council shall, from time to time, determine who shall be invited to attend the national summit.
- 15.6. Records of the proceedings of the national summit shall be kept by the secretariat, and these shall be made available to members of the public upon payment of a reasonable fee as determined by the executive council.
- 15.7. No resolution of policy adopted by the national summit shall be binding on the Council, unless expressly adopted by the Council.

16. SECRETARIAT

- 16.1. The Council shall, in terms of paragraph 5.1(j), appoint its own secretariat to perform the administrative work on behalf of the Council.
- 16.2. The secretariat shall be accountable to the executive council and management committee.
- 16.3. The executive council shall appoint an executive director to head the secretariat.
- 16.4. The executive director, or his/her designate shall be a member of the executive council, the chambers and the management committee, but shall not have voting rights.

17. AMENDMENT OF CONSTITUTION

- 17.1. This constitution may only be amended by the executive council provided that any such amendments are endorsed by two thirds of each of the constituencies.
- 17.2. Not less than thirty days notice of an amendment shall be given, which notice shall otherwise comply with the provisions of clause 11 and include the text of the proposed amendment.
- 17.3. No amendment to this constitution shall be valid to the extent that it is inconsistent with the Act.

18. DISSOLUTION

- 18.1. The Council may be dissolved by Parliament repealing the Act.
- 18.2. Upon the winding up and dissolution of the Council, the assets of the Council remaining after the satisfaction of its liabilities, shall be given or transferred to:
 - 18.2.1. in respect of monies from the State, to the government department concerned;
 - 18.2.2. in respect of any monies received from any person other than the State, to any other association, society or institution or any combination of them, which shall be of a public character, in the Republic of South Africa, that is:
 - a) politically independent;
 - b) of a non-profit nature;
 - c) concerned with issues of social and economic policy.
- 18.3. Such organisation shall be determined by the members of the executive council at or before the time of the Council's dissolution, or failing such determination, by the division of the Supreme Court of South Africa, having jurisdiction in the place where the secretariat is situated.

**FINAL DRAFT 3
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