

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—
- (a) the Cabinet, must be read as a reference to an Executive Council;
 - (b) a Minister, must be read as a reference to a member of an Executive Council; and
 - (c) 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—
- (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 (3);
 - (b) 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;
 - (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 (3);

- (d) terminate any appointment under paragraph (b)—
 - (i) 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
 - (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 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—
- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the Premier'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 Premier's party, the decision of the leader of the party of which such 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 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".