



NEDLAC CONSTITUTION

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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, Deputy President, and President”, means those bodies or persons as referred to in the Constitution of the Republic of South Africa Act, 1996;
- 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. “Constitution” means the Nedlac Constitution as provided for in Section 4 of the Nedlac Act;
- 1.6. “Minister” means the Minister of Labour;
- 1.7. “Member” means the representative of any organisation save where the context indicates otherwise;
- 1.8. “National summit” means the annual meeting of Nedlac constituencies and interested parties called by the executive council in terms of clause 15;
- 1.9. “Organisations of community and development interest” means those non-governmental organisations identified by the Minister.
- 1.10. “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;
- 1.11. “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;
- 1.12. “Party to the Council” means any organisation which has members

representing it on the Council;

- 1.13 “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 ;
- 1.14 “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.
- 3.5 Other committees may be established as may be required from time to time.

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 coordinated policy on social and economic matters, through social dialogue.

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 cooperation 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;
- g. shall propose amendments to new and amended legislation.

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 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.
- 4.5 The Council's financial powers in respect of public funds shall be restricted to the exercise of the necessary financial powers to execute its budget as approved by the Minister in terms of clause 14 and subject to any financial controls required by the Public Finance Management Act, as amended, Treasury Regulations, other applicable legislation and any other financial controls that may be required by the Auditor-General.
- 4.6 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.

5. Powers of the executive council

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 protocols 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. the staff complement and staff structure shall be approved by the executive council, including amendments thereto;
- l. to cooperate fully with the office of the Auditor-General appointed for purposes of annually auditing the accounts of the Council, and to monitor compliance with the recommendations made by the Auditor-General;
- m. to exercise any other powers and perform any other functions as may be necessary for the Council to achieve its objectives.

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;
- 6.1.2. not more than 18 members who represent organised labour;
- 6.1.3. not more than 18 members who represent the State appointed by the Deputy President;
- 6.1.4. not more than 18 members who represent organisations of community and development interests, appointed by the Minister.

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 responsibility for the chairing of meetings of the executive council shall be rotated, on a quarterly basis, amongst the constituencies.
- 6.4. The executive council shall meet at least four times in every financial year.
- 6.5. Any organisation may withdraw as a party to the Council by notice in writing delivered to the executive director. The effect of such resignation shall be that the organisation shall cease to have members representing it on the executive council.
- 6.6. The constituencies shall each appoint one of their members on the executive council as the overall convenor for that constituency on the Council.
- 6.7. 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:
 - 6.7.1. is absent from the meeting;
 - 6.7.2. requests their participation, and such requests are approved by the constituency Overall Convenor.

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;
 - 7.1.2. not more than six members who are nominated by organised labour;
 - 7.1.3. not more than six members who represent the State and are appointed by the Minister;

- 7.1.4. in the case of the representatives of community and interests in the Development chamber, such members as determined by the executive council and appointed by the Minister.
- 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 meeting of each chamber shall be chaired by Constituencies on a quarterly rotational basis. If so requested by a chamber, the Secretariat may, on an ad-hoc basis, chair meetings of a chamber.
- 7.4. A chamber shall meet at least six times in every financial year, and as and when a need may arise.
- 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.
- 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 or constituency convenor 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 5 persons per constituency, which shall include:
 - 8.1.1. the four overall convenors;
 - 8.1.2. the convenors from each constituency in each of the chambers.
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 coordinating 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 responsibility for the chairing of meetings of the management committee shall be rotated, on a quarterly basis, amongst the constituencies.
- 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. Overall convenors

The four overall constituency convenors shall:

- 9.1. Coordinate the participation of their respective constituency membership in respect of each of the chambers and task teams;

- 9.2. Undertake tasks delegated by the executive council and the management committee.

10. Admission of Members

- 10.1. 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.
- 10.2. Unless otherwise agreed within each constituency, representation in the Council shall be determined as follows:
 - 10.2.1. for organised business, by Business Unity South Africa;
 - 10.2.2. for the State, by the Deputy President of the Republic of South Africa;
 - 10.2.3. for organised labour, by proportional representation according to paid-up membership of the founding trade union federations - Cosatu, Fedusa and Nactu;
 - 10.2.4. for the organisations representing community and development interests, by the Minister in consultation with organised business and organised labour.
- 10.3. Applications for admission to membership by organised business, organised labour and the State after the inaugural meeting shall be made to the executive director, in writing, in the form required by the executive council. Such applications shall be considered according to the process outlined in 10.4-10.6 below.
- 10.4. The executive director on receiving such an application shall submit such application to the overall convenor of the affected constituency on the executive council.
- 10.5. The overall convenor shall, within one (1) month of receipt of an application from the executive director, convene a meeting within the affected constituency to consider the application.
- 10.6. Applications for admission to membership by any organisation representing community and development interests after the inaugural meeting shall be made to the executive director, in

writing, on the application form required by the executive council. Such applications shall be considered according to the process outlined in 10.7-10.11 below.

- 10.7. The executive director shall submit such applications to the executive council.
- 10.8. The executive 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 and
 - (d) is able to seek mandates from its own members and to obtain compliance from its members in regard to resolutions, procedures and policies of the Council.
- 10.9. After the executive 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 who shall, in consultation with the executive council, decide the following:
 - 10.9.1. whether to admit the nominees as parties to the Council and
 - 10.9.2. in that event, the reallocation 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.

11. Termination of Membership

The membership of any member of any constituency may be terminated by that constituency in the following circumstances:

- 11.1 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;
- 11.2. where the organisation no longer meets the criteria determined by each constituency, or
- 11.3. where the organisation has ceased to function as provided for in terms of its own constitution and/or the law.

12. Proceedings at Meetings

- 12.1. All meetings, in terms of this constitution, shall be conducted in accordance with the rules.
- 12.2. Unless otherwise provided for, decisions of any meeting shall be by consensus and procedures as determined or amended by the executive council.
- 12.3. All meetings shall be convened by the relevant structures acting in consultation with the constituency overall convenors.
- 12.4. 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.
- 12.5. The quorum necessary for the management committee shall be eight members provided that organised business, organised labour and the state shall each have at least two members present.

12.6. 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 executive council through the executive director, and such replacements are ratified by the executive council prior to the replacement members being entitled to take a seat on the executive council or chamber.

13. Minutes

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

14. Reports

- 14.1. All relevant reports of the Council, including the annual reports or reports on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the relevant Ministers. Every such report shall as soon as practicable be submitted to the National Council of Provinces and of the National Assembly.
- 14.2. The Council shall, in accordance with the Public Finance Management Act, and as soon as possible after 31 March in each year, furnish the Minister with an annual report in respect of its activities.
- 14.3. The Council shall submit all Nedlac Reports to the relevant Ministers, the National Council of Provinces and the National Assembly.
- 14.4. The Council shall submit any other report to the relevant Ministers, the National Council of Provinces and the National

Assembly, subject to authorisation by the executive council.

- 14.5. 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.

15. Finances

- 15.1. The financial year end of the Council shall be 31 March.
- 15.2. 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.
- 15.3. 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.
- 15.4. The executive director shall ensure that proper records and books of account of the administration of the Council, consistent with generally recognised 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.
- 15.5. The accounts of the Council shall be audited annually by the Auditor-General or such auditors as shall be appointed from time to time by the executive council.
- 15.6. 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.
- 15.7. The Council shall be entitled to receive monies from credible 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.

15.8. The executive director shall prepare quarterly income and expenditure statements to for consideration at executive council and management committee meetings.

15.9. 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.

15.10. The financial affairs of the Council shall be conducted strictly in accordance with the Public Finance Management Act, as amended, Treasury Regulations and any other applicable legislation.

16. National Summit

16.1. The executive council shall convene an annual meeting of members and as many interested parties as possible, called the national summit, to report on and consider the activities of the Council.

16.2. The national summit shall be a consultative forum and will not form part of the Council itself.

16.3. The function of the national summit will be to:

- 16.3.1. involve as many interested parties as possible in order to give feedback on Council activities;
- 16.3.2. obtain inputs from organisations or persons not normally involved in Council activities;
- 16.3.3. obtain broader consultation on issues being deliberated upon in the Council.

16.4. The annual summit shall be chaired by the President or Deputy President or a delegated person as the Constitution of the Republic of

South Africa may provide for. If the President or Deputy President are not available to chair a national summit, the parties on the executive council shall themselves decide on a replacement chairperson.

- 16.5. The executive council shall, from time to time, determine who shall be invited to attend the annual summit.
- 16.6. Records of the proceedings of the annual summit shall be kept by the executive director, and these shall be made available to members of the public.
- 16.7. Any resolution or policy adopted at the annual summit shall not be binding on the Council, unless expressly adopted by the executive council.

17. Secretariat

- 17.1. The Council shall, in terms of paragraph 5.1(j), appoint its own secretariat to perform the administrative work on behalf of the Council.
- 17.2. The executive council shall appoint an executive director to head the secretariat.
- 17.3. The executive director shall be accountable to the executive council and management committee.
- 17.4. 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.

18. Amendment of Constitution

- 18.1. 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.
- 18.2. Not less than thirty days-notice of an amendment shall be given, which notice shall otherwise comply with the provisions of clause 12 and include the text of the proposed amendment.
- 18.3. No amendment to this constitution shall be valid to the extent that it is inconsistent with the Act.

19. Dissolution

- 19.1. The Council may be dissolved by Parliament repealing the Act.
- 19.2. 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:
 - 19.2.1. in respect of monies from the State, to the government department concerned;
 - 19.2.2. 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.
- 19.3. 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 High Court of South Africa, having jurisdiction in the place where the secretariat is situated.

TERMS OF REFERENCE OF THE CHAMBERS

Development Chamber

The Development Chamber shall seek to reach consensus and make agreements for placing before the executive council all matters pertaining to development, both urban and rural, implementation strategies, financing of development programmes, campaigns to mobilise the nation behind government associated institutions of delivery.

Labour Market Chamber

The Labour Market Chamber shall seek to reach consensus and make arrangements for placing before the executive council all matters pertaining to the world of work and the associated institutions of delivery.

Public Finance and Monetary Policy Chamber

The Public Finance and Monetary Policy Chamber shall seek to reach consensus and make agreements for placing before the executive council on all matters pertaining to financial, fiscal, and monetary and exchange rate policies, the coordination of fiscal and monetary policy, related elements of macroeconomic policy and the associated institutions of delivery.

Trade and Industry Chamber

The Trade and Industry Chamber shall seek to reach consensus and make arrangements for placing before the executive council all matters pertaining to the economic and social dimensions of trade, industrial, mining, agricultural and services policies and the associated institutions of delivery.



NEDLAC PROTOCOLS & FOUNDING DOCUMENTS

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