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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**DRAFT CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
17 November 1993**

**(subject to editing by the South
African Authorities)**



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DRAFT
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
1993
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ACT

To introduce a new Constitution for the Republic of South Africa and to provide for matters incidental thereto.

PREAMBLE

*In humble submission to Almighty God,
We the people of South Africa declare that -*

WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

AND WHEREAS it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

NOW THEREFORE the following provisions are adopted as the Constitution of the Republic of South Africa:

CHAPTER 1
Formal and Constituent Provisions

The Republic of South Africa

1. (1) The Republic of South Africa shall be one, sovereign state.
- (2) The national territory shall consist of all the territory described in Schedule 1.

National symbols

2. (1) The national anthem and the design of the flag of the Republic shall be as set out in a proclamation by the State President in the *Government Gazette* acting in terms of an Act of Parliament.
- (2) The coat of arms and the seal of the Republic existing on the date of the coming into operation of this Constitution, shall continue to be the coat of arms and the seal of the Republic.

Languages

3. (1) Afrikaans, English, siNdebele, sePedi, seSotho, siSwati, xiTsonga, seTswana, luVenda, siXhosa and siZulu shall be the official South African languages at national level and conditions shall be created for their development and for the promotion of their equal use and enjoyment.
- (2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and Parliament shall make provision for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).
- (3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with all public administrations at the national level in any official South African language of his or her choice.

(4) Regional differentiation in relation to language policy and practice shall be permissible.

(5) A provincial legislature may, by a two thirds majority, determine any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language existing in any area or in relation to any function at the time of the coming into operation of this Constitution, may be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with all public administrations at provincial level in any one of the official languages of his or her choice as contemplated in terms of subsection (5).

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any provincial legislature may, subject to the provisions of this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice in relation to the use of languages at all levels of government shall be subject to and based on the provisions of this section and the following principles:

- (a) the creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;
- (b) the extension of those rights relating to language and the status of languages which at the date of commencement of this Constitution are restricted to certain regions;
- (c) the prevention of the use of any language for the purposes of exploitation, domination or division;

- (d) the promotion of multilingualism and the provision of translation facilities;
- (e) respect for languages spoken in the Republic other than the official languages and the encouragement of their use in appropriate circumstances; and
- (f) non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10) Legislation shall provide for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.

(11) The Pan South African Language Board shall be consulted and invited to make recommendations in relation to any proposed legislation contemplated in this section.

(12) The Pan South African Language Board shall be responsible for promoting respect for and the development of Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic and Hebrew and other languages used for religious purposes.

The supremacy of the Constitution

4. (1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, subject to section 88(5) and (6) and section 91(4) be of no force or effect, to the extent of its inconsistency.

(2) The provisions of this Constitution binds all the legislative, executive and judicial organs of state at all levels of government.

CHAPTER 2 Citizenship and the Franchise

Citizenship

5. (1) There shall be a South African citizenship, and the acquisition, loss and restoration of South African citizenship shall be regulated by Act of Parliament.

(2) Every person who is a South African citizen shall, subject to the provisions of this Constitution, exercise franchise rights in South Africa and enjoy all other rights, privileges and benefits and be subject to all duties, obligations and responsibilities of citizenship in South Africa as are accorded or imposed upon him or her in terms of this Constitution.

The franchise

6. Every person who is -

- (a) a South African citizen or a person who in terms of the *Electoral Act*, 1993 is qualified to vote;
- (b) of or over the age of 18 years; and
- (c) not subject to any disqualification as may be prescribed by law,

shall be entitled to vote in elections of members of the National Assembly, the legislature of a province or a local government in accordance with the laws governing that particular election.

CHAPTER 3 Fundamental Rights

Application

7. (1) This Chapter shall bind the legislative and executive organs of the State at all levels of government including all statutory bodies and functionaries.

2) This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Chapter.

3) Juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of the rights permits.

(4) (a) When an infringement of or threat to any right entrenched in this Chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights.

(b) An application referred to in paragraph (a) may be brought by -

- (i) a person acting in his or her own interest;
- (ii) an association acting in the interest of its members;
- (iii) a person acting on behalf of another person who is not in a position to bring such application in his or her own name;
- (iv) a person acting as a member of or in the interest of a group or class of persons; or
- (v) a person acting in the public interest.

Equality

8. (1) Every person shall have the right to equality before the law and to equal protection of the law.

(2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

(3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination in order to enable their full and equal enjoyment of all rights and freedoms.

(b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with the provisions of subsection (2) shall be entitled to claim restitution of such rights subject to and in accordance with Chapter

(4) Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection until the contrary is established.

Life

9. Every person shall have the right to life.

Human dignity

10. Every person shall have the right to respect for and protection of his or her dignity.

Freedom and security of the person

11. (1) Every person shall have the right to freedom and security of the person which shall include the right not to be detained without trial.

(2) No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

Servitude and forced labour

12. No person shall be subject to servitude or forced labour.

Privacy

13. Every person shall have the right to his or her personal privacy which shall include the rights not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

Religion, belief and opinion

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.

(2) Without derogating from the generality of subsection (1), religious observances may be conducted at state or state-aided institutions under rules established by an appropriate authority for that purpose, provided that such observances are conducted on an equitable basis and attendance at them is free and voluntary.

Freedom of expression

15. (1) Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research.

(2) All media financed by or under the control of the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion.

Assembly, demonstration and petition

16. Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions.

Freedom of association

17. Every person shall have the right to freedom of association.

Freedom of movement

18. Every person shall have the right to freedom of movement anywhere within South Africa.

Residence

19. Every person shall have the right freely to choose his or her place of residence anywhere in South Africa.

Citizens' rights

20. Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall be deprived of his or her citizenship.

Political rights

21. (1) Every citizen shall have the right -

- (a) to form, to participate in the activities of and to recruit members for a political party;
- (b) to campaign for a political party or cause; and
- (c) freely to make political choices.

(2) Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.

Access to court

22. Every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.

Access to information

23. Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the protection or exercise of any of his or her rights.

Administrative justice

24. Every person shall have the right to -

- (a) lawful administrative action where any of his or her rights or interests is affected or threatened;
- (b) procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;
- (c) be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and
- (d) administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.

Detained, arrested and accused persons

25. (1) Every person who is detained, including every sentenced prisoner, shall have the right -

- (a) to be informed promptly in a language which he or she understands of the reason for his or her detention;
- (b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;
- (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state;
- (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice; and
- (e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

- (a) in a language which he or she understands, to be informed promptly that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, to be brought before an ordinary court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released;
- (c) not to be compelled to make a confession or admission which could be used in evidence against him or her; and
- (d) to be released from detention with or without bail, unless the interests of justice require otherwise.

(3) Every accused person shall have the right to a fair trial, which shall include the right -

- (a) to a public trial by an ordinary court of law within a reasonable time after having been charged;
- (b) to be informed with sufficient particularity of the charge;
- (c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;
- (d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
- (e) to be represented by a legal practitioner of his or her choice or, where substantial injustice would otherwise result, to be provided with legal representation at state expense, and to be informed of these rights;
- (f) not to be convicted of an offence in respect of any act or omission which was not an offence at the time it was committed, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;
- (g) not to be tried again for any offence of which he or she has previously been convicted or acquitted;
- (h) to have recourse by way of appeal or review to a higher court than the court of first instance;
- (i) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her; and
- (j) to be sentenced within a reasonable time after conviction.

Economic activity

26. (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in South Africa.

(2) Subsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

Labour Relations

27. (1) Every person shall have the right to fair labour practices.

(2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.

(3) Workers and employers shall have the right to organise and bargain collectively.

(4) Workers shall have the right to strike for the purpose of collective bargaining.

(5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired subject to section 34(1).

Property rights

28. (1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.

(2) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.

(3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2) such expropriation shall be permissible for public purposes only and

shall be subject to the payment of agreed compensation or, failing agreement, the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

Environment

29. Every person shall have the right to an environment which is not detrimental to his or her health or well-being.

Children

30. (1) Every child shall have the right -

(a) to a name and nationality as from birth;

(b) to parental care;

(c) to security, basic nutrition and basic health and social services;

(d) not to be subject to neglect or abuse; and

(e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.

(2) Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.

(3) For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interests shall be paramount.

Language and culture

31. Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

Customary law

32. (1) Every person who -

(a) in pursuance of the right entrenched in section 17 belongs to a community which observes a system of customary law; or

(b) of free and informed choice observes the rules and practices of a system of customary law and associates with other persons observing the same rules and practices,

shall, subject to sections 7(2) and 34(2), have the right to the recognition of such customary law as the legal dispensation governing the internal affairs of the community mentioned in paragraph (a) or regulating his or her interpersonal relationships with the persons mentioned in paragraph (b), as the case may be.

(2) It shall be competent for any court of law applying a system of customary law as contemplated in subsection (1) and finding certain of its rules and practices to be in conflict with section 8, to determine, to the extent that its jurisdiction allows, conditions on and a time within which such rules and practices shall be brought in conformity with section 8.

(3) This section shall not preclude legislation designed to assist the development of customary law in accordance with the values embodied in the other provisions of this Chapter.

(This provision has not been finally adopted.)

Education

33. Every person shall have the right -

(a) to basic education and to equal access to educational institutions;

- (b) to instruction in the language of his or her choice where this is reasonably practicable; and
- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race or colour.

Limitation

34. (1) The rights entrenched in this Chapter may be limited by law of general application provided that such limitation -

- (a) shall be permissible only to the extent that it is -
 - (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and
- (b) shall not negate the essential content of the right in question,

and provided further that any limitation to -

- (aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or
- (bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,

shall, in addition to being reasonable as required in paragraph (a)(i), also be necessary.

(2) Save as provided for in subsection (1) or any other provision of this Chapter, no law, whether a rule of the common law, customary law or legislation, shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights in terms of this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised and conferred by common law, customary law or legislation to the extent that they are not inconsistent with the provisions of this Chapter.

(4) This Chapter shall not preclude measures designed to prohibit unfair discrimination by bodies and persons other than those bound in terms of section 7(1).

(5) (a) The provisions of a law in force at the commencement of this Chapter promoting fair employment practices, orderly and equitable collective bargaining and regulating industrial action shall remain of full force and effect until repealed or amended by the legislature.

(b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 24 of the Labour Relations Act 1956, or any other similar body which may replace the Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto."

State of emergency and suspension

35. (1) A state of emergency shall be proclaimed prospectively under an Act of Parliament and shall be declared only where the security of the Republic is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster, and if the declaration of a state of emergency is necessary to restore peace or order.

(2) The declaration of a state of emergency and any action, whether a regulation or otherwise, taken in consequence of it, shall be of force for a period of not more than 21 days unless it is extended for a period of no longer than three months or consecutive periods of no longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members.

(3) Any superior court shall be competent to enquire into the validity of a declaration of a state of emergency, any extension thereof, and any action, whether a regulation or otherwise, taken under such declaration.

(4) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency, and only to the extent necessary to restore peace or order.

(5) Neither any law which provides for the declaration of a state of emergency, nor any action taken in consequence thereof, shall permit or authorise -

(a) the creation of retrospective crimes;

(b) the indemnification of the State or of persons acting under its authority for unlawful actions taken during the state of emergency; or

(c) the suspension of this section, and sections 7, 8(2), 9, 10, 11(2), 12, 14, 27(1) and (2), 30(1)(d) and (e) and (2) and 34(1) and (2).

(6) The detention of a person under a state of emergency shall be subject to the following conditions:

(a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;

(b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Gazette within five days of their detention;

(c) when rights entrenched in sections 11 or 25 have been suspended -

(i) the detention of a detainee shall, as soon as it is reasonably possible but not later than 10 days after his or her detention, be reviewed by a court of law, and the court shall order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;

- (ii) the detainee shall at any stage after the expiry of 10 days of a review in terms of subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;
- (d) the detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;
- (e) the detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;
- (f) the detainee shall be entitled at all times to have access to a medical practitioner of his or her choice: and
- (g) the state shall for the purpose of a review referred to in paragraph (c)(i) or (ii) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.

(7) If a court of law, having found the grounds for a detainee's detention unjustified, orders his or her release, such a person shall not be detained again on the same grounds unless the state shows good cause to a court of law prior to such re-detention.

Interpretation

36. (1) In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.

(2) No law which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used prima facie

exceeds the limits imposed in this Chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event the law shall be construed as having the said more restricted meaning.

(3) In the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport and objects of this Chapter.

CHAPTER 4

Parliament

Constitution of Parliament

37. Parliament shall consist of the National Assembly and the Senate.

Legislative authority of the Republic

38. The legislative authority of the Republic shall, subject to and in accordance with this Constitution, vest in Parliament which shall have the power to make laws for the Republic.

Duration of Parliament

39. (1) Parliament shall continue until it is dissolved under Chapter 5 or until a new Parliament is constituted in terms of the new constitutional text adopted in accordance with the provisions of Chapter 5, or until it is dissolved as a result of a vote of no-confidence in the national executive.

(2) If Parliament is dissolved in terms of Chapter 5 or in terms of subsection (1), an election for a new Parliament shall be called by the President, and such election shall take place within 90 days from the date of such dissolution.

(3) Notwithstanding the dissolution of Parliament in terms of this Constitution, every person who at the date of the dissolution is a member of the National Assembly or the Senate shall remain a member thereof and the National Assembly and

the Senate shall remain competent to perform their functions until a new National Assembly and a new Senate have been elected.

(4) The President shall have the power to summon the National Assembly and the Senate for the conduct of urgent and necessary business during the period following the dissolution under Chapter 5, until a new National Assembly and Senate have been elected.

Composition of the National Assembly

40. (1) The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters provided for in Schedule 2.

(2) Persons who are nominated as candidates on provincial party lists shall be ordinarily resident in the province in respect of which the party list applies.

Speaker and Deputy Speaker of the National Assembly

41. (1) At its first sitting, and after the election of the President, the newly elected National Assembly, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker.

(2) The provisions of Schedule 5 shall apply *mutatis mutandis* to the election of the Speaker and the Deputy Speaker.

(3) The Speaker shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution or an Act of Parliament and by the rules and orders of the National Assembly.

(4) If the Speaker is absent or for any reason unable to perform the powers, duties or functions vested in the office of Speaker, or when the office of Speaker is vacant, the Deputy Speaker shall act as Speaker during the Speaker's absence or inability or until a Speaker is elected.

(5) The Speaker, or in his or her absence the Deputy Speaker or any other person designated for that purpose in terms of the rules and orders of the National Assembly, shall preside over meetings of the National Assembly.

(6) The Speaker or Deputy Speaker shall vacate his or her office if he or she ceases to be a member of the National Assembly, may be removed from office by a resolution of the National Assembly, and may resign by lodging his or her resignation in writing with the Secretary of Parliament.

(7) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly shall in like manner elect a member to fill the vacancy: provided that the Speaker shall in such event preside at the election of a new Deputy Speaker.

(8) Where neither the Speaker nor the Deputy Speaker is available, the duties and functions of the Speaker shall be discharged in a manner provided for and by a person designated in terms of the rules and orders of the National Assembly.

(9) While presiding at a meeting of the National Assembly, the Speaker, Deputy Speaker or other person presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Qualification of Members of the National Assembly

42. (1) No person may become a member of the National Assembly if he or she -
- (a) at the date of the election is serving a sentence of imprisonment of more than twelve months without the option of a fine; or
 - (b) at any time after the adoption of this Constitution, is convicted of an offence in South Africa or outside of South Africa if such conduct would have constituted an offence within South Africa, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon; or
 - (c) is an unrehabilitated insolvent; or
 - (d) is unsound mind and has been so declared by a competent court; or

- (e) holds any office of profit under the Republic: provided that the following persons shall be deemed not to hold an office of profit for the purposes of this paragraph:
- (i) a Minister or Deputy Minister;
 - (ii) a person in receipt of a pension paid from the national revenue fund or the revenue fund of a province;
 - (iii) a part-time or pensioned member of an existing or dissolved South African security force, or a member of such force;
 - (iv) a lawfully appointed justice of the peace or appraiser;
 - (v) a member of any council, board, committee, commission of enquiry or similar body established under law or a select committee of the National Assembly, who receives remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.

(2) For the purposes of subsection (1) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction or sentence has expired.

Vacation of Seats

43. (1) A member of the National Assembly shall vacate his or her seat if he or she:
- (a) ceases to qualify for membership of the National Assembly; or
 - (b) ceases to be a member of the political party which nominated him or her to sit in the National Assembly; or
 - (c) resigns his or her seat in writing addressed to the Speaker; or

- (d) absent himself or herself voluntarily from the National Assembly for 15 consecutive sitting days, without having obtained leave in the manner and on grounds specified in the rules and standing orders of the National Assembly; or
- (e) becomes a member of the Senate, a provincial legislature or of a local government.

(2) If a seat of a member of the National Assembly is vacated in terms of subsection (1), the party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on the party's election list compiled for the previous general election who is qualified and available to become a member of the National Assembly, or if there is no such person, by nominating any member of the party.

(3) If the vacancy occurs in respect of a person who was elected from a national list, it shall be filled from the national list, and if the vacancy occurs in respect of a person who was elected from a provincial list, it shall be filled from the provincial list, by a person ordinarily resident in such province.

Quorum

44. The presence of at least one third of the members of the National Assembly, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers and for the performance of its functions.

Oath or Affirmation by Members of the National Assembly

45. Every member of the National Assembly shall, before taking his or her seat, make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Sessions of the National Assembly

46. (1) The National Assembly shall sit:

- (a) at the Houses of Parliament in Cape Town, unless the Speaker, in accordance with the rules and orders of the National Assembly, directs otherwise on the grounds of public interest, security or convenience;
- (b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the National Assembly and not later than 10 days after such election, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (c) in ordinary session on such dates as the National Assembly may determine by resolution, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.

(2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as its rules and standing orders may provide.

(3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.

(4) There shall be a session of the National Assembly at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Composition of the Senate

47. (1) The Senate shall be composed of ten members from each province, elected by the members of the provincial legislature of each province within 10 days of the commencement of the first session after its election.

(2) Candidates for the election of the Senate shall be nominated by a party represented in the provincial legislature and the election shall be conducted according to the principle of proportional representation as provided for in the *Electoral Act, 1993*.

(3) Any member of a provincial legislature elected in terms of subsection (2) to the Senate, shall vacate his or her seat in the provincial legislature.

President and Deputy President of the Senate

48. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected Senate, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the President of the Senate, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the Senate.

(2) The Senate shall thereafter elect a Deputy President of the Senate from amongst its members, and the Deputy President of the Senate shall act as President of the Senate whenever the President of the Senate is not available, and for that purpose shall have all the powers vested in the President of the Senate.

(3) The President of the Senate, or in his or her absence the Deputy President of the Senate, shall preside over meetings of the Senate and at joint sessions of the National Assembly and the Senate.

(4) The President of the Senate or Deputy President of the Senate shall vacate his or her office if he or she ceases to be a member of the Senate, may be removed from office by a resolution of the Senate, and may resign by lodging his or her resignation in writing with the Secretary of Parliament.

(5) If the office of President of the Senate or Deputy President of the Senate becomes vacant, the Senate shall in like manner elect a member to fill the vacancy.

(6) Where neither the President of the Senate nor the Deputy President of the Senate is available, the Senate, with the Secretary of Parliament acting as Chairperson, shall elect a member to act as President of the Senate during such absence.

(7) The President of the Senate or the Deputy President of the Senate or the acting President of the Senate presiding at a meeting of the Senate shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

49. *[To be filled when the text is finally edited]*

Qualification of members of the Senate

50. Persons shall be qualified to be Senators under this Constitution if they are qualified to stand for election as members of the provincial legislature by whom they are elected.

Quorum

51. The presence of at least one third of the number of senators other than the President of the Senate or the presiding senator shall be necessary to constitute a meeting of the Senate for the exercise of its powers and for the performance of its functions.

Oath or affirmation by Senators

52. Every Senator, before taking his or her seat, shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Vacation of Seats by Senators

53. (1) A senator shall vacate his or her seat if he or she:
- (a) ceases to qualify for membership of the Senate; or
 - (b) resigns his or her seat in writing addressed to the President of the Senate;
or
 - (c) absent himself or herself voluntarily from the Senate for 15 consecutive sitting days, without having obtained the leave of the Senate on grounds specified in its rules and standing orders; or

(d) becomes a member of the National Assembly, a provincial legislature or a local government.

(2) If a seat of a member of the Senate is vacated in terms of subsection (1), the political party which nominated that Senator shall nominate a person to fill the vacancy.

Sessions of the Senate

54. (1) The Senate shall sit:

(a) at the Houses of Parliament in Cape Town, unless the President of the Senate, in accordance with the rules and orders of the Senate, directs otherwise on the grounds of public interest, security or convenience;

(b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the Senate and not later than 10 days after such election, and such session shall terminate on such date as the Senate may determine by resolution;

(c) in ordinary session on such dates as the Senate may determine by resolution, and such session shall terminate on such date as the Senate may determine by resolution;

(d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.

(2) During such sessions the Senate shall sit on such days and during such times of the day or night as its rules and standing orders may provide.

(3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the President of the Senate on the grounds of public interest or convenience.

(4) There shall be a session of the Senate at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Privileges and immunities of members of Parliament

55. (1) Notwithstanding the provisions of any other law, no member of Parliament shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he or she has brought by petition, bill, motion or otherwise or may have said before or in any meeting of Parliament or any committee thereof.

(2) Provision for other privileges and immunities of members of Parliament may be made by Act of Parliament.

Public access to Parliament

56. All sessions of the National Assembly and the Senate shall be held in public and members of the public and the media shall have access to such meetings: provided that reasonable measures may be instituted to regulate such access, and to search, and where appropriate, to refuse entry to persons.

Rights and duties of President, the Deputy President and Ministers in Parliament

56A. (1) The President, an Executive Deputy President and a Minister shall be entitled to sit and to speak in the National Assembly and the Senate, and in a joint session of both Houses, but may only vote in a House of which he or she is a member.

(2) If requested to do so by resolution of the National Assembly or the Senate, the President, an Executive Deputy President and any Minister shall attend a sitting of such House and reply to questions at such sitting.

Parliamentary procedure

Rules and orders and committees

57. (1) The National Assembly and the Senate may each make rules of procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate standing orders, including restrictions on access to such committees.

(2) For the purposes of exercising its powers and performing its functions any committee of the National Assembly or Senate established in terms of subsection (1) shall have the power to *subpoena* persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.

(3) The National Assembly and the Senate may jointly make rules and orders concerning the order and conduct of their joint proceedings, including all matters referred to in subsections (1) and (2).

(4) Parliament may institute standing committees representative of all parties in the National Assembly and the Senate, in order to resolve possible disagreements between the Houses and to make joint reports.

Ordinary legislation

58. (1) All laws, except laws relating to finance, specified provincial matters, and the amendment of this Constitution, shall be considered to be ordinary legislation.

(2) Ordinary legislation may be introduced in either the National Assembly or the Senate and shall be passed by each House.

(3) Ordinary legislation passed by one House and rejected by the other shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments to the bill, whereafter the bill shall be referred to a joint sitting of both Houses at which it may be adopted with or without amendment by a majority of the total number of members of both Houses of Parliament.

Finance Bills

59. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly and after they have been considered and reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

(2) A bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(3) The Senate may not amend any bills in so far as they impose taxation or appropriate revenue or moneys.

(4) If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys, and the Senate in the same session rejects or fails to pass it within 30 days after it has been passed by the National Assembly, the bill shall be reconsidered by the National Assembly.

(5) The National Assembly may adopt a bill referred to in terms of subsection (4), with or without amendment, and if adopted it may thereafter be presented to the President for his or her assent, and shall as soon as it has been assented to by the President become an Act of Parliament as if it had been approved by the Senate.

Bills concerning specified provincial matters

60. (1) Bills affecting provincial boundaries or the exercise of powers and functions allocated to provincial governments under Chapter 9 of this Constitution shall be approved both by the National Assembly and the Senate.

(2) A bill which affects the exercise of powers or functions of a particular province only, shall also be approved by a majority of the Senators of that particular province.

Amendment of the Constitution

61. (1) Save for the provisions of subsections (2) and (3) and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 4.

(3) An amendment of section 118 shall be passed by a two thirds majority of the total number of members of the National Assembly and of the total number of members of the Senate: provided that the legislative and executive competences of a province shall not be amended without the consent of its legislature.

Requisite Majorities

62. Save as provided in this Constitution, a majority of votes cast shall be sufficient for the passing of any Bill, or the taking of any decision or resolution by the National Assembly or the Senate.

Assent to Bills

63. A Bill duly passed by the National Assembly, and where required by this Constitution, by the Senate, shall require the assent of the President, to be signified by the signing of the Bill, and the publication of the Act in the *Government Gazette*, in order to acquire the status of a valid Act of Parliament.

Signature and enrolment of Acts

64. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the *Government Gazette* shall be enrolled in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and such copies shall be conclusive evidence of the provisions of the Act.

(2) In case of conflict between the copies of an Act enrolled in terms of subsection (1), the copy signed by the President shall prevail.

(3) The public shall have the right of access to the copies of Acts of Parliament enrolled in terms of subsection (1) subject to such regulations as may be prescribed by Parliament to protect the safety and durability of the said copies and the convenience of the Registrar's staff.

CHAPTER 5

The Adoption of the new Constitution

The Constitution-making Body

65. (1) The National Assembly and the Senate, sitting in joint session, shall be the Constitutional Assembly.

(2) The Constitutional Assembly shall adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.

(3) The first meeting of the Constitutional Assembly shall be convened by the President of the Senate not later than seven days after the first sittings of the National Assembly and the Senate have been held.

(4) At its first sitting, and before proceeding to dispatch any other business, the Constitutional Assembly shall elect one of its members to preside at its meetings and a deputy to preside in his or her absence.

(5) In the absence of the President of the Constitutional Assembly or his or her deputy, a person elected by the Constitutional Assembly for such purpose shall preside for as long as such absence continues.

(6) The Constitutional Assembly may make rules of procedure for the conduct of its business and proceedings, and also make rules for the establishing, functioning and procedures of committees and formulate such standing orders, including restrictions on access to such committees as may appear to it to be expedient or necessary, having regard to the business of such committees.

Constitutional Principles

66. (1) In undertaking its task of drafting a new constitutional text, the Constitutional Assembly shall comply with the Constitutional Principles contained in Schedule 4.

(2) During the course of the drafting of the new constitutional text, any constitutional proposal pertaining to such drafting shall be referred to the Constitutional

Court by the Chairperson after being petitioned by one third of the members of the Constitutional Assembly to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would comply with the Constitutional Principles.

(3) A new constitutional text, or any separate part thereof, shall not come into operation unless the Constitutional Court certifies that all its provisions comply with the Constitutional Principles.

(4) A decision of the Constitutional Court in terms of subsections (2) and (3) shall be final and binding and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of any constitutional provision which has been certified by the Constitutional Court in terms of subsection (3).

Appointment of commissions, committees and advisory bodies

67. (1) The Constitutional Assembly shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.

(2) The Constitutional Assembly shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five South African citizens being recognised constitutional experts not being members of any legislature and not holding office in any political party, to advise it and the Chairperson on constitutional matters and to perform such other tasks as are provided for in this Constitution.

(3) If the Constitutional Assembly fails to reach agreement upon the panel of constitutional experts in accordance with the requirements of subsection (2), a panel with the qualifications referred to in subsection (2) shall be appointed consisting of a nominee of each party holding at least 40 seats in the Constitutional Assembly.

Adoption of a new constitutional text

68. (1) A new constitutional text shall be adopted by the Constitutional Assembly within two years from the commencement of the first session of Parliament.

(2) A new constitutional text shall be approved by two thirds of all the members of the Constitutional Assembly.

(3) Should the Constitutional Assembly fail to adopt a new constitutional text by the required two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for its advice, to be given within 30 days of such referral, on amendments within the framework of the Constitutional Principles which might secure a majority necessary for the approval of the constitutional text.

(4) Should a draft prepared in accordance with the unanimous advice of the panel of constitutional experts in terms of subsection (3) not be submitted to the Constitutional Assembly within 30 days, or, should such draft, after being so submitted, not be supported by the required two-thirds majority in the Constitutional Assembly, a constitutional text may be accepted by a majority of the members of the Constitutional Assembly.

(5) The President shall refer a constitutional text accepted in terms of subsection (4) after it has been certified by the Constitutional Court to be in compliance with the Constitutional Principles set out in Schedule 4, to a national referendum.

(6) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft constitutional text.

(7) The constitutional text presented to the electorate in the referendum shall, if approved by a majority of sixty per cent of the votes cast in the referendum, become the Constitution of South Africa.

(8) If the new constitutional text is not approved in the referendum contemplated in subsection (7), or if a new constitutional text is not adopted in terms of this Constitution within two years, Parliament shall be dissolved by the President and a general election shall be held for a new Parliament in accordance with the provisions of this Constitution.

(9) A Constitutional Assembly, composed of the newly elected National Assembly, and the Senate, shall within a period of one year after its first session, approve and pass the new constitutional text by an ordinary majority.

(10) The newly elected Parliament shall be convened in accordance with the provisions of sections 46(1) and 54(1), and shall conduct its proceedings in accordance with the provisions of this Constitution other than the provisions of subsections (1) to (8) hereof.

Amendment of this Chapter

69. (1) No amendments to the provisions of this Chapter shall be permitted in so far as they relate to -

- (a) the Constitutional Principles set out in Schedule 4;
- (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

(2) All other provisions of Chapter 5 shall be capable of being amended by a two thirds majority of the total number of members of the Constitutional Assembly.

CHAPTER 6

The Executive Power

Executive power

70. The executive power of the Republic regarding all matters falling within the legislative power of Parliament shall vest in the President who shall exercise his or her powers and functions subject to the provisions of this Constitution.

Head of State

71. The President shall be the Head of State.

Election of the President

72. (1) The first President under this Constitution shall be elected by the National Assembly at its first sitting.

(2) The election of a President other than the first President referred to in subsection (1) shall be held within 30 days after the vacation of the office of President, within 7 days after a vote of no confidence as contemplated in section 83, or in the event of a general election held in terms of this Constitution, within 30 days after the commencement of the first sitting of the Senate after such general election.

(3) The election referred to in subsection (2) shall take place at a joint sitting of the National Assembly and the Senate.

(4) The Chief Justice or a Judge of the Appellate Division designated by him or her for this purpose shall preside over the elections referred to in subsections (1) and (2).

(5) The election of the President in terms of this section shall be conducted in the manner provided for in Schedule 5.

(6) No person may be elected as President unless he or she has been elected to the National Assembly.

(7) On being elected the President shall vacate his or her seat in the National Assembly, and the political party to which he or she belongs shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on such party's election list compiled for the general election, or if there is no such person, by nominating any member of such party.

Oath or affirmation

73. The President-elect shall, before formally assuming office, make an affirmation or take an oath in the form contained in Schedule 3, which shall be administered by the Chief Justice or a judge designated by the Chief Justice for this purpose.

Tenure of office

74. The President shall hold office until he or she is removed from office in terms of this Constitution, or until he or she is replaced in terms of the provisions of the new constitutional text contemplated in Chapter 5 of this Constitution.

Responsibility of the President

75. (1) The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall as head of state defend the Constitution as the supreme law of the land.

(2) The President shall with dignity provide executive leadership in the interests of national unity in accordance with the provisions of this Constitution and all the laws of the Republic.

Powers and functions of the President

76. (1) The President shall be competent to exercise the following powers and functions -

- (a) to assent to, sign and promulgate bills duly passed by Parliament;
- (b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by Parliament back for further consideration by Parliament;
- (c) to convene meetings of the Cabinet, including extraordinary meetings for the resolution of disputes among the members of the Cabinet;
- (d) to refer disputes of a constitutional nature between political parties represented in Parliament or between organs of the State at any level of government to the Constitutional Court or other appropriate institution, commission or body for resolution, whether such institution, commission or body was appointed by himself or herself or constituted under this Constitution or other law;
- (e) to confer honours;
- (f) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

- (g) to appoint commissions of enquiry;
- (h) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any law;
- (i) to negotiate and sign international agreements;
- (j) to proclaim referenda and plebiscites in terms of this Constitution or an Act of Parliament; and
- (k) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit and to remit any fines, penalties or forfeitures.

(2) The President shall consult the Executive Deputy Presidents -

- (a) in the development and execution of the policies of the government;
- (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
- (c) in the assignment and allocation of the functions contemplated in section 79(4) to an Executive Deputy President;
- (d) regarding appointments made under subsection (1)(j); and
- (e) before exercising any of the competences referred to in subsection (1)(g)-(k).

(3) The President shall exercise all other powers and perform all other functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law in consultation with the Cabinet.

(4) (a) The President shall be the Commander-in-Chief of the National Defence Force.

(b) The President may -

- (i) declare, with the approval of Parliament, a state of national defence;
- (ii) with the approval of Parliament, employ the National Defence Force in accordance with the provisions of sections 4 and 5 (of Chapter 13); and
- (iii) confer permanent commissions on members of the national Defence Force and cancel commissions in accordance with law.

Executive Deputy Presidents

77. (1) Every party holding at least 80 seats in the National Assembly shall be entitled to designate an Executive Deputy President from among the members of the National Assembly.

(2) Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest number of seats, and the party holding the second largest number of seats, shall each be entitled to designate one Executive Deputy President.

(3) On being designated as such, an Executive Deputy President may vacate his or her seat in the National Assembly, and the party to which he or she belongs shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on such party's election list compiled for the general election, or if there is no such person, by nominating any member of such party.

(4) An Executive Deputy President shall perform such functions as may be assigned to him or her by the President.

(5) The provisions of section 75 shall apply *mutatis mutandis* to an Executive Deputy President.

(6) *The President shall appoint on a rotational basis one of the Executive Deputy Presidents to act as President during his or her absence or temporary incapacity:*

provided that if the President is unable to do so, the Cabinet shall make such appointment.

Salaries of the President and Executive Deputy Presidents

78. (1) There shall be paid to the President and the Executive Deputy Presidents out of and as a charge on the National Revenue Fund and apart from any privilege which they may enjoy, such salaries and allowances as may be determined from time to time by resolution of Parliament.

(2) The President and Executive Deputy Presidents shall not hold any other public offices and shall not perform remunerative work outside the duties of their offices.

Removal from office of the President and filling of the vacancy

79. (1) The President or an Executive Deputy President shall be removed from office if two thirds of all the members of the National Assembly and the Senate, at a joint sitting adopt a resolution impeaching the President or the Executive Deputy President on the grounds of a serious violation of the laws of the land, of misconduct or inability rendering him or her unfit to perform his or her functions in accordance with the provisions of section 75.

(2) If the President resigns, or is removed from or ceases to hold office for any reason, the vacant office of President shall be filled in accordance with the provisions of section 72.

(3) If the office of President becomes vacant an Executive Deputy President, designated by a majority of the members of the Cabinet, shall act as President pending the election in terms of subsection (2).

(4) If the office of an Executive Deputy President becomes vacant, the vacancy shall be filled in accordance with the provisions of section 77.

The Cabinet

80. (1) The Cabinet shall consist of the President, the Executive Deputy Presidents and not more than 27 Ministers appointed by the President in accordance with

the provisions hereof to administer one or more of the Departments of State established by the President.

(2) A party holding at least 20 seats in the National Assembly shall be entitled to be allocated a number of Cabinet portfolios in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other parties represented in the Cabinet.

(3) The President shall allocate portfolios to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Ministers from among the members of Parliament to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The President shall terminate the appointment of any Minister if requested to do so by the leader of the party by which such Minister was designated.

(6) In the event of a vacancy in the Cabinet, occurring for any reason, the President shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No member of the Cabinet may take up any other paid employment, engage in activities inconsistent with membership of the Cabinet, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a member of the Cabinet and his or her private interests.

(8) No member of the Cabinet shall use his or her position as such, or use information entrusted confidentially to him or her in such capacity, directly or indirectly to enrich himself or herself or any other person.

Procedure in the Cabinet

81. (1) Meetings of the Cabinet shall be presided over by the President, or in his or her absence, by an Executive Deputy President: provided that the Executive Deputy

Presidents shall, in the absence of the President, preside over consecutive meetings of the Cabinet in turn.

(2) The Cabinet shall endeavour to reach consensus on all its decisions, in the absence of which, and if any member of the Cabinet requests a vote, by a majority of 76 of the Ministers present and voting: provided that, if the Cabinet takes a vote on the national budget, any other financial matter or on a matter concerning the security of the Republic, a majority of 76 shall be required.

Accountability of Ministers and the Cabinet

82. (1) A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio allocated to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the government and for its policies.

(2) A Minister shall administer his or her portfolio in accordance with the policy determined by the Cabinet.

(3) If a Minister fails to administer his or her 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 such policy, and may, if the Minister fails to do so and after consultation with the Minister and the leader of his or her party, remove the Minister from office.

Vote of no confidence

83. (1) If a vote of no confidence is passed by Parliament in the President and the Cabinet, the President shall dissolve Parliament and call a general election.

(2) If a vote of no confidence is passed by Parliament in the President, but not the Cabinet, the President shall resign, and the vacancy shall be filled in accordance with the provisions of section 72.

(3) If a vote of no confidence is passed by Parliament in the Cabinet, but not the President, the President may either -

- (a) reconstitute the Cabinet in accordance with the provisions of section 80; or
- (b) dissolve Parliament and call a general election.

(4) Should the President resign or dissolve Parliament in accordance with the provisions of this section, the President and the Cabinet shall continue to hold office until the vacancy of President has been filled in terms of section 72.

Appointment of Deputy Ministers

84. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet establish deputy ministerial posts for specified Cabinet portfolios.

(2) A party shall be entitled to be allocated a number of deputy ministerial posts in the same proportion as that in which the portfolios in the Cabinet is allocated to it.

(3) The President shall allocate the deputy ministerial posts to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Deputy Ministers from among the members of Parliament to the posts referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) A Deputy Minister shall exercise or perform on behalf of the relevant Minister any of the powers, functions and duties entrusted to such Minister in terms of any law or otherwise which may, subject to the directions of the President and the Cabinet, be assigned to him or her them by such Minister.

(6) The President shall terminate the appointment of any Deputy Minister if requested to do so by the leader of the party which such Deputy Minister represents.

(7) The provisions of section 80(5) - (8) and section 82 shall apply *mutatis mutandis* to Deputy Ministers.

Composition and functioning of Cabinet in the event of non-participation by parties

85. (1) Should any party, other than the party of the President, entitled to designate an Executive Deputy President, fail to do so, the remaining Executive Deputy President or Executive Deputy Presidents, shall exercise all the functions of the Executive Deputy Presidents provided for by this Constitution.

(2) If any party entitled to Cabinet portfolios declines to be represented in the Cabinet, portfolios shall be allocated to the other parties entitled to such representation, in proportion to the number of seats each such party holds in the National Assembly.

(3) If all parties entitled to Cabinet portfolios, other (3) If President, decline to be represented in the Cabinet, appointments to the Cabinet shall be made at the discretion of the President.

CHAPTER 7

The Judicial Power and the Administration of Justice

Judicial authority

86. (1) The judicial authority of the Republic shall vest in the courts established in terms of this Constitution and any other law.

(2) The judiciary shall be independent, impartial and subject only to the Constitution and the law.

(3) No person or organ of the state shall interfere with judicial officers in the execution of their duties.

Appointment of Chief Justice and President of the Constitutional Court

87. (1) There shall be a Chief Justice of the Supreme Court of South Africa who shall, subject to the provisions of section 94, be appointed by the President after consultation with the Judicial Service Commission and in consultation with the Cabinet.

(2) There shall be a President of the Constitutional Court who shall, subject to the provisions of section 89, be appointed by the President after consultation with the Chief Justice for a non-renewable period of 7 years.

The Constitutional Court and its jurisdiction

88. (1) There shall be a Constitutional Court consisting of a President and 10 other judges appointed in terms of section 89.

(2) The Constitutional Court shall have jurisdiction in all parts of the Republic as the court of final instance over all matters relating to the interpretation, protection and enforcement of all the provisions of this Constitution, including -

(a) the violation or anticipated violation of any fundamental right enshrined in Chapter 3 of this Constitution;

- (b) the constitutionality of executive and administrative conduct of all organs of the state;
- (c) the constitutionality of any law, including an Act of Parliament, irrespective of whether such law came into operation or was adopted prior to or after the coming into operation of this Constitution;
- (d) disputes of a constitutional nature between organs of the state at all levels of government;
- (e) compliance in accordance with the provisions of Chapter 5 and Chapter 9 of this Constitution with the Constitutional Principles contained in Schedule 4;
- (f) whether any matter falls within its jurisdiction;
- (g) to consider and advise on the constitutionality of a bill or draft bill; and
- (h) any other matter provided for in this Constitution or any other law.

(3) Subject to the provisions of section 90(2), the Constitutional Court shall have original jurisdiction over issues referred to in subsection (2) to the extent that such jurisdiction does not overlap with the provisions of section 91(3).

(4) A decision of the Constitutional Court shall bind all persons and all legislative, executive and judicial organs of the state.

(5) In the event of the Constitutional Court finding that any law or any provision thereof is inconsistent with this Constitution, it shall declare such law or provision invalid to the extent of its inconsistency: provided that the Constitutional Court may, in the interests of justice and good government, require Parliament or the competent authority, within a period specified by the Court, to correct the defect in the law, which shall then remain in force pending correction or the expiry of the specified period.

(6) Unless the Constitutional Court in the interests of justice and good government orders otherwise, and save to the extent that it so orders, the declaration of invalidity of a law or any provision thereof -

(a) existing at the commencement of this Constitution, shall not invalidate anything done in terms thereof before the coming into effect of such declaration of invalidity; or

(b) enacted after the commencement of this Constitution shall invalidate anything done in terms thereof.

(7) In the event of the Constitutional Court declaring executive or administrative conduct to be unconstitutional, it may order the relevant organ of the state to refrain from such conduct, or it may order it, subject to such conditions and within such time as may be specified by it, to correct its conduct, in order to conform with the Constitution.

(8) The Constitutional Court may in respect of the proceedings before it make such order as to costs as it may deem just and equitable in the circumstances.

Composition of the Constitutional Court and appointment of judges of the Constitutional Court

89. (1) The judges of the Constitutional Court shall be appointed by the President in accordance with the provisions of subsection (3) and (4) for a non-renewable period of 7 years.

(2) No person shall be qualified to be appointed President or Judge of the Constitutional Court unless he or she -

(a) is a South African citizen; and

(b) is a fit and proper person to be a Judge of the Constitutional Court; and

(c) is a judge of the Supreme Court of South Africa or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having so qualified:

(i) practised as an advocate or an attorney, or

(ii) lectured in law at a university; or

(d) is a person who, by reason of his or her training and experience, has expertise in the field of constitutional law relevant to the application of this Constitution and South African law.

(3) Four judges of the Constitutional Court shall be appointed from amongst the judges of the Supreme Court of South Africa by the President in consultation with the Chief Justice and the Cabinet.

(4) Six judges of the Constitutional Court shall be appointed by the President, after consultation with the President of the Constitutional Court and in consultation with the Cabinet: provided that not more than two persons shall be appointed from the category of persons referred to in subsection (2)(d).

(5) Vacancies in the Constitutional Court shall be filled as follows -

(a) a vacancy in respect of a judge appointed under subsection (3) shall be filled in accordance with the provisions of subsection (3); and

(b) a vacancy in respect of a judge appointed under subsection (4) shall be filled in accordance with the provisions of subsection (4).

Engaging the Constitutional Court

90. (1) The conditions upon which the Constitutional Court may be seized of any matter in terms of this Constitution or any other law, and all matters relating to the conduct of proceedings before the Court, shall be regulated by rules prescribed by the President of the Constitutional Court in consultation with the Chief Justice, which rules shall be published in the *Government Gazette*.

(2) The rules of the Constitutional Court may make provision for direct access to the Court where it is in the interests of justice to do so in respect of any matter over which it has jurisdiction.

The Supreme Court

91. (1) There shall be a Supreme Court of South Africa which, subject to section 97, shall consist of an Appellate Division and such provincial and local divisions as may be prescribed by law.

(2) Subject to the provisions of this Constitution, the Supreme Court shall have the jurisdiction, including the inherent jurisdiction, vested in it prior to the coming into operation of this Constitution and any further jurisdiction conferred upon it by this Constitution or by any law.

(3) A provincial or local division of the Supreme Court shall, subject to the provisions of this Constitution have jurisdiction in the following additional matters -

- (a) to inquire into and pronounce upon the validity of a law, other than an Act of Parliament, within its area of jurisdiction;
- (b) the violation or anticipated violation of the fundamental rights enshrined in Chapter 3 of this Constitution within the area of its jurisdiction; and
- (c) subject to subparagraph (a), the constitutionality or validity of executive or administrative actions of all organs of the state taken in terms of any legislation or law applicable within the area of its jurisdiction;
- (d) disputes of a constitutional nature between local governments as well as local and provincial governments;
- (e) to consider and advise on the constitutionality of a provincial bill or draft bill; and
- (f) any other matter provided for by law.

(4) In exercising its jurisdiction under subsection (3) a provincial or local division of the Supreme Court shall have the powers vested in the Constitutional Court in terms of sections 88, (5), (6) and (7) and (8).

(5) The Appellate Division shall have no jurisdiction to adjudicate on any issue within the jurisdiction of the Constitutional Court.

(6) Subject to the provisions of section 92(13) and notwithstanding the provisions of sections 88(2) and 91(3), a provincial division of the Supreme Court may hear a matter, provided that all interested parties shall agree to the jurisdiction of that Court as a court of first instance.

Procedural matters

92. (1) If in any matter before a provincial or local division, there is an issue which may be decisive of the case, and which falls within the exclusive jurisdiction of the Constitutional Court in terms of section 88(3), the provincial or local division concerned shall, if it considers it to be in the interest of justice to do so, refer such matter to the Constitutional Court for its decision: provided that, if it is necessary for evidence to be heard for the purposes of deciding such issue, the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring the matter to the Constitutional Court.

(2) If, in any matter there is any issue, other than the issue or issues referred to the Constitutional Court in terms of subsection (1), the provincial or local division concerned shall, if it refers an issue to the Constitutional Court, suspend the proceedings before it, pending the decision of the Constitutional Court.

(3) If, in any matter before a provincial or local division there are both constitutional and other issues, the provincial or local division concerned shall, if it does not refer an issue to the Constitutional Court, hear the matter, make findings of fact which may be relevant to a constitutional issue within the exclusive jurisdiction of the Constitutional Court, and give a decision on such issues as are within its jurisdiction.

(4) An appeal shall lie to the Appellate Division against a decision of a provincial or local division given in terms of subsection (3).

(5) If the Appellate Division is able to dispose of an appeal brought in terms of subsection (3), without dealing with the constitutional issue or issues that have been raised, it shall do so.

(6) If it is necessary for the purposes of disposing of the appeal for the constitutional issue to be decided, the Appellate Division shall refer such issue to the Constitutional Court for its decision.

(7) The Chief Justice and the President of the Constitutional Court shall jointly formulate rules to facilitate the procedure for dealing with appeals in which there are both constitutional and other issues, which may provide for the constitutional issues to be referred to the Constitutional Court before or after the appeal has been heard by the Appellate Division.

(8) If any division of the Supreme Court disposes of a matter in which constitutional issues have been raised and such court is of the opinion that the constitutional issues are of such public importance that a ruling should be given thereon, it may, notwithstanding the fact that the matter has been disposed of, refer such issues to the Constitutional Court for a ruling.

(9) When a constitutional issue has been referred to the Constitutional Court by a division of the Supreme Court in terms of subsection (8), the Minister of Justice shall, at the request of the President of the Constitutional Court, appoint counsel to argue such constitutional issues.

(10) If the validity of legislation is in dispute in any matter, and the relevant government is not a party to the proceedings, it shall be entitled to intervene as a party before the competent court, or shall be entitled to submit written argument to the said Court.

(11) Appeals to the Appellate Division and the Constitutional Court shall be regulated by law, including the rules of such courts, which may provide that leave of the Court from which the appeal is brought, or to which the appeal is noted, shall be required as a condition for such appeal.

(12) Appeals arising from matters referred to in section 91(3) and which relate to issues of constitutionality shall lie to the Constitutional Court.

(13) If a dispute arises between organs of the state regarding the question whether or not any conduct of one of those organs is consistent with this Constitution, the organ disputing the validity of the act may apply to a provincial or local division to

refer the question of the validity of such conduct to the Constitutional Court for its decision.

(14) If the provincial or local division concerned is of the opinion that the conduct referred to in subsection (14) may be unconstitutional, it shall refer the matter to the Constitutional Court.

(15) If evidence is necessary for the purpose of a matter referred to in subsections (14) and (15) the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring such matter to the Constitutional Court.

(16) A decision not to refer a matter to the Constitutional court in terms of subsection (15), shall be appealable to the Constitutional Court.

(17) If in any matter before a provincial or local division of the Supreme Court the only issue raised is a constitutional issue within the exclusive jurisdiction of the Constitutional Court in terms of section 88(3), refusal to refer such issue to the Constitutional Court shall be appealable to the Constitutional Court.

Other Courts

93. (1) The establishment, jurisdiction, composition and functioning of all other courts shall be regulated by legislation.

(2) If in any proceedings before a court referred to in subsection (1) it is alleged that any law or provision of such law is invalid on the ground of inconsistency with a provision of this Constitution, the court shall, subject to the other provisions of this section, decide the matter on the assumption that the law or provision is valid.

(3) If in any proceedings before a court referred to in subsection (1) the presiding officer is of the opinion that it is in the interests of justice so to do, he or she may postpone the proceedings to enable the party who has alleged that a law is invalid, to apply to the Supreme Court for relief in terms of subsection (4).

(4) If the Supreme Court to which the matter is referred in terms of subsection (3) is of the opinion that a decision regarding the validity of the law or provision is

material to the adjudication of the matter and there is a reasonable prospect that the relevant law will be held to be invalid, the Court shall -

- (a) if the matters raised are within its jurisdiction, deal with such matters itself, and if they are in the exclusive jurisdiction of the Constitutional Court, refer them to the Constitutional Court for its decision after making findings on any evidence which may be relevant to such issue; and
- (b) suspend the proceedings before the court referred to in subsection (1) pending the decision of the Supreme Court or the Constitutional Court, as the case may be.

Appointment, removal, term of office and tenure of judges

94. (1) Judges of the Supreme Court shall be fit and proper persons appointed by the President under his hand and the seal of the Republic of South Africa acting on the advice of the Judicial Service Commission as constituted in terms of section 95.

(2) Judges appointed under subsection (1), sections 87 and 88 shall receive such remuneration as may be prescribed by law, and their remuneration shall not be reduced during their continuation in office.

(3) Any Judge shall, before commencing to exercise the functions of his or her office, take an oath or make an affirmation which shall be subscribed by him or her in the form set out in Schedule 3 of this Constitution.

(4) A Judge may only be removed from office by the President on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Service Commission and upon receipt of an address from both the National Assembly and the Senate in the same session praying for such removal.

(5) A Judge who is the subject of investigations by the Judicial Service Commission in terms of subsection (4) may be suspended by the President pending such investigations.⁶

Judicial Service Commission

95. (1) There shall be a Judicial Service Commission which shall, subject to the provisions of subsection (3), consist of -

- (a) the Chief Justice, who shall preside at meetings of the Commission;
- (b) the President of the Constitutional Court;
- (c) one Judge President designated by the Judges President;
- (d) the Minister of Justice or his or her nominee;
- (e) 2 practising advocate designated by the advocates' profession;
- (f) 2 practising attorney designated by the attorneys' profession;
- (g) one professor of law designated by the deans of all the law faculties at South African universities;
- (h) 4 Senators designated by the Senate *en bloc* by a two thirds majority;
- (i) 4 persons, 2 of whom shall be practising attorneys or advocates who shall be designated by the President in consultation with the Cabinet;
- (j) on the occasion of the consideration of matters specifically relating to a provincial division of the Supreme Court, the Judge President of the relevant division and the Premier of the relevant province.

(2) The functions of the Judicial Service Commission shall be -

- (a) to make recommendations regarding the appointment, removal from office, term of office and tenure of judges of the Supreme Court in terms of section 94;
- (b) to make recommendations regarding the removal from office of judges of the Constitutional Court in terms of section 94(4); and

(c) to advise the national and provincial governments on all matters relating to the judiciary and the administration of justice.

(3) When the Commission performs its functions in terms of subsection (2)(c) it shall sit without the 4 senators referred to in subsection (1)(h).

(4) The Commission shall determine its own procedure, provided that the support of at least an ordinary majority of all its members shall be required for its decisions and resolutions.

(5) The Commission may appoint committees from among its number and delegate any of its functions to such committee.

Seats of the Constitutional Court and the Appellate Division

96. (1) The seat of the Constitutional Court shall be Johannesburg.

(2) The seat of the Appellate Division of the Supreme Court shall be Bloemfontein.

Languages of the courts

97. (1) A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.

(2) The record of the proceedings of a court shall be kept either in Afrikaans or in English.

98. *(removed to Chapter 1-4)*

Attorney-General

99. (1) The authority to institute criminal prosecutions on behalf of the state shall vest in the attorneys-general of the Republic.

(2) The area of jurisdiction, powers, functions and duties of an attorney-general shall be prescribed by law.

(3) No person shall be appointed as an attorney-general unless he or she is academically qualified in terms of a law regulating the admission of advocates in the Republic to practise as an advocate and, after having become so qualified, has been involved in the practice, administration or teaching of law for a period of at least 10 years.

Magistrates Commission

100. There shall be a Magistrates Commission constituted by law to ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against magistrates, takes place without favour or prejudice, and that the applicable laws and administrative directives in this regard are applied uniformly and properly and to ensure that no victimisation or improper influencing of magistrates occurs.

CHAPTER 8

The Public Protector and Human Rights Commission

The Public Protector

Establishment and appointment

1. (1) There shall be an Office of the Public Protector for the Republic to which shall be appointed a Public Protector who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate shall within 60 days of the first sitting of the Senate nominate a person to be appointed as the Public Protector and if such nomination is approved by resolution adopted by 75% of the members present at a joint sitting of the National Assembly and the Senate, the nominee shall be appointed by the President as Public Protector.

(3) If the nomination is not approved at the joint sitting as contemplated in subsection (2), the matter shall be referred back to the joint standing committee for reconsideration.

(4) A vacancy in the office of Public Protector shall be filled in accordance with the procedure prescribed in this section.

(5) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who -

(a) is a Judge of the Supreme Court of South Africa; or

(b) is qualified to be admitted as an advocate and has, for a cumulative period of at least 10 years after having so qualified:

(i) practised as an advocate or an attorney, or

(ii) lectured in law at a university; or

(c) has specialised knowledge of or experience of a period of at least 10 years in the administration of justice, public administration or public finance.

(6) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Public Protector will hold office for a period of 7 years.

(7) The remuneration and other conditions of employment of the Public Protector shall be prescribed by an Act of Parliament and such remuneration shall not be reduced, nor shall such conditions be adversely altered, during his or her term of office.

(8) The Public Protector shall not perform remunerative work outside his or her official duties.

(9) The Public Protector may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of an address from both the National Assembly and the Senate requesting such removal.

(10) A Public Protector who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (9) may be suspended by the President pending such investigation.

Independence and Impartiality

2. (1) The Public Protector shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Public Protector and the persons appointed in terms of section 4(1) shall have such immunities and privileges as may be assigned to them by Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall [improperly interfere with] hamper the Public Protector in the exercise of his or her powers, duties and functions.

(4) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Public Protector in the execution of his or her functions, powers and duties.

Powers, Functions and Duties

3. (1) The Public Protector shall be entitled -

(a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged -

(i) maladministration in connection with the affairs of the government at any level; or

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function; or

- (iii) improper or dishonest act, omission or corruption with respect to public money; or
 - (iv) improper or unlawful enrichment or the receipt of any improper advantage or promise of such enrichment or advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
 - (v) any alleged act or omission by an employee of government at any level or a person performing a public function which results in unlawful or improper prejudice to any other person.
- (b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by -
- (i) mediation, conciliation or negotiation; or
 - (ii) advising, where necessary, any complainant regarding appropriate remedies; or
 - (iii) any other means as may be expedient in the circumstances.
- (c) at any time prior to, during or after an investigation -
- (i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
 - (ii) if he or she deems it advisable, to refer any matter which has a bearing on the investigation contemplated in subparagraph (a) to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected or any other public body or authority.

(d) Nothing in this subsection shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.

(2) The Public Protector shall conduct an investigation under subsection (1) with due regard to the circumstances of each case, and shall for the purposes of such investigation, in addition to such powers as may be prescribed by law, but subject to the provisions of this Constitution and the law of privilege, have the power to -

(a) direct any person to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which in the opinion of the Public Protector, has a bearing on the matter being inquired into, and may examine such person for that purpose; and

(b) enter or authorise another person to enter any building or premises and there to make such investigation or inquiry as he or she may deem necessary and seize anything on those premises which in his or her opinion has a bearing on the purpose of the investigation.

(3) The Public Protector or any member of his or her staff shall be competent but not compellable to answer questions in any proceedings in a court of law or before any body or institution established by or under any law in connection with any information which in the course of his or her investigation has come to his or her knowledge.

(4) Recourse to or exercise of any powers, functions and duties of the Public Protector, shall not oust the jurisdiction of the Court to hear any matter or cause whatsoever.

(5) Notwithstanding any other provision the Public Protector shall report in writing on his or her activities to Parliament at least once every year.

Staff and expenditure

4. (1) The Public Protector may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of the work of the Office of the Public Protector.

(2) The Public Protector may delegate any of his or her functions to persons referred to in subsection (1) subject to such conditions as shall be prescribed by law.

(3) Expenditure incidental to the performance of the functions of the Public Protector in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

Provincial Public Protector offices

5. (1) A provincial legislature may by law establish and regulate an Office of Provincial Public Protector.

(2) A provincial law referred to in subsection (1) shall not in any way derogate from the powers of the Office of the Public Protector established in terms of section 1.

(3) The Provincial Public Protector shall be appointed by the Premier in consultation with the Public Protector, provided that the appointment shall be confirmed by resolution of a two thirds majority of the provincial legislature.

(4) The powers, duties and functions of the Provincial Public Protector are to be exercised in consultation and conjunction with the Public Protector who has concurrent jurisdiction in the province concerned.

Human Rights Commission

Establishment and appointment

6. (1) There shall be a Human Rights Commission which shall consist of 11 fit and proper persons who are South African citizens and broadly representative of the South African community.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate shall within 60 days of the first sitting of the Senate nominate persons to be appointed to the Commission and if such nominations are approved by resolution adopted by 75% of the

members present at a joint sitting of the National Assembly and the Senate, the nominees shall be appointed to the Commission by the President.

(3) If the nominations are not approved at the joint sitting as contemplated in subsection (2), the matter shall be referred back to the joint standing committee for reconsideration.

(4) A vacancy on the Commission shall be filled in accordance with the procedure prescribed in this section.

(5) The Human Rights Commission shall have powers, duties and functions vested in it by an Act of Parliament which shall include the duty to -

- (a) promote the observance of, the respect for and the defence of fundamental rights;
- (b) develop an awareness of fundamental rights amongst all people of the Republic;
- (c) make recommendations to the government and all organs of the state at all levels when it considers such action advisable for the adoption of progressive measures in favour of fundamental rights within the framework of the law and this Constitution as well as appropriate measures for the further observance of those rights;
- (d) prepare such studies for report on or relating to fundamental rights as it considers advisable in the performance of its duties;
- (e) request any organ of government to supply it with information on any legislative or executive measures adopted by it in or relating to matters of fundamental rights; and
- (f) receive and consider recommendations or representations from any person or organisation on the application of the provisions of Chapter 3.

(6) If the Commission is of the opinion that any provisions of any proposed legislation might be contrary to the provisions of Chapter 3 of this Constitution or to

norms of international human rights law which form part of South African law or to other relevant norms of international law, it shall immediately report that fact to the relevant legislature.

(7) The Commission shall be entitled to investigate on its own initiative or on receipt of a complaint any alleged violation of fundamental rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, insofar as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum.

Staff and expenditure

7. (1) The Commission shall appoint a director who shall be the chief executive officer of the Commission, who shall be empowered to appoint staff subject to the approval of the Commission and such conditions of service as may be prescribed by Act of Parliament.

(2) The expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

Reports

8. The Commission shall be required to report to the President at least once in every year on the performance of its mandate, and the President shall cause such report to be tabled promptly in the National Assembly and the Senate.

CHAPTER 9 Provincial Government

Establishment of provinces

100. The provinces of South Africa shall be the Eastern Cape, the Eastern Transvaal, KwaZulu/Natal, Northern Cape, Northern Transvaal, the Northwest, the Orange Free State, Pretoria-Witwatersrand-Vereeniging, and the Western Cape, the boundaries of which are defined in Schedule 1.

Provincial legislatures

101. (1) There shall be a legislature for each province with the power to make laws in accordance with and subject to the provisions of this Constitution.

(2) Laws made by a provincial legislature shall, subject to exceptions provided for by Act of Parliament, be applicable only within the territory of the province.

(3) The legislature of each province shall consist of the members elected at the time of the election of Parliament according to a system of proportional representation on provincial party lists as provided for in Schedule 2.

(4) The number of seats in a provincial legislature shall be determined by dividing the total number of votes cast in the province in the election held in terms of subsection (3) by 50 000, approximated to the nearest complement: provided that no provincial legislature shall have less than 30 nor more than 100 seats.

(5) After consultation with the Commission on Provincial Government an Executive Council shall appoint a Secretary and other officers of the Provincial Legislature.

(6) For the purposes of setting up a provisional administration for a provincial legislature, the Transitional Executive Council established in terms of the *Transitional Executive Council Act, 1993* shall appoint for each provincial legislature a provisional secretary who shall hold office as Secretary until an appointment is made in terms of subsection (5) and shall be remunerated out of the Provincial Revenue Fund.

Sessions and Speakers of Provincial Legislatures

102. (1) A session of a provincial legislature shall commence at the time of the first sitting after its election and shall continue until its dissolution.

(2) The first sitting of a provincial legislature after its election shall be convened by the Secretary of the provincial legislature within 7 days after such legislature has been elected.

(3) A provincial legislature shall sit on such days and during such hours as may be determined by the rules and orders referred to in section 107: provided that a provincial legislature may adjourn and fix the time for its next sitting by resolution.

(4) At its first sitting, and after the election of the Premier, the newly elected provincial legislature shall, with the judge presiding in terms of section 114, elect one of its members to be Speaker of the legislature, and one of its members to be Deputy Speaker, who shall be vested with all powers, duties and functions assigned to them by the rules and orders of the provincial legislature.

Qualifications for Election to Provincial Legislatures

103. No person shall be qualified to be a member of a provincial legislature unless he or she:

- (a) is ordinarily resident within the boundaries of the province; and
- (b) is qualified to stand for election as a member of the National Assembly.

Vacation of Seats by Members of Provincial Legislatures

104. (1) A member of a provincial legislature shall vacate his or her seat if he or she -

- (a) ceases to be eligible to be a member of the provincial legislature; or
- (b) ceases to be a member of the party which nominated him or her for election to the provincial legislature; or

- (c) resigns his or her seat in writing addressed to the Premier of the province:
or
- (d) absent himself or herself voluntarily from the provincial legislature for 30 consecutive sitting days, without having obtained the leave of the provincial legislature on grounds specified in its rules and standing orders.

(2) If a seat of a member of a provincial legislature is vacated in terms of subsection (1), the party which nominated such member to sit in the provincial legislature shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on the party's election list compiled for the previous provincial election, or if there is no such person, by nominating any member of the party.

Quorum of meetings of provincial legislature

105. The presence of at least one third of the number of members of the provincial legislature other than the Speaker or the presiding member thereof shall be necessary to constitute a meeting of the provincial legislature for the exercise of its powers and for the performance of its functions: provided that, for the purpose of the passing of a Bill, the quorum shall be one half of the total number of members of the provincial legislature.

Requisite Majorities

106. (1) Save as provided in this Constitution or in a constitution adopted in terms of section 124, a majority of votes cast shall be sufficient for the passing of any Bill, or the taking of any decision or resolution by a provincial legislature.

(2) The Speaker of the provincial legislature or the person presiding at a meeting of the provincial legislature shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Rules and orders and committees

107. (1) A provincial legislature may make rules of procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and

procedures of committees, and formulate standing orders, including restrictions on access to such committees.

(2) For the purposes of exercising its powers and performing its functions any committee of a provincial legislature established in terms of subsection (1) shall have the power to *subpoena* persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.

Privileges and immunities of provincial legislatures

108. (1) Notwithstanding the provisions of any other law, no member of a provincial legislature shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or anything which he or she has brought by petition, bill, motion or otherwise or may have said before or in any meeting of the provincial legislature or any committee thereof.

(2) Provision for other privileges and immunities of members of provincial legislatures may be made by law of the provincial legislature concerned.

Assent to Bills passed by the provincial legislatures

109. A Bill passed by a provincial legislature in terms of this Constitution shall require the assent of the Premier to be signified by his or her signature attached to the bill, and the publication of the Act in the *Provincial Gazette* in order to acquire the status of a valid law of a provincial legislature.

Signature and Enrolment of provincial legislation

110. (1) Any valid law of a provincial legislature which has been duly passed by such legislature, shall be signed by the Premier, published in the *Provincial Gazette*, enrolled in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and such copy shall be conclusive evidence of the provisions of the law.

(2) In case of conflict between the copies of a law enrolled in terms of subsection (1), the copy signed by the Premier shall prevail.

(3) The public shall have the right of access to the copies of the laws of a provincial legislature enrolled in terms of subsection (1) subject to such regulations as may be prescribed by Parliament to protect the safety and durability of the said copies and the convenience of the Registrar's staff.

Public access to provincial legislature

111. All sessions of a provincial legislature shall be held in public and members of the public and the media shall have access to such meetings: provided that reasonable measures may be instituted to regulate such access, and to search, and where appropriate, to refuse entry to persons.

Duration of the provincial legislature

112. (1) The provincial legislature shall continue until Parliament is dissolved under Chapter 5.

(2) Notwithstanding the dissolution of a provincial legislature, every person who at the date of dissolution is a member of the provincial legislature shall remain a member thereof, the provincial legislature shall remain competent to perform its functions until a legislature replacing it is duly constituted, and the Premier shall be competent to summon it for the dispatch of business.

Executive power of the province

113. (1) The executive power of a province shall vest in the Premier who shall exercise his or her powers and functions subject to the provisions of this Constitution.

(2) A province shall have executive power over all matters regarding which such province has lawfully exercised its legislative competence and matters allocated to it in terms of *section 119 (now removed to Chapter 14)* or any law, and matters delegated to it under any law.

The Premier

114. (1) The Premier shall be elected by the provincial legislature from among its number in the manner, *mutatis mutandis*, provided for in Schedule 5: provided that a Judge designated by the Chief Justice shall preside at the election.

(2) The Premier shall hold office until he or she is removed from office in terms of this Constitution, or until he or she is replaced in terms of the provisions of a provincial constitution adopted in terms of section 124.

(3) The Premier shall be responsible for the observance of the provisions of this Constitution and all other laws by the executive of the province.

(4) The Premier shall exercise all powers and perform all functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law in consultation with the Executive Council.

(5) The Premier shall be competent to exercise the following powers and functions -

- (a) to assent to, sign and promulgate bills duly passed by the provincial legislature;
- (b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by the provincial legislature back for further consideration by such legislature;
- (c) to convene meetings of the Executive Council;
- (d) during an adjournment of the provincial legislature, to convene a special sitting thereof; and
- (e) all other powers and functions conferred on him or her by law.

(6) The Premier shall be removed from office if two thirds of all the members of the provincial legislature adopt a resolution impeaching the Premier on the grounds of

a serious violation of the laws of the land, or misconduct or inability rendering him or her unfit to perform his or her functions.

(7) If the Premier resigns, or is removed from or ceases to hold office for any reason, the vacant office of Premier shall be filled in accordance with the provisions of subsection (1).

(8) If the office of Premier becomes vacant, a Member of the Executive Council designated by a majority of such Council shall act as Premier pending the election in terms of subsection (1).

The Executive Council

115. (1) The Executive Council shall consist of the Premier and not more than 10 Members appointed by the Premier in accordance with the provisions of this section to administer one or more of the departments of the province established by the Premier.

(2) A party holding at least 10% of the seats in the Provincial Legislature shall be entitled to be allocated a number of Executive Council portfolios in proportion to the number of seats held by it in the Provincial Legislature relative to the number of seats held by the other parties represented in the Executive Council.

(3) The Premier shall allocate portfolios to the parties represented in the Executive Council after consultation with the leaders of the parties represented in the Executive Council.

(4) The Premier shall appoint Members of the Executive Council from among the members of the Provincial Legislature to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The Premier shall terminate the appointment of any Member of the Executive Council if requested to do so by the leader of the party which such member represents.

(6) In the event of a vacancy in the Executive Council, occurring for any reason, the Premier shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No Member of the Executive Council may take up any other paid employment, engage in activities inconsistent with membership of the Executive Council, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a Member of the Executive Council and his or her private interests.

(8) A Member of the Executive Council shall preserve the confidentiality of any information entrusted to him or her in such capacity and shall not use his or her position or such information directly or indirectly to enrich himself or herself or any other person.

(9) Every Member of the Executive Council shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Procedure in the Executive Council

116. (1) Meetings of the Executive Council shall be presided over by the Premier, or in his or her absence, by a Member of the Executive Council elected by the Executive Council for that purpose.

(2) The Executive Council shall endeavour to reach consensus on all its decisions, in the absence of which, and if any Member of the Executive Council requests a vote, by a 7/10 of the Members of the Executive Council present and voting.

Accountability of Members of the Executive Council

117. (1) A Member of the Executive Council shall be accountable individually both to the Premier and to the Provincial Legislature for the administration of the portfolio allocated to him or her, and all Members of the Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.

(2) A Member of the Executive Council shall administer his or her portfolio in accordance with the policy determined by the Executive Council.

(3) If a Member of the Executive Council fails to administer his or her portfolio in accordance with the policy of the Executive Council, the Premier may require the Member concerned to bring the administration of the portfolio into conformity with such policy, and may, if the Member fails to do so and after consultation with him or her and the leader of his or her party, remove such Member from office.

(4) If a vote of no confidence is passed by the Provincial Legislature in the Premier and the Executive Council, the Premier shall dissolve the Provincial Legislature and call an election.

(5) If a vote of no confidence is passed by the Provincial Legislature in the Premier, but not the Executive Council, the Premier shall resign, and the vacancy shall be filled in accordance with the provisions of section 114(1).

(6) If a vote of no confidence is passed by the Provincial Legislature in the Members of the Executive Council, but not the Premier, the Premier shall either -

(a) reconstitute the Executive Council in accordance with the provisions of section 115; or

(b) dissolve the Provincial Legislature and call an election.

(7) Should the Provincial Legislature be dissolved in accordance with the provisions of this section, the Premier shall continue to hold office until a Premier is elected in terms of section 114, and the Members of the Executive Council shall continue to hold office until a new Executive Council is appointed in terms of section 115.

Remuneration of Premiers, Members of the Executive Council and Members of Provincial Legislatures

117A. The Premier, Members of an Executive Council and Members of the Provincial Legislature shall be paid out of and as a charge on the Provincial Revenue Fund such

salary and allowances and pensions, as may be determined from time to time by resolutions of the Provincial Legislature.

Legislative competences of provinces

118. (1) A provincial legislature shall, subject to the provisions of subsections (3) and (4), have concurrent competence with Parliament to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6.

(2) The legislative competence referred to in subsection (1) shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

(3) An Act of Parliament which deals with a matter referred to in subsections (1) and (2) shall prevail over a provincial law inconsistent therewith only to the extent that -

- (a) it deals with a matter that cannot be regulated effectively by provincial legislation; or
- (b) it deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic; or
- (c) it is necessary to set minimum standards across the nation for rendering of public services; or
- (d) it is necessary for the determination of national economic policies, the maintenance of economic unity, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour or the maintenance of national security; or
- (e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.

(4) An Act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.

(5) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent.

119. *(Removed to Chapter 1-4)*

120. *(Removed to Chapter 1-4)*

Provincial finance and fiscal affairs

121. (1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to execute its powers and functions.

(2) The equitable share of revenue referred to in subsection (1) shall consist of

(a) a percentage, fixed by Act of Parliament, of income tax on individuals which is collected within its boundaries; and

(b) a percentage, fixed by Act of Parliament, of value added tax or other sales tax which is collected within its boundaries; and

(c) other conditional or unconditional allocations of national revenue made in terms of this section.

(3) The percentages referred to in subsection (2)(a) and (b) shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission.

(4) Allocations made in terms of subsection 2(c) shall be determined by Act of Parliament, with due regard to the national interest and after taking into account -

- (a) the provision that has to be made for interest and other payments in respect of the national debt; and
 - (b) the different fiscal capacities including the revenues derived under subsection (2)(a) and (b), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and
 - (c) the legitimate needs and interests of the national government; and
 - (d) the recommendations of the Financial and Fiscal Commission.
- (5) Provincial legislatures may raise other taxes, surcharges or levies, provided that:
- (a) they are authorised to do so by Act of Parliament, passed after taking into account the recommendations of the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.
- (6) A provincial government shall not be entitled to raise taxes detrimentally affecting national policies, inter-provincial commerce, or the national mobility of goods, services, capital and labour.
- (7) Provincial legislatures shall be competent to enact legislation authorising the imposition of user charges: provided that -
- (a) the criteria to be taken into account in raising such charges may be regulated by Act of Parliament in accordance with recommendations made by the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.

(8) A provincial government -

(a) shall not be competent to raise loans for current expenditure: provided that loans may be raised for bridging finance during the current fiscal year, subject to such conditions as may be prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission;

(b) shall be competent to raise loans for capital expenditure: provided that it does so within the framework of norms and conditions prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission.

(9) A provincial government may not guarantee loans, unless:

(a) the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given; and

(b) the giving of the guarantee has been approved by a resolution of Parliament.

(10) Revenue allocations made by the national government to local governments shall ordinarily be made via the provincial government within whose jurisdiction the local government falls.

(11) Allocations from national revenue to provincial governments and local governments shall be made through appropriation acts passed in accordance with the provisions of this section.

(12) There shall be established in each province a Provincial Revenue Fund into which shall be paid all revenue raised by or accruing to the provincial government.

(13) No money may be withdrawn from a Provincial Revenue Fund otherwise than by an appropriation made in accordance with the provisions of law.

122. *To be filled when the text is finally edited. (Removed to Chapter 1-1)*

Recommendations to Parliament

123. A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

Provincial Constitutions

124. (1) A provincial legislature may, subject to the provisions of this Constitution, adopt a constitution for the province by a two thirds majority of all its members.

(2) A provincial legislature may make such arrangements as it deems appropriate for the negotiation and drafting of a provincial constitution.

(3) A provincial constitution adopted by a provincial legislature shall not be inconsistent with the Constitutional Principles enumerated in Schedule 4 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) A provincial constitution shall be developed in consultation with the Commission on Provincial Government established in terms of section 127.

(5) A provincial constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the Constitutional Assembly passed by two thirds of its members.

(6) A provincial constitution adopted by a provincial legislature may be referred to the Constitutional Court by the chairperson of the Constitutional Assembly after being petitioned by one third of the members of the Constitutional Assembly in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.

(7) A provincial constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding provincial Government

125. (1) The development of a system of provincial government shall receive the priority attention of the Constitutional Assembly and in this regard it shall take into consideration the recommendations of the Commission on Provincial Government referred to in section 127 and the views expressed thereon by the executives of the various provinces.

(2) The Commission's recommendations to the Constitutional Assembly regarding any matter that falls within the ambit of its objects in terms of section 128 shall include draft provisions for the national Constitution.

(3) The Constitutional Assembly shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the Constitutional Assembly, shall lapse, except if a majority of the members of the Constitutional Assembly present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the Constitutional Assembly, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

Election of new provincial Governments

126. A provincial government may at any time after the coming into force of a provincial constitution contemplated in section 124 or of the constitutional dispensation contemplated in section 125, petition the Constitutional Assembly to determine by resolution that an election for the establishment of a new provincial legislature and executive in that province, or in a province incorporating that province in whole or in part, shall be held.

Commission on Provincial Government

Establishment of Commission on Provincial Government

127. A Commission on Provincial Government shall be appointed by the President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

128. (1) The objects and functions of the Commission regarding the establishment of provincial government in terms of this Chapter are to -

- (a) advise the National Government and provincial governments on the establishment and consolidation of administrative institutions and structures in the provinces and on any matter arising out of the provisions of section 118; and
- (b) make recommendations to the National Government and provincial governments on the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of provincial government.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the Constitutional Assembly in the form of draft constitutional provisions regarding -

- (a) the finalisation of the number and the boundaries of the provinces of the Republic;
- (b) the constitutional dispensations of such provinces, including the constitutional structures within such provinces as well as the method of their election and their authority, functions and procedures;
- (c) measures, including transitional measures, that provide for the phasing in of new provincial constitutional dispensations;

- (d) the final delimitation of powers and functions between national and provincial institutions of government with due regard to the criteria that are set out in subsection (3);
- (e) fiscal arrangements between the institutions of national government and those of provincial government;
- (f) the powers and functions of local governments; and
- (g) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -

- (a) The provisions of this Constitution;
- (b) The Constitutional Principles enumerated in Schedule 4;
- (c) Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;

- (j) Developmental potential:
- (k) Cultural and language realities.

Constitution and impartiality of the Commission

129. (1) The Commission shall be appointed by the President for the period during which this Constitution is in force, and shall consist of not less than 10, nor more than 15 full-time members, as the President may determine.

(2) At least one member of the Commission shall be appointed from each province with the approval of the Premier of the province.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission shall not hold office in any political party or political organisation.

(6) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

130. (1) The President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

- (2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

- (b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

131. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) If a member of the Commission ceases to hold office, the President may, subject to section 129 appoint a person to fill the vacancy.

Meetings of the Commission

132. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

Committees

133. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the

committee the members present shall elect one from among their number to act as chairperson.

- (4) (a) The Commission may, subject to such directions as it may issue from time to time-
- (i) delegate any power granted to it by or under section 128 to such a committee; and
 - (ii) grant authority that a duty assigned to it by or in terms of section 128 may be performed by such a committee.
- (b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

134. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

135. Members of the Commission and persons referred in section 134 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

136. The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with

the Commission for Administration, determine the remuneration and conditions of service of such staff.

Regulations

137. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 10 Local Government

Establishment and status of local government.

140. (1) Local government shall be established for residents of areas demarcated by law.

(2) Any law passed by a competent legislature providing for or relating to local government may make provision for categories of metropolitan, urban and rural governments with the differentiated powers, functions and structures according to considerations of demography, revenue, physical and environmental conditions and other factors which justify or necessitate such categories.

(3) A local government shall be autonomous and, within the limits prescribed by law, shall be entitled to regulate its affairs.

(4) A competent legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government and the status, boundaries, powers and functions of a local government shall only be changed after consultation with the local government concerned.

(5) A bill of a competent legislature or which materially affects the boundaries, powers and functions of local government shall be published for comment in the *Government Gazette* or the *Provincial Gazette* as the case may be, and a local government, interested persons or groups of persons affected thereby, including organised local government, shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

Powers and functions of local government

141. (1) The powers, functions and structures of local government shall be determined by law.

(2) A local government shall have powers and functions to provide such services as may be necessary to maintain and promote the wellbeing of all persons within the area of the local government.

(3) A local government shall make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health, education, housing and security: provided that such services and amenities are rendered in an environmentally sustainable manner and are financially and physically practicable.

(4) A local government shall have the power to make bylaws not inconsistent with an Act of Parliament or a provincial law.

(5) A local government shall have executive powers which shall allow it to function effectively.

(6) Any decision or legislative or executive action of any competent authority which may materially and detrimentally impact upon the environment of any local government shall be implemented only -

(a) in consultation with the local government concerned; or

(b) if reasonably required in the general public interest.

Administration and finance

142. (1) The local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.

(2) A local government shall, subject to conditions prescribed by law passed by a competent legislature after taking into consideration recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its duties and functions: provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction.

(3) A local government shall be entitled to an equitable allocation by the provincial government of funds and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations taking into account the different categories of local government referred to in section 140(3).

Elections

143. (1) A local government shall be elected democratically and such elections shall take place in terms of provincial legislation and at intervals of not less than 3 and not more than 5 years: provided that the first local government elections after the coming into force of this Constitution shall take place on the same day.

(2) The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a competent legislature.

(3) A voter for the election of a local government shall be -

(a) a natural person who -

(i) is eligible to vote in terms of section 6 of this Constitution;

(ii) is ordinarily resident within the area of jurisdiction of the local government for which such election is held, or under law which

such election is held, or under law is liable for the payment of assessment rates, service charges or levies to the local government concerned; and

(iii) is registered on the voters' role of the local government concerned.

(b) a juristic person which is -

(i) the owner of immovable property within the area of jurisdiction of the local government concerned;

(ii) liable for the payment of assessment rates, service charges or levies, and

(iii) registered on the voters' roll of the local government concerned.

(4) A voter shall not have more than one vote per local government.

(5) No person shall be elected a member of a local government if he or she -

(a) is not eligible to vote in terms of subsection (3); and

(b) is an elected member of any other legislature; or

(c) does not qualify to be elected as a member of the National Assembly under this Constitution; or

(d) is an employee of a local government unless, with due regard to the public interest, exemption of this qualification is given by the executive council of the province and proof of such exemption accompanies the nomination of such person; or

(e) is disqualified in terms of any other law.

Code of conduct

144. An enforceable code of conduct for members and officials of local government shall be provided for by law.

Transitional arrangement

145. (1) Until elections have been held in terms of the *Local Government Transition Act, 1993*, restructuring of local government shall not take place otherwise than in accordance with the provisions of that Act.

(2) Restructuring of local government which takes place as a result of legislation enacted by a competent authority after the elections referred to in subsection (1) have been held, shall be effected in accordance with the principles embodied in this chapter and the Constitution as a whole.

CHAPTER "Y"

Traditional Authorities

Indigenous law

1. Indigenous law or customary law may be subject to regulation by law.

Traditional authority and local government

2. (1) Traditional authorities recognised by and instituted in accordance with indigenous law and legislation, shall continue to exist and exercise their powers and functions in terms of indigenous law and as regulated by enabling legislation.

(2) The traditional leader of a traditional authority within the area of jurisdiction of an elected local government referred to in Chapter 10 shall be an ex-officio member of that local government and shall be eligible to be elected for any office of such local government.

Provincial House of Traditional Leaders

3. (1) A House of Traditional Leaders shall be established in each province for representatives of traditional authorities within such province where such authorities exist.

(2) (a) A House shall consist of as many representatives elected or nominated by traditional authorities as shall be prescribed by provincial law: provided that such law shall be introduced not later than the end of the sitting held after the first sitting during which the Premier of the province concerned was elected.

(b) The provincial legislature shall, prior to the introduction of such law, determine the method by which the views of the traditional leaders resident in the province concerned shall first be sought through consultation and established on the content of such law, and thereafter proceed to procure their views in the manner so determined.

(3) (a) The House shall be entitled to advise and make proposals to the provincial legislature in respect of matters relating to traditional authorities, indigenous law, tradition and custom.

(b) All provincial bills relating to traditional authorities, indigenous law, tradition and custom, and any other matter having a bearing thereon, shall be referred to the House by the Speaker of the provincial legislature for its comments before the passing of such bill.

(c) The House shall indicate its support for or opposition to such bill within 30 days from the date of such referral.

(d) If the House indicates that it is opposed to such bill, the provincial legislature shall not pass the bill before the lapse of a further period of 30 days from the date of receipt by the Speaker of such comment.

- (c) A provincial legislature shall enact laws to regulate the procedures applicable to the exercise of the powers and functions of the House in terms of this subsection.

Council of Traditional Leaders

4. (1) A Council of Traditional Leaders shall be established, composed of not more than 20 representatives of traditional authorities and elected by an electoral college, constituted by the members of the Provincial Houses of Traditional Leaders referred to in section 3 (1) in accordance with the procedures prescribed by Act of Parliament.

(2) (a) The Council shall meet whenever necessary to perform its functions.

(b) The composition, terms of office, functions, procedures and convening of meetings of the Council and all matters relating thereto shall be prescribed by Act of Parliament.

(c) The provisions of section 3(2)(b) shall apply *mutatis mutandis* in respect of an Act referred to in subparagraph (b) and the reference therein to a provincial legislature shall be deemed to be a reference to Parliament.

(3) The Council shall be entitled to advise and make proposals to the national government in respect of all relevant matters relating to traditional authorities, indigenous law, tradition and custom.

(4) The President may seek the advice of the Council on any matter of national interest.

(5) All parliamentary bills pertaining to traditional authorities, indigenous law, tradition and custom and related matters, shall be referred by the Speaker, simultaneously with the submission of such bill to the Senate, to the Council for its comments.

(6) The comments of the Council shall indicate its support for or opposition to such bill within 30 days from the date of such referral.

(7) If the Council indicates its opposition to the bill such bill shall not be passed by the Senate or be finally adopted before the lapse of a further period of 30 days from the date of receipt of such comment by the Speaker.

(8) If the Council fails to comment within the period of 30 days it shall be deemed to support such bill.

(9) If a bill is introduced in the Senate and not in the National Assembly the procedures prescribed in subsections (5), (6), (7) and (8) shall *mutatis mutandis* apply.

(10) Procedures relating to the exercise of its powers and functions by the Council referred to in subsections (2) to (8) shall be prescribed by Act of Parliament.

CHAPTER 11

Finance

Vesting of property

143. (1) All property which immediately prior to the coming into operation of this Constitution vested in any administration as defined in subsection (5), and

(a) which was being used by such administration for the purpose of or relating to a function in respect of which a province has legislative competence in terms of section 118 of this Constitution shall, subject to the provision of subsection (2), vest in such provincial government, and

(b) which was being used for any other purpose, shall, subject to the provisions of subsection (2) vest in the national government.

(2) When the rationalisation of administrations is carried out in accordance with section 119, or if a provincial government assumes responsibility for functions which were previously being carried out by the national government, the vesting of property under subsection (1) shall be reviewed by the governments concerned, on the

basis that property which was being used for or in connection with a particular function shall vest in the government performing such function.

(3) If there should be any disagreement between the governments concerned in relation to the change in the vesting of property under subsection (2), the advice of the Commission on provincial government shall be obtained.

(4) If notwithstanding the provisions of subsection (3) the governments concerned are unable to reach agreement, the differences between them shall be dealt with in accordance with parameters prescribed by Act of Parliament.

(5) For the purposes of this section -

"any administration" shall mean a provincial administration established in terms of the *Provincial Government Act*, 69 of 1986, administrations of the Self-governing Territories established in terms of the *Self-governing Territories Constitution Act*, 21 of 1971 and the Transkei, Bophuthatswana, Venda and Ciskei;

"property" shall mean and include movable and immovable property, whether corporeal or incorporeal and wheresoever situate, and shall include any right or interest therein or in respect thereof.

Transfer of property

144. (1) Immovable property transferred in terms of section 143 shall be transferred to the relevant government without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property and subject also to the provisions of this Constitution.

(2) The Registrar of Deeds concerned shall upon production to him or her of the title deed of any immovable property mentioned in section 143 endorse such title deed to the effect that the immovable property therein described is vested in the government concerned and shall make the necessary entries in the deeds register, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the said government to the said property.

Debts and liabilities

145. (1) All debts and liabilities which are directly linked to the property vesting in a province in terms of section 143 shall be assumed by such province.

(2) All debts and liabilities other than those referred to in subsection (1) shall vest in the national government.

(3) The Financial and Fiscal Commission shall make recommendations to Parliament concerning the re-allocation of debts and liabilities referred to in section 143(1) and (2), taking into account all relevant factors.

(4) The re-allocation of debts and liabilities shall be made by Act of Parliament after taking into account the recommendations of the Financial and Fiscal Commission.

Audit of property, debts and liabilities

145A. The Auditor-General shall audit the re-allocation of property, debts and liabilities made in terms of sections 143, 144 and 145.

National Revenue Fund

146. (1) There shall be established a National Revenue Fund into which shall be paid all revenues, as defined by Act of Parliament, raised or received by the National Government, and from which appropriations shall be made by Parliament in a manner prescribed by this Constitution and any other law, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by law in accordance with the provisions of this Constitution: provided that revenue to which a province is entitled in terms of section 121(2) (a) and (b) shall form a direct charge against the National Revenue Fund to be credited to the relevant Provincial Revenue Fund.

Appropriation bills

147. Any bill which appropriates or authorises the appropriation of revenue or money for the services provided by the National Government shall deal only with such appropriation.

Appropriation to be initiated by a Minister

148. The National Assembly shall not consider any bill for the appropriation of any part of the public revenue, or of any tax or impost, if such bill has not been initiated by a Minister, with the approval of the Minister responsible for national financial matters.

Annual Budget

149. The Minister responsible for national financial matters shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of receipts and expenditure, which shall *inter alia*, reflect capital and current expenditure, of the Government for that year.

Procurement administration

150. (1) The procurement of goods and services for any level of government shall be regulated by Act of Parliament and provincial laws which shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.

(2) The tendering system prescribed in terms of subsection (1) shall be fair, public and competitive, and tender boards shall be required to give reasons for their decisions to interested parties.

(3) No member of the Cabinet or the legislature or of any organ of the state or any other person shall improperly interfere with the decisions and operations of the tender boards.

(4) All decisions of any tender board shall be recorded.

Guarantees by the national government

151. The national government may not guarantee any provincial or local government loans, unless -

- (a) this guarantee complies with the framework and norms as set out in an Act of Parliament; and
- (b) the Financial and Fiscal Commission has made recommendations concerning compliance with the framework and norms referred to in subparagraph (a).

Special pensions

152. (1) Provision shall be made by Act of Parliament for payment by the national government to -

- (a) persons who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order; or
- (b) dependents of such persons.

(2) The Act of Parliament referred to in subsection (1) shall prescribe the qualifications of a beneficiary of a pension referred to in subsection (1), the conditions for the granting thereof and the manner of the determination of the amount of such pensions, taking into account all relevant factors, including *inter alia* any other remuneration or pension received by such beneficiary.

Auditor-General

Establishment and appointment

161. (1) There shall be an office of Auditor-General for the Republic to which shall be appointed, in terms of subsection (2), an Auditor-General who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate, shall, at the request of the President nominate a person to be appointed by the President as Auditor-General and such nomination shall be approved by resolution adopted by two-thirds of the members present at a joint sitting of the National Assembly and the Senate: provided that, in connection with such resolution, no debate shall be allowed.

(3) If the post of Auditor-General becomes vacant, the highest ranking member of the Auditor-General's office shall act as Auditor-General until the vacancy is filled, and for that purpose, shall have the functions, powers and duties of the Auditor-General.

(4) The Auditor-General shall be a South African citizen who is a fit and proper person to hold such office and who shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

(5) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Auditor-General shall be appointed for a specific period of not less than 5 years and not more than 10 years and shall not thereafter be eligible for reappointment.

(6) The remuneration and other conditions of service of the Auditor-General shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(7) The Auditor-General shall not perform remunerative work outside his or her official duties.

(8) The Auditor-General shall not hold office in any political party or political organisation.

(9) The Auditor-General may be removed from office by the President, but only on the grounds of misconduct, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of a request for such removal by Parliament adopted at a joint sitting of the National Assembly and the Senate.

(10) An Auditor-General who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (8) may be suspended by the President pending such investigation.

(11) The Auditor-General may at any time, subject to his or her conditions of service, resign by lodging his or her resignation in writing with the President.

Independence and Impartiality

162. (1) The Auditor-General shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed in terms of section 164(1) shall have such immunities and privileges as may be assigned to them by Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall improperly interfere with the Auditor-General or a person appointed in terms of section 164(1) in the exercise of his or her powers, duties and functions.

(4) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the execution of his or her functions, powers and duties.

Powers, Functions and Duties

163. (1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial government level, other than that of the office of Auditor-General, and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets.

(2) The Auditor-General shall audit and report on all the accounts and financial statements of any local government, board, fund, institution, company,

corporation or other organization established or constituted by or under any law and of which the accounts and financial statements shall in terms of law be audited by the Auditor-General and the accounts and financial statements of all persons in the employment of such a body, who have been entrusted by it with its assets, or any other assets.

(3) The Auditor-General shall also, at the request of the President or Parliament, conduct performance audits.

(4) The Auditor-General may, whenever he or she considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

(5) No further duty or function may be imposed upon or assigned to the Auditor-General other than by means of an Act of Parliament.

(6) Whenever the Auditor-General or a person appointed in terms of section 164 exercises his or her powers and functions in terms of this Constitution, he or she shall have access to all books, records and other documents and information relating to the accounts and financial statements referred to in this section.

(7) The Auditor-General shall report on the accounts examined by him or her and submit such reports to the authorities designated by Act of Parliament to receive them, and, unless otherwise provided by Act of Parliament, such reports or a report on any other matter shall be tabled in each house of Parliament within 7 days after receipt thereof by such authority; or if Parliament is not in session, within 7 days of the next ensuing session.

(8) The Auditor-General shall make public any report referred to in subsection (7) after the expiry of a period of 14 days from the date on which such report was submitted to the authorities concerned.

Staff and expenditure

164. (1) The Auditor-General may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of the work of the office of the Auditor-General.

(2) The Auditor-General may delegate any of his or her functions to persons referred to in subsection (1) subject to such conditions as shall be prescribed by law.

(3) Expenditure incurred during the performance of the functions of the Auditor-General in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from fees raised or money obtained in a manner authorised by Act of Parliament.

South African Reserve Bank

Central bank

165. The South African Reserve Bank, established and regulated by Act of Parliament, shall be the central bank of the Republic.

Primary objectives

166. (1) The primary objectives of the South African Reserve Bank shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its duties independently, subject only to the powers of Parliament as set out in section 167(1): provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

Powers and duties

167. (1) The powers and duties of the South African Reserve Bank shall be those customarily performed by central banks, which shall be determined by Act of Parliament and shall be subject to such conditions as may be described by such Act.

(2) All decisions of the Board of Governors and the Board of Directors of the South African Reserve Bank shall be recorded.

Financial and Fiscal Commission

Establishment

170. A Financial and Fiscal Commission shall be appointed by the President in terms of this Constitution within 60 days of its coming into operation.

Objects and functions

171. (1) The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including -

- (a) financial and fiscal policies;
- (b) equitable fiscal and financial allocations to the national, provincial and local governments from revenue collected nationally;
- (c) taxes, levies, imposts and surcharges that a provincial government intends to levy;
- (d) the raising of loans by a provincial or local government and the financial norms applying thereto;
- (e) criteria for the allocation of financial and fiscal resources; and

(f) any other matter allocated to the Commission by law.

(2) In carrying out its functions the Commission shall, *inter alia*, take into consideration the provisions of section 121(4)(b) and any other provision of this Constitution.

Constitution, expertise and impartiality

172. (1) The Commission shall consist of -

(a) a chairperson and deputy chairperson, who shall also be the chief executive officer and deputy chief executive officer of the Commission's staff, appointed by the President on the advice of the Cabinet; and

(b) nominees of the provincial executives, each nominating one person, who shall be appointed by the President; and

(c) 7 members appointed by the President on the advice of the Cabinet, at least one of whom shall have experience in local government finance.

(2) No person shall be qualified to be appointed to the Commission unless he or she -

(a) is a South African citizen; and

(b) is a person who, by reason of his or her training and experience, has expertise in economics, public finance, public administration, taxation, management or accountancy.

(3) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, a member of the Commission may only be removed from office by the President on account of misconduct, incapacity or incompetence: provided that removal of a member of the Commission from office and the reasons therefor shall be communicated by the President by message to Parliament and to the provincial legislatures within 14 days after such removal or, if Parliament or a provincial legislature is not then in session, within 14 days after the commencement of its next ensuing session.

(4) Vacancies in the Commission shall be filled in accordance with the provisions of this section.

(5) A member of the Commission shall be eligible for re-appointment.

(6) A member of the Commission shall perform his or her duties fairly, impartially and independently.

(7) The chairperson and deputy chairperson shall not perform or commit himself or herself to perform remunerative work outside their official duties.

(8) A member of the Commission shall not hold office in any political party or political organisation.

(9) It shall be an offence to influence or attempt to influence otherwise than in accordance with the provisions of subsection (6).

(10) The chairperson and deputy chairperson shall be the only full-time members of the Commission.

(11) The chairperson and deputy chairperson shall be appointed for a period of 5 years and the other members of the Commission for a period of 2 years.

Meetings of the Commission

173. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson. If both the Chairperson and Deputy Chairperson are absent from a meeting, the members present shall elect one from amongst their members to act as Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of two-thirds of the members present shall constitute a decision of the Commission.

(4) All the decisions of the Commission shall be recorded.

Committees

174. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time -

(i) delegate any function entrusted to it by or under section 171 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 171 may be performed by such a committee.

(b) The Commission shall not be divested of a function so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

175. (1) A committee may co-opt any person to serve on such committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

176. Members of the Commission and persons referred in section 175 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

177. (1) The Commission may appoint and accept secondment of staff as it may deem necessary in consultation with the Public Service Commission.

(2) Expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

Regulations

178. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 12
Public Service Commission and Public Service

Public Service Commission

Establishment

180. There shall be a Public Service Commission for the Republic which shall have the powers, functions and duties provided for by this Constitution and by law, and it shall be accountable to Parliament.

Powers and functions

181. (1) The Commission shall be competent to -

(a) make recommendations, give directions and conduct enquiries regarding -

- (i) the organisation and administration of departments and the public service;
- (ii) the conditions of service of members of the public service and matters related thereto;
- (iii) personnel practices in the public service, appointments, promotions, transfers, discharge and other career incidents of members of the public service and matters connected with the employment of personnel;
- (iv) the promotion of efficiency and effectiveness in departments and the public service; and
- (v) a code of conduct applicable to members of the public service;

(b) when so requested, advise the President, a Minister or a member of a provincial executive in regard to any matter relating to the public service or in relation to the employment, remuneration or other conditions of service of functionaries employed by any institution or body which

receives funds wholly or partly appropriated by the national or provincial legislature:

- (c) exercise such other powers, perform such other functions and carry out such other duties entrusted to it by any law; and
- (d) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation imposed by law.

(2) Until amended by law, the powers of the Commission set out in subsection (1) shall be exercised in accordance with statutory provisions in force at the time of the coming into operation of this Constitution.

(3) A recommendation or direction of the Commission shall be implemented by the appropriate person or institution within 6 months unless:

- (a) such recommendation or direction involves expenditure from public funds and the approval of the treasury therefor is not obtained; or
- (b) the President rejects it and refers it back to the Commission before its implementation.

(4) The Commission may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of its work.

(5) Expenditure incurred during the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from fees raised or money obtained in a manner authorised by Act of Parliament.

(6) On recommendation of the Commission the President may assign any power, function or duty of the Commission to a provincial service commission.

(7) The Commission shall annually frame and submit a report to Parliament on matters which have been dealt with by the Commission.

Composition

182. (1) (a) The Commission shall consist of no fewer than 3 members and no more than 5 members appointed by the President, one of whom shall be designated as chairperson by the President.
- (b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently.
- (c) The remuneration and other conditions of service of a member of the Commission shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.
- (d) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions.
- (e) A member of the Commission may be removed from office by the President on account of misconduct or unfitness for his or her duties or incapacity to carry them out efficiently or if, for reasons other than unfitness or incapacity, his or her removal from office will promote efficiency, and the removal and the reasons therefor shall be communicated by the President by message to Parliament within 14 days after such removal or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
- (2) A person shall be qualified to be appointed to the Commission if he or she -
- (a) is a South African citizen; and
- (b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.

(3) The composition, appointment, tenure, vacation of office, conditions of service and functioning of the Commission shall be as determined by Act of Parliament, and shall ensure the independence and impartiality of the Commission and the efficient and effective exercise of its powers, performance of its functions and carrying out of its duties.

The Public Service

183. (1) There shall be a public service for the Republic, structured in terms of law to provide effective public administration.

(2) Such public service shall -

- (a) be non-partisan, career-orientated and function according to fair and equitable principles;
- (b) be obliged to promote an efficient public service broadly representative of the South African community;
- (c) serve all members of the public in an unbiased and impartial manner;
- (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service;
- (e) loyally execute the policies of the government of the day in the performance of its administrative functions; and
- (f) be organised in departments and other organizational components and the head of such department or organizational component shall be responsible for the efficient management and administration of his department or organizational component.

(3) Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law for employment in such service.

(4) In the making of any appointment or the filling of any post in the public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.

(5) Subsection (4) shall not preclude measures to promote the objectives set out in subsection (2).

(6) Provision shall be made by law for a pension for a member of the public service by means of a pension fund or funds by law and members of the public service who are required by law to be members of a pension fund shall be entitled to fair representation on the body which manages the applicable fund.

(7) (a) In the event of changes to the law governing pension funds which prejudice persons referred to in subsection (6), the real value of the accrued benefits of a member of a fund, and his or her beneficiaries, as represented by the fund's actuarial liability towards the member or his or her beneficiaries, shall be maintained.

(b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.

Provincial Service Commissions

184. (1) A provincial legislature may provide by law for a provincial service commission and, subject to the national norms and standards, such commission shall, in respect of public servants employed by the province, have -

(a) the power to make recommendations, give directions and conduct inquiries -

(i) pertaining to the establishment and organisation of departments of the province;

- (ii) relating to appointments, promotions, transfers, discharge and other career incidents of such public servants; and
 - (iii) regarding the promotion of efficiency and effectiveness in departments of the province;
- (b) the power to -
- (i) when so requested, advise the Premier or a member of the provincial executive in regard to any matter relating to the public service or in relation to the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by the provincial legislature; and
 - (ii) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law; and
- (c) such other powers, functions and duties of the public service commission assigned to it by the President with the approval of the Premier of the province.

(2) The measures contained in sections 181(2),(3) and (4), and 182(1), (2), and (3) pertaining to the public service commission, shall *mutatis mutandis* apply to the provincial service commissions established by provincial legislation, save that any reference to an act of Parliament, Parliament or to the President shall be deemed to be a reference to a provincial law, provincial legislature or the Premier of the province respectively.

185. (Removed to Chapter 1-4)

CHAPTER 13

Police and Defence

South African Police Service

Establishment

186. (1) There shall be established and regulated by Act of Parliament a South African Police Service structured both at national and provincial levels which shall function under the direction of both the national and provincial governments.

- (2) The Act of Parliament referred to in sub-section 1 shall -
- (a) provide for the appointment of a Commissioner of the Service and a Commissioner for each Province;
 - (b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding:
 - (i) the exercise of police powers;
 - (ii) the recruitment, appointment, promotion and transfer of members of the Service;
 - (ii) suspension, dismissal, disciplinary and grievance procedures;
 - (iv) training, conduct, and conditions of service of members of the Service;
 - (v) the general management, control, maintenance and provisioning of the Service;
 - (vi) returns, registers, records, documents, forms and correspondence;
- and

- (vii) generally, all matters which are necessary or expedient for the achievement of the purposes of this Constitution.

Powers and functions

187. The powers and functions of the Service shall be:

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

Minister and Commissioner

188. (1) The President shall, subject to the provisions of this Constitution, charge a Minister with responsibility for the Service.

(2) Without derogating from the provisions of section 185(2) the President shall appoint a Commissioner of the South African Police Service, who shall exercise executive command of the Service subject to the directions of the Minister referred to in subsection (3).

(3) The State President may, if the Commissioner has lost the confidence of the Cabinet, institute appropriate proceedings against the Commissioner in accordance with law.

Powers of Province

189. (1) The Provincial Premier shall charge a member of the provincial executive with responsibility for the performance by the Service of the functions set out in section 191(1).

(2) The member of the provincial executive referred to in subsection (1):

- (a) shall approve or veto the appointment of the Provincial Commissioner in terms of section 190(1)(b); and
- (b) may, if the Provincial Commissioner has lost the confidence of the provincial executive, institute appropriate proceedings against the said Commissioner according to law.

(3) The provincial legislature may pass laws not inconsistent with national legislation regarding the functions of the Service set out in section 191(1).

(4) No provincial law may permit lower standards of performance of the functions of the Service than those provided for by Act of Parliament or detract from the rights which citizens have under Act of Parliament.

National Commissioner

190. (1) Subject to the provisions of section 186, and under the direction of the relevant Minister, the Commissioner of the South African Police Service shall be responsible for -

- (a) the maintenance of an impartial, accountable, transparent and efficient police service;
- (b) the appointment of provincial commissioners, subject to the provisions of section 189 (2)(a);
- (c) the preservation of the internal security in the Republic;
- (d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: provided that the Act referred to in section 186(1) shall set out the circumstances which shall be regarded as organised crime and the circumstances which require national investigation and prevention or specialised skills;
- (e) international police liaison;

- (f) the keeping and provision of crime intelligence data, criminal records and statistics;
- (g) the training members of the Service, including any municipal or metropolitan police services to be established;
- (h) the recruitment, appointment, promotion and transfer of all members of the Service;
- (i) the provision of forensic laboratory services;
- (j) such functions relating to border control and the import and export of goods as may be allocated to the Service by law;
- (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: provided that the Act referred to in section 186 shall provide that the President, in consultation with the Cabinet, may direct the National Commissioner to deploy the said unit in circumstances where the Provincial Commissioner is unable to maintain public order and the deployment of the said unit is necessary to restore public order;
- (l) national protection services;
- (m) establishment of a special task force for high risk operations which require specialised skills; and
- (n) such other functions not referred to in section 19 which:
 - (i) are necessary to achieve the objectives set out in section 187; and
 - (ii) are appropriate for the National Commissioner to take responsibility for.

(2) The National Commissioner may *[and with the approval of the relevant provincial executive]* delegate responsibility for any function set out in this section to a Provincial Commissioner.

Provincial Commissioners

191. (1) Subject to the provisions of section 186 and section 190 and under the direction of the relevant member of the provincial executive, a Provincial Commissioner shall be responsible for:

- (a) the investigation and prevention of crime;
- (b) the development of community-policing services;
- (c) the maintenance of public order;
- (d) the provision in general of all other visible policing services, including
 - (i) the establishment and maintenance of police stations,
 - (ii) crime reaction units; and
 - (iii) patrolling services;
- (e) protection services in regard to provincial institutions and personnel;
- (f) transfers within the province of members of the Service performing functions in terms of this section; and
- (g) promotion of members of the Service performing functions set out in this section up to the rank of lieutenant-colonel.

(2) Subject to the provisions of sections 186 and 191, and under the direction of the National Commissioner a provincial commissioner shall be responsible for -

- (a) the maintenance and discipline of the Service in the province;
- (b) the recruitment, and, the promotion to the rank of colonel and above of all members of the Service responsible for functions set out in this subsection;

- (c) such other functions as may be delegated to him or her by the National Commissioner; and
- (d) subject to any procedures or mechanisms established by the Board of Commissioners referred to in section 19, the transfer of members of the Service under his or her command to positions outside his or her jurisdiction, or vice versa.

Co-ordination and co-operation

192. (1) A committee consisting of the Minister referred to in section 188 and the members of the provincial executives referred to in section 189(1) shall be established to ensure the effective co-ordination of the Service and effective co-operation between the various Commissioners.

(2) A Board of Commissioners consisting of the National Commissioner and the Provincial Commissioners presided over by the National Commissioner, or his or her nominee, shall be established in terms of the Act referred to in section 186(1) to promote co-operation and co-ordination in the Service.

Local Policing

193. (1) The Act of Parliament referred to in section 186(1) shall provide for the establishment of community-police forums at police station level.

(2) The functions of community-police forums referred to in sub-section (1) may include -

- (a) the promotion of local accountability of the Service to communities and cooperation of communities with the Service;
- (b) the monitoring of the effectiveness and efficiency of the Service;
- (c) advising the Service regarding local policing priorities;
- (d) the evaluation of the provision of visible police services, including -

- (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;
 - (iii) the provision of protective services at gatherings;
 - (iv) the patrolling of residential and business areas; and
 - (v) the prosecution of offenders; and
- (e) requesting enquiries into policing matters in the locality.

(3) The Act referred to in section 186(1) shall make provision for the establishment by a local authority of a municipal or metropolitan police service: provided that :

- (a) such police service may only be established with the consent of the relevant member of the provincial executive;
- (b) said member of the provincial executive shall, subject to the provisions the act determine the powers, duties and functions of such police service which may have powers relating only to crime prevention and municipal and metropolitan by-laws; and
- (c) the provisions of the Act shall apply *mutatis mutandis* to any such police service.

Independent complaints mechanism

194. There shall be established and regulated by Act of Parliament an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the Service.

Acts of members outside their territorial jurisdiction

195. (1) No act of a member of the Service shall be invalid solely by reason of the fact that it was committed outside the province in which that member is stationed.

(2) The National Commissioner shall by regulation determine the procedures and the powers of the members of the Service to enable them to perform their functions outside their area of provincial jurisdiction.

Transitional Provisions

196. (1) At the coming into operation of this Constitution the South African Police existing in terms of the Police Act, 7 of 1958, and all other police forces established by law within the Republic, shall be deemed to constitute the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.

(2) Any reference in any Act to the South African Police shall, unless the context indicates otherwise, bear the meaning and be interpreted as the South African Police Service in terms of this Constitution.

(3) The national and provincial governments shall assume responsibility for the consolidation and rationalisation of all the police forces in accordance with section 119.

National Defence Force

Establishment of a National Defence Force

1. (1) A National Defence Force is hereby established as the only defence force for the Republic.

(2) The National Defence Force, shall consist of -

(a) all members of -

(i) the South African Defence Force; and

(ii) the defence forces of the Republics of Transkei, Bophuthatswana, Venda and Ciskei; and

- (b) the members of any armed or military force not established by or under any law and which is under the authority and control of or associated with and promotes the objectives of a political organisation,

who are considered to be members of such respective defence, armed and military forces under the provisions of section 16(3) or (9), as the case may be, of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993): provided that this section shall not apply to the members of any such defence or armed force if the political organisation under whose authority and control it stands or with whom it is associated and whose objectives it promotes does not take part in the elections contemplated in sections 40 or 101(3).

(3) Save for the National Defence Force referred to in subsection (1) no other armed force or military force or armed organisation shall be established in or for the Republic other than -

- (a) as provided for in this Constitution;
- (b) a force established by or under Act of Parliament for the protection of public property or the environment; or
- (c) a service established by or under law for the protection of persons or property.

Chief of the National Defence Force

2. *Without derogating from the provisions of section 185(2)*, the President shall appoint a Chief of the National Defence Force, who shall exercise military executive command of the National Defence Force subject to the directions of the Minister of Defence and, during a state of national defence, of the President.

Members of the National Defence Force

3. (1) The National Defence Force shall comprise both a permanent force and a part-time reserve component.

(2) The establishment, organisation, training, conditions of service and other matters concerning the permanent force shall be provided for by Act of Parliament.

(3) The establishment, organisation, training, state of preparedness, calling up, obligations and conditions of service of the part-time reserve component shall be provided for by Act of Parliament.

(4) The National Defence Force shall be established and trained in such a manner that will provide a balanced military force capable of exercising its functions in terms of this Constitution.

(5) The National Defence Force shall strive to be a technologically advanced military force which complies with international standards of competency.

(6) A member of the National Defence Force shall have all the rights of a citizen save for those inconsistent with military service, provided that no full-time member of the Force shall hold office in any political party or political organisation.

(7) A member of the National Defence Force shall be obliged to comply with all lawful orders, but shall be entitled to refuse to execute any order if the execution of such order would constitute an offence or would breach *international law of armed conflict binding on the Republic*.

(8) An Act of Parliament shall provide for adequate compensation to a member of the National Defence Force who suffers loss due to physical or mental disability in the execution of his or her duties.

(9) Provision shall also be made for the adequate compensation to the immediate dependants of a member of the National Defence Force who suffer loss due to the death of or physical or mental disability of the member referred to in subsection (1).

Functions of the National Defence Force

4. (1) The National Defence Force may be employed -

- (a) for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;
- (b) for service in compliance with the international obligations of the Republic with regard to international bodies and other states;
- (c) for service in the preservation of life, health or property;
- (d) for service in the provision or maintenance of essential services;
- (e) subject to the provisions of section 5, for service in the upholding of law and order in the Republic in co-operation with the South African Police Service under circumstances set out in law where the said Police Service is unable to maintain law and order on its own; and
- (f) for service in support of any department of state for the purpose of socio-economic upliftment.

(2) The National Defence Force shall -

- (a) perform its functions and duties and exercise its powers solely in the national interest by -
 - (i) upholding the Constitution;
 - (ii) providing for the defence of the Republic; and
 - (iii) ensuring the protection of the inhabitants of the Republic,

in accordance with the provisions of this Constitution and any law;

- (b) perform its functions, exercise its powers and comply with its duties under the directions of the government of the Republic;
- (c) refrain from furthering or prejudicing party political interests;

- (d) not breach international customary law binding on the Republic relating to aggression;
- (e) in armed conflict comply with its obligations under international customary law and treaties binding on the Republic; and
- (f) be primarily defensive in the performance of its powers, duties and functions.

(3) The employment, training, organisation and deployment of the Defence Force shall be in accordance with the requirements of subsection (2).

Accountability

5. (1) The Minister of Defence shall be accountable to Parliament for the employment of the National Defence Force.

(2) Parliament shall annually approve a budget for the defence of the Republic.

(3) A joint standing committee of Parliament on defence shall -

(a) be established consisting of members of all political parties holding more than 20 seats in the National Assembly;

(b) be constituted in proportion to the number of seats held by each participating party in the National Assembly; and

(c) be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to exercise such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

(4) The President shall, whenever he exercises any of his powers referred to in section 76(4)(b)(i), forthwith communicate the reasons for such action to Parliament: provided that if Parliament is not then sitting, the President shall summon the joint

standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after having taken such action to communicate to it the reason for taking the action.

(5) The President shall, if Parliament is in session at the time of his employing the National Defence Force for service as contemplated in section 4(1)(e), forthwith communicate the reason for such action to Parliament and if Parliament is not then sitting, the President shall do so not later than 14 days after the commencement of the next sitting of Parliament, and Parliament may by motion terminate such employment: provided that any act or omission committed prior to such termination, shall be deemed to have been committed in terms of section 4(1)(d).

Transitional provisions

6. (1) The provisions of section 183(1), (2), (3), (4), (5), (6) and (7) shall apply *mutatis mutandis* to members of the National Defence Force.

(2) The provisions of section 185 (1), (2), (4) and (6) shall apply *mutatis mutandis* to all members of forces referred to in section 1 (2).

(3) The provisions of section 152 shall apply to all members referred to in section 1 (2)(b).

(4) If the number of the members of the National Defence Force in terms of subsection (1) exceeds the personnel strength determined in the force design and structure for that Force, any member of that Force who, due to the integration, consolidation and rationalisation of the National Defence Force is not included in such force design and structure, shall be dealt with in accordance with law.

(5) Continuance of membership of members referred to in section 1(2)(b) shall be subject to such members entering into agreement for temporary or permanent appointment with the National Defence Force within a reasonable time: provided that such contracts shall be in accordance with normal employment policies and terms and conditions of service.

(6) Any reference in any law to the South African Defence Force shall, unless the context indicates otherwise, bear the meaning and be interpreted as the National Defence Force.

(7) The National Defence Force shall, subject to this Constitution and any Act of Parliament, be governed by the Defence Act, 44 of 1957.

CHAPTER 14

General and transitional provisions

Repeal of laws

190. (1) The laws mentioned in Schedule ... are hereby repealed to the extent set out in the third column of that Schedule.

(2) Notwithstanding the repeal of section 13 and 101(2) of the previous Constitution, any pension which but for such repeal would have been payable shall continue to be payable as if such repeal has not been effected.

Continuation of existing laws and conventions

191. (1) Subject to the provisions of this Constitution, all laws which immediately prior to the commencement of this Constitution were in force in any part of the national territory shall continue in force until repealed or amended by a competent authority.

(2) The constitutional and parliamentary conventions which existed immediately before the commencement of this Constitution shall continue to exist, except to the extent that they are inconsistent with the provisions of this Constitution.

Continuation of international rights and obligations

192. All rights and obligations under international agreements which were vested in or binding on the Republic immediately before the commencement of this Constitution, shall after such commencement continue to be vested in or binding on the Republic.

Status of International Law

192A. (1) Parliament shall subject to the provisions of this Constitution have the powers and functions to agree to the ratification of or accession to international agreements negotiated and signed in terms of section 76 (1)(i).

(2) International agreements approved by Parliament in terms of subsection (1) shall, unless inconsistent with the provisions of this Constitution or excluded by express provision in an Act of Parliament, be binding and shall form part of the law of the Republic.

(3) Rules of customary international law binding on the Republic, unless inconsistent with the provisions of this Constitution or an Act of Parliament, shall form part of the law of the Republic.

Construction of certain references

193. Unless the context otherwise indicates, a reference in a law referred to in section 191 -

(a) State President ...

(b) Republic ...

(c) Parliament ...

(d) Administrator ...

(e) Province ...

Transition: Legislatures

194. (1) A person who immediately before the commencement of this Constitution was a member of Parliament or of any other legislative assembly which exercised legislative powers in respect of any part of the national territory, shall at such commencement cease to be such a member, but shall for the purpose of any law relating

to the payment of pension benefits to such members not be disqualified solely by reason of this section.

(2) A person who immediately before the commencement of this Constitution was an officer or employee in the service of Parliament shall after such commencement and notwithstanding section 190 continue in such service subject to the laws regulating such service.

(3) The provisions of section 196(3), (4) and (5) shall apply *mutatis mutandis* in respect of a person referred to in subsection (2).

(4) A person who immediately before the commencement of this Constitution was an officer or employee in the service of a legislature referred to in subsection (1) other than Parliament, shall be deemed to be an officer or an employee in the service of the administration of that part of the national territory in which such legislature exercised legislative powers, and sections 196 and 197 shall apply *mutatis mutandis* in respect of such person.

(5) Any matter before Parliament or any such other legislative assembly which immediately before the commencement of this Constitution has not yet been disposed of by Parliament or such legislative assembly, as the case may be, shall lapse upon such commencement.

(6) The rules and orders of Parliament in force immediately before the commencement of this Constitution, shall, to the extent that they can *mutatis mutandis* be applied in respect of the affairs of Parliament under this Constitution, continue in force until amended or replaced in terms of this Constitution.

Transitional arrangements: The Executive

195. (1) A person who immediately before the commencement of this Constitution was -

(a) the State President or a Minister or Deputy Minister of the Republic within the meaning of the previous Constitution;

(b) the Administrator or a member of the Executive Council of a province; or

- (c) the President, Chief Minister or other chief executive or a Minister, Deputy Minister or other political functionary in the government of

any part of the national territory in terms of a constitution or other constitutional arrangement in force in such part of the said territory, shall after such commencement and notwithstanding section 190 continue in office until the President under this Constitution has been elected and has assumed office.

(2) Any vacancy which may occur in an office referred to in subsection (1)(a), (b) or (c) shall, if necessary, be filled by a person designated by the persons continuing in office in terms of subsection (1)(a), acting in consultation with the Transitional Executive Council.

(3) Executive authority vested in a person or persons referred to in subsection (1)(a), (b) or (c) in terms of a constitution or constitutional arrangement in force immediately before the commencement of this Constitution, shall during the period in which the said person or persons remain in office in terms of subsection (1), be exercised in accordance with such constitution or constitutional arrangement as if it had not been repealed or superseded by this Constitution, and any such person or persons shall continue to be competent to administer any department of state, administration or other institution which was entrusted to, and to exercise and perform any power or function which vested in, him or her or them immediately before the commencement of this Constitution.

(4) Upon the assumption of office by the President in terms of this Constitution -

- (a) the executive authority of the Republic as contemplated in section 70 shall vest in the President acting in accordance with that section; and
- (b) the executive authority of a province as contemplated in section 113 shall vest in the Premier of that province acting in accordance with that section, or if the Premier of a province has not yet assumed office, in the President acting in accordance with section 70 until the Premier assumes office.

(5) The power to exercise executive authority in terms of laws which immediately prior to the commencement of this Constitution were in force in any part of the national territory and which in terms of section 191 continue in force after such commencement, shall be allocated in accordance with the following rules:

(a) All laws with regard to matters which -

(i) do not fall within the functional areas specified in Schedule 6; or

[(ii) do fall within such functional areas but which are matters in respect of which Parliament has overriding legislative competence in terms of section 118.]

shall be administered by a competent authority within the jurisdiction of the national government referred to in subsection (4)(a).

(b) All laws with regard to matters which fall within the functional areas specified in Schedule 6 and which are matters in respect of which a provincial legislature has legislative competence in terms of section 118 shall -

(i) if any such law was immediately before the commencement of this Constitution administered by or under the authority of a functionary referred to in subsection (1)(a) or (b), be administered by a competent authority within the jurisdiction of the national government until the administration of any such law is with regard to any particular province assigned under subsection (6) to an appropriate authority within the jurisdiction of the government of such province referred to in subsection (4)(b); or

(ii) if any such law was immediately before the said commencement administered by or under the authority of a functionary referred to in subsection (1)(c), be administered by a competent authority within the jurisdiction of the government of the province in which that law applies, to the extent that it so applies.

(c) In this subsection "competent authority" shall mean -

- (i) in relation to a law of which the administration is allocated to the national government, an authority designated by the President; and
 - (ii) in relation to a law of which the administration is allocated to the government of a province, an authority designated by the Premier of the province.
- (6) (a) The President may, and shall if requested to do so by the Premier of a province, by proclamation in the *Gazette* assign, within the framework of section 118, the administration of a law referred to in subsection (5)(b)(i) to an appropriate authority within the jurisdiction of the government of a province, either generally or to the extent specified in the proclamation.
- (b) When the President so assigns the administration of a law, or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may -
- (i) amend or adapt such law in order to regulate its application or interpretation;
 - (ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or to the extent that the assignment relates to them; and
 - (iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including the transfer or admission of persons to or in the service of the State or any other person, subject to conditions not less favourable than those under which they serve, and the transfer of assets, liabilities, rights and obligations, including moneys, to or from the national or a provincial government or any other person or body established by law.

(c) Any reference in a law so assigned in terms of paragraph (a) to the authority administering such law, shall upon the assignment be deemed to be a reference *mutatis mutandis* to the appropriate authority of the province concerned.

(7) (a) If for any reason the government of a province is unable to assume responsibility within 14 days of its appointment for the administration of any law referred to in subsection (5)(b)(ii), the President shall by proclamation in the *Gazette* assign the administration of such law to a special administrator or other appropriate authority within the jurisdiction of the national government, either generally or to the extent specified in the proclamation, until the government of such province is able to assume such responsibility.

(b) Subsection (6)(b) and (c) shall *mutatis mutandis* apply in respect of an assignment under paragraph (a) of this subsection.

(8) Proclamations contemplated in subsections (6) and (7) shall be tabled before Parliament in session and if not approved within 14 days of such tabling, such proclamations shall lapse.

(9) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired or accrued or incurred as at the said date under and by virtue of such proclamation.

Transitional arrangements: Public administration

196. (1) A public service, department of state, administration or other institution which immediately before the commencement of this Constitution performed governmental functions under the control of an authority referred to in section 195(1)(a), (b) or (c), shall after such commencement and notwithstanding section 190 continue as such and to perform the said functions in accordance with the laws applicable to it until it is abolished, consolidated with any other public service, department of state, administration or institution or otherwise rationalized as contemplated in section 197.

(2) Any person immediately before the commencement of this Constitution was an officer or employee in the service of any institution referred to in subsection (1) shall after such commencement and notwithstanding section 190 continue in such service subject to this Constitution and the laws regulated such service.

(3) Subject to subsection (4), the terms and conditions of service applicable to a person referred to in subsection (2) immediately before the commencement of this Constitution, shall continue to apply to him or her until amended by or under a law.

(4) Subject to any law relating to unfitness or incapacity to carry out duties efficiently, the pensionable salary or pensionable salary scale of a person referred to in subsection (2) shall not be reduced below that applicable to such person as at the commencement of this Constitution.

(5) Notwithstanding the provisions of this section, 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 or may occur between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2), or class of such persons, may, at the instance of a Minister or a member of a provincial executive, within one year of the commencement of this Constitution, be reviewed by a tribunal appointed by such Minister or member of a provincial executive and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the tribunal may reverse or alter the contract, appointment, promotion or award.

(6) Subsection (1) shall apply *mutatis mutandis* to a public service commission established for a public service referred to in subsection (1) and subsections (2), (3), (4) and (5) shall apply *mutatis mutandis* to a person who immediately before the commencement of this Constitution occupied the position of chairperson or member of such a public service commission: provided that -

(a) the Commission for Administration, established by the Commission for Administration Act, 1984 (Act No. 65 of 1984), shall cease to exist upon the appointment of the chairperson and members of the Public Service Commission referred to in section 180; and

- (b) any other public service commission existing immediately before the commencement of this Constitution, shall cease to exist upon the establishment under section 184 of a provincial service commission for a province in the area of which such public service commission continued as such in terms of subsection (1).

Rationalization of public administration

197. (1) All public services, departments of state, administrations and other institutions referred to in section 196(1), and all public service commissions established for such public services, shall as soon as is possible after the commencement of this Constitution be rationalized with a view to establishing -

- (a) a public administration at the national level of government to deal with matters within the jurisdiction of the national government referred to in section 195(4)(a); and

- (b) a public administration for each province to deal with matters within the jurisdiction of each provincial government referred to in section 195(4)(b).

- (2) (a) The responsibility for the rationalization of public services, departments, administrations and other institutions, and public service commissions, shall primarily but not exclusively rest with the national government which shall exercise such responsibility in co-operation with the provincial governments and the Commission on Provincial Government referred to in section 127.

(b) The responsibility for the internal rationalization of an administration referred to in subsection (1)(b) shall rest with the relevant provincial government.

- (3) (a) The President may, subject to subsection (2)(a), by proclamation in the *Gazette* take such steps as he or she considers necessary in order to achieve the aim mentioned in subsection (1).

(b) Without derogating from the generality of paragraph (a) the steps referred to in that paragraph may include -

- (i) the amendment, repeal or replacement of any law regulating the establishment, functions and other matters relating to any public service, department, administration, institution or public service commission referred to in section 196(1), or of any law referred to in section 196(2), or of any law which deals with any of the foregoing matters in a consequential way: Provided that if a law referred to in section 196(2) is repealed, provision shall be made for the application of any general law regulating the employment of persons, or any class of persons, in the service of the state to the persons, or class of persons, affected by such repeal; and
 - (ii) measures prescribing the transfer or secondment of personnel, or the allocation of assets and liabilities, rights and obligations (including moneys), and administrative records, in order to establish the administrations referred to in subsection (1)(a) and (b).
- (c) A proclamation under paragraph (a) shall be submitted to Parliament in session within 14 days after the publication thereof.
- (d) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.
- (5) (a) A special tribunal consisting of a judge and two assessors shall in accordance with an Act of Parliament determine all claims and disputes of rights in terms of laws regulating as at 1 November 1993 employment in a public service referred to in section 196(1) and arising out of the implementation of this section and section 196.

(b) The Act of Parliament referred to in paragraph (a) shall prescribe expeditious procedures for the adjudication of claims and disputes including the granting of interim and final relief.

(c) Notwithstanding the provisions of any law the procedures contemplated in paragraph (b) shall be the only procedures to be followed by such tribunal.

(d) The decisions of the tribunal on any such claim or dispute shall be final and binding.

(e) The provisions of this subsection shall lapse one year from the commencement of this Constitution.

Transitional arrangements: Assets and liabilities

198. (1) All assets, including administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 195(1)(a), (b) or (c), or in a government or administration under the control of such an authority, shall be allocated in accordance with the following rules:

(a) Where any asset is applied or intended to be applied for or in connection with a matter which -

(i) does not fall within a functional area specified in Schedule 6; or

[(ii) does fall within such a functional area but is a matter in respect of which Parliament has overriding legislative competence in terms of section 118.]

such asset shall vest in the national government.

(b) Where any asset is applied or intended to be applied for or in connection with a matter which falls within a functional area specified in Schedule 6 and is a matter in respect of which a provincial legislature has legislative competence, such asset shall, subject to paragraph (c), vest in the appropriate provincial government.

- (c) Where any asset referred to in paragraph (b) is applied or intended to be applied for or in connection with the administration of a particular law or the performance of a particular function in a particular area, such asset shall vest in the government to which the administration of that law is assigned, or is assigned in that particular area, in terms of section 195(5), (6) or (7) or to which the performance of that function is entrusted, or entrusted in the particular area, in terms of section 197.
 - (d) Where any asset cannot in terms of the foregoing rules be classified with reference to a particular matter, law or function, or where there is disagreement between two or more governments, the advice of the Commission on Provincial Government referred to in section 127 shall be obtained, and any dispute shall be resolved with due regard to such advice.
 - (e) Parliament shall be competent to enact a law to facilitate the application of this section and to prescribe guide-lines for the resolution of disputes arising from such application.
- (2) (a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of subsection (1), make such entries or endorsements in or on any relevant register, title deed or other document to register such immovable property in the name of such government.
 - (b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).
 - (3) (a) Subject to paragraph (b) all debts and liabilities -
 - (i) directly linked to an asset vesting in terms of subsection (1) in a provincial government, shall be assumed by such provincial government; and

(ii) other than those referred to in subparagraph (i) shall be assumed by the national government.

(b) Parliament shall be competent to enact a law regulating the re-allocation of debts and liabilities to the national and respective provincial governments, but no such law shall be enacted unless a report and recommendations of the Financial and Fiscal Commission referred to in section 170 has been tabled in and considered by Parliament.

(4) Anything done in terms of this section shall be subject to audit by the Auditor-General.

Transitional arrangements: Judiciary

199. (1) A superior or lower court of law which immediately before the commencement of this Constitution exercised judicial functions in any part of the national territory, shall after such commencement and notwithstanding section 190 continue as such and to perform judicial functions in accordance with the laws applicable to it until it is abolished, consolidated with any other court or otherwise rationalized as contemplated in section 200.

(2) A person who immediately before the commencement of this Constitution was -

(a) the Chief Justice or a judge of appeal of the Appellate Division or a judge president of a provincial division or a judge of a provincial or local division of the Supreme Court of South Africa, or a magistrate or other judicial office-bearer of any lower court under the jurisdiction of the said Supreme Court;

(b) a chief justice, judge of appeal or judge of any superior court in any part of the national territory, other than the Supreme Court of South Africa, or a magistrate or other judicial officer in any lower court under the jurisdiction of any such superior court; or

(c) an attorney-general in the jurisdictional area of any superior court referred to in paragraph (a) or (b), shall after such commencement and

notwithstanding section 190 continue in office subject to this Constitution and the laws relating to such office.

(3) The provisions of section 196(3), (4) and (5) shall apply *mutatis mutandis* in respect of a person referred to in subsection (2).

(4) A person referred to in subsection (2) shall within 30 days of the commencement of this Constitution make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of the person continuing in office as Chief Justice in terms of subsection (2)(a), before any judge of appeal.

(5) All proceedings which immediately before the commencement of this Constitution were pending before any court exercising jurisdiction in accordance with the law in force then, shall be continued and concluded as if this Constitution had not been passed: Provided that if an appeal in such proceedings is noted after such commencement the appeal proceedings shall be subject to the law as altered by this Constitution.

Rationalization of court structures

200. (1) All courts of law referred to in section 199(1) shall as soon as is possible after the commencement of this Constitution be rationalized with a view to establishing the court structures contemplated in Chapter 7.

(2) The provisions of section 197(2) (a) and (3) shall apply *mutatis mutandis* in respect of any rationalization under this section.

Transitional and other arrangements: Educational Institutions

201. (1) The National and provincial governments shall not alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools under existing laws, unless agreement, resulting from *bona fide* negotiations has been reached with such bodies and reasonable notice of implementation has been given.

(2) The National and provincial governments shall not alter the rights, powers and functions of the controlling bodies of universities and technikons under existing laws, unless agreement, resulting from *bona fide* negotiations, has been reached with such bodies.

(3) Should agreement not be reached in terms of subsections (1) and (2), the competence of the national and provincial governments to alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools as well as the controlling bodies of universities and technikons will not be constrained, provided that interested persons and bodies shall have recourse to challenge the exercise of the competence of the said governments under the provisions of this Constitution.

(4) In order to ensure an acceptable quality of education, the responsible government shall provide funds to departmental, community-managed or state-aided primary or secondary schools on an equitable basis.

Continuation of electoral system

202. (1) (a) The President may, subject to the provisions of this Constitution, by proclamation in the *Gazette* call a general election of members of the National Assembly in pursuance of its dissolution, to be held on a date to be determined by the President: Provided that such and any election shall take place in accordance with the provisions of the Electoral Act, 1993.

(b) The Premier of a provincial government may, subject to the provisions of this Constitution, call a general election of members of the legislature of the province concerned, to be held on a date to be determined by the Premier in which event the provisions of subsection (1)(a) shall apply *mutatis mutandis*.

(2) The provisions of this Constitution and of the Electoral Act, 1993, relating to the holding of elections, shall subject to the provisions of this Constitution, remain in force until a further Parliament is elected in accordance with the provisions of Chapter 5 or in accordance with the new constitutional text adopted in terms of chapter 5.

(3) A referendum shall take place in accordance with the provisions of this Constitution and of the *Electoral Act*, 1993 provided that:

- (a) Such referendum shall be limited to ascertaining the opinion of the electorate on a question formulated by the President;
- (b) A referendum may take place in respect of any part of the Republic or any section of the electorate; and
- (c) The Premier of a provincial government may call a referendum in respect of the territory or electorate of the province concerned, in which event the provisions of this subsection (3)(a) shall apply *mutatis mutandis*.

Prescription of penalties

203. Subject to the provisions of this Constitution a competent legislature may prescribe penalties in respect of a contravention of any provision of law which falls within the competence of such legislature.

Definitions

204. (1) In this Constitution;

- (a) **"a decision in consultation with"** a person or body means a decision taken jointly by the persons or bodies concerned, in which each person or body concurs;
- (b) **"a decision after consultation with"** a person or body means a decision taken in good faith by the person or body vested with that power, after consulting and giving serious consideration to the views of the person or body concerned.

(2) In this Constitution, unless the context otherwise indicates -

"Administrator"

"Administration"

"Chief Justice", means the Chief Justice of the Supreme Court of South Africa;

"Constitutional Principles" means the principles set out in Schedule 4;

"Constitutional Assembly" means the National Assembly and the Senate sitting in joint session for the purposes of Chapters 5 and 9 of this Constitution;

"Parliament" means the legislative authority of South Africa consisting of the National Assembly and the Senate;

"Party" means a party registered in terms of the *Electoral Act*, 1993;

"Premier" means

"President" means the President of the Republic of South Africa;

"Republic" means the Republic of South Africa as defined in section 1.

"State President" means the State President under the *Republic of South Africa Constitution Act*, 1983.

(A complete list of definitions will be prepared in due course.)

Short title and commencement

205. (1) This Constitution shall be called the Republic of South Africa Constitution Act, 1993, and shall, save to the extent as may be otherwise required in order that affect may be given to any provision thereof, come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Constitution.

(3) A reference in a provision of this Constitution to the commencement of this Constitution shall, unless the context otherwise indicates, be construed as a reference to the commencement of such provision.

Nkosi sikelel' iAfrika. God seën Suid-Afrika.

Morena boloka sechaba sa heso. May God bless our country.

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika.

SCHEDULE 1

The National Territory and Boundaries and Designation of provinces

SCHEDULE 2

TO BE REVISITED IN CONJUNCTION WITH THE DRAFT ELECTORAL ACT System for the Election of the National Assembly and Provincial Legislatures

Nomination of candidates and compilation of party lists

1. Parties registered in terms of the *Electoral Act*, 1993 shall nominate candidates for election to the National Assembly and provincial legislatures, and compile party lists in accordance with the provisions of the *Electoral Act*, 1993.

Election of 200 members of the National Assembly on national party lists

2. For the purpose of electing the members of the National Assembly on the national party lists contemplated in section 40, such registered parties shall take part in the election by submitting to the chief electoral officer a list of candidates, not exceeding two hundred, in such order as that party may determine.

3. For the purpose of filling the two hundred seats in the National Assembly contemplated in item 2, the total number of votes cast in a general election contemplated in section 40 divided by two hundred and the result shall be the quota of votes per seat.

4. The total number of votes cast in favour of a registered party, shall be divided by the quota of voters per seat and the result shall, subject to item 5, determine the number of seats allocated to that party. The allocation shall be made in terms of the provisions of the *Electoral Act*, 1993.

5. Where the formula set out in item 4 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 4) shall be awarded to the party or parties concerned in sequence of the highest surplus.

Election of 200 members of the National Assembly on regional party lists

6. For the purpose of electing the members of the National Assembly on the regional party lists contemplated in section 40, such parties shall take part in the election by

submitting to the chief electoral officer a list of candidates for each province in which it wishes so to take part, in such order as that party may determine.

7. For the purpose of determining the number of seats of the National Assembly to be filled from regional party lists from a province, the number of votes cast in the province shall be divided by the total number of votes cast nationally and be multiplied by 200. Fractions shall be approximated to the nearest complement.

8. For the purpose of filling the seats in the National Assembly contemplated in item 6, the total number of votes cast in a general election in a province shall be divided by the number of seats to be filled from such province in terms of item 7, and the result shall be the quota of votes per seat for such province.

9. The total number of votes cast in a province in favour of a party shall be divided by the quota of voters per seat for such province and the result shall, subject to item 10, determine the number of seats allocated to that party in respect of such province. The allocation shall be made in terms of the *Electoral Act*, 1993.

10. Where the formula set out in item 9 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 9) shall be awarded to the party or parties concerned in sequence of the highest surplus.

Election of members of provincial legislatures

11. The provisions of items 6, 9 and 10 shall apply *mutatis mutandis* to the election of the members of a provincial legislature contemplated in section 101 of this Constitution: Provided that the quota of votes per seat shall be 50 000.

Manner of casting and counting votes

12. (1) The election of the National Assembly and the election of the provincial legislatures shall be conducted at the same time and in accordance with a single ballot.

(2) Subject to the provisions of item 13, the name of a party that wishes to contest any of the elections referred to in subitem (1), shall appear on the ballot paper.

(3) Each voter shall be entitled to cast one vote only.

(4) The vote contemplated by subitem (3) shall be cast in favour of a party which has entered the election and, subject to the provisions of item 13, such vote shall be counted as a vote in favour of such party -

(a) in respect of the national list of candidates in the election of the National Assembly; and

(b) in respect of the regional list of candidates for the province in which the vote was cast in the election of the National Assembly; and

(c) in respect of the party's list of candidates in the election of the provincial legislature of the province in which the vote was cast.

Declaration of support by one party of another party

13. (1) If a party wishes to contest the election of one or more provincial legislatures, but does not wish to contest the election of the National Assembly, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of the National Assembly, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be a vote in favour of such other party.

(2) If a party wishes to contest the election of the National Assembly, but does not wish to contest the election of one or more of the provincial legislatures, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of a provincial legislature, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the relevant provincial legislature, be deemed to be a vote in favour of such other party.

(3) If a party wishes to contest the election of one or more provincial legislatures but does not wish to contest the election of all provincial legislatures, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of the provincial legislatures that it is not contesting, and if it makes such a declaration, all votes cast in its favour shall, for the

purposes of the elections of the provincial legislatures that it is not contesting, be deemed to be a vote in favour of such other party.

(4) For the purposes of subitems (2) and (3), a party may support different parties in the different provinces.

(5) If a party does not make a declaration in terms of subitems (1), (2) or (3), it shall be deemed to have entered the election of the National Assembly and of all the provincial legislatures.

SCHEDULE 3
Oaths and Affirmations of Office

Oath or Affirmation of the President or Acting President

In the presence of those assembled here today and in full realisation of the high calling I assume office as President/ Acting President in the service of South Africa I, AB do swear/solemnly affirm to be faithful to the Republic of South Africa and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic; to obey, observe, uphold, and maintain the Constitution and all other laws of South Africa; to discharge my duties with all my strengths and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of South Africa and all its people.

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

Oath or Affirmation of a Cabinet and provincial Minister

I, AB do swear/solemnly affirm to be faithful to the Republic of South Africa and to undertake before those assembled to hold my office as Minister with honour and dignity; to respect and uphold the Constitution and all other laws of South Africa; to be a true and faithful counsellor; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; 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 Affirmation of member of Parliament and provincial legislature

I, AB., do swear/solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my duties as a member of the National Assembly/Senate/provincial legislature to the best of my ability.

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

Oath or Affirmation of Office of Judges

I, AB, do hereby swear/solemnly affirm that I will in my capacity as Judge of the Supreme Court/Constitutional Court uphold and protect the Constitution of the Republic of South Africa and the fundamental rights enshrined therein and in so doing administer

justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the laws of the Republic of South Africa.

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

SCHEDULE 4
Constitutional Principles

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

VI

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

VII

The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

VIII

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and in general, proportional representation.

IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

X

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged. This principle shall not derogate from the provisions of Principle III.

XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

XIII

The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

XIV

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XV

Amendments to the Constitution shall require special procedures involving special majorities.

XVI

Government shall be structured at national, provincial and local levels.

XVII

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII.

XVIII

The powers, boundaries and functions of national and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a special majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

XIX

The powers and functions of the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

XX

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need for and promotes national unity, and legitimate provincial autonomy and acknowledges cultural diversity.

XXI

The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
5. The determination of national economic policies, and the power to promote inter-provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
6. provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - 6.1 for the purposes of provincial planning and development and the rendering of services; and
 - 6.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the province.
7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers

should be allocated concurrently to the national government and the provincial governments.

8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or provincial governments.

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXIII

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

XXIV

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

XXV

National and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

[Notwithstanding the provision of any other clause.] The right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, and Auditor-General and Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functions of the public service, as well as the conditions of service of its members, shall be regulated by law.
2. Every member of the public service shall be entitled to a fair pension.

XXXI

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

XXXII

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.

SCHEDULE 5

Procedure for the Election of the President

1. Nominations of candidates shall be called for by the person presiding at the meeting at which the President is to be elected.
2. Every nomination shall be submitted in the form prescribed by the Chief Justice and shall be signed by two members of Parliament and also by the person nominated, unless he or she has in writing signified his or her willingness to accept the nomination.
3. The names of the persons duly nominated as provided for in item 2 shall be announced at the meeting at which the election is to take place by the person presiding thereat, and no debate shall be allowed at the election.
4. If in respect of any election only one nomination has been received, the person presiding at the meeting shall declare the candidate in question to be duly elected.
5. Where more than one candidate is nominated for election, a vote shall be taken by secret ballot, each person present and entitled to vote having one vote and any candidate in whose favour the majority of all the votes cast is recorded, shall be declared duly elected by the person presiding at the meeting.
6.
 - (a) If no candidate obtains a majority of all the votes so cast, the candidate who has received the smallest number of votes shall be eliminated and a further ballot shall be taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast and is declared duly elected.
 - (b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the meeting shall by separate vote, to be repeated as often as may be necessary, determine which of those candidates shall for the purpose of subitem (a) be eliminated.
7. Whenever -
 - (a) only two candidates have been nominated; or

(b) after the elimination of one or more candidates in accordance with the provisions of this Schedule, only two candidates remain,

and there is an equality of votes between those two candidates, the person presiding at the meeting shall at the time the result of the election is announced, fix the time and date at which a further meeting will be held, being a date not more than 7 days thereafter.

8. At the further meeting referred to in item 7, the provisions of this Schedule shall apply as if such further meeting were the first meeting called for the purpose of the election in question.

9. (a) The Chief Justice shall make rules in regard to the procedure to be observed at a meeting at which the President is to be elected, and rules defining the duties of the presiding officer and of any person appointed to assist him and prescribing the manner in which the ballot at any such meeting shall be conducted.

(b) Any such rules shall be made known in such manner as the Chief Justice may consider necessary.

10. The election of the President in terms of section 2(2) shall be held at a time and place to be fixed by the Chief Justice and made known by notice in the *Government Gazette* at least 7 days before the date fixed for such election.

SCHEDULE 6

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at all levels, excluding university and technikon education.

Health services

Housing

Language policy and the regulation of the use of official languages within a province, subject to section 3.

Local government subject to the Provision of Chapter 10

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police subject to the provisions of Chapter 13

Provincial public media

Public Transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

SCHEDULE 7

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 46 of 1959	Representation between the Republic of South Africa and Self-governing Territories Act, 1959	The whole
Act No. 32 of 1961	Provincial Government Act, 1961	The whole
Act No. 22 of 1963	Provincial Councils and Executive Committees Act, 1963	The whole
Act No. 26 of 1969	South Africa Act Amendment Act, 1969	The whole
Act No. 26 of 1970	National States Citizenship Act, 1970	The whole
Act No. 21 of 1971	Self-governing Territories Constitution Act, 1971	The whole
Act No. 65 of 1976	Financial Relations Act, 1976	The whole, except sections 27 and 28
Act No. 100 of 1976	Status of Transkei Act, 1976	The whole
Act No. 30 of 1977	Constitution Amendment Act, 1977	The whole
Act No. 31 of 1977	Financial Relations Amendment Act, 1977	The whole
Act No. 89 of 1977	Status of Bophuthatswana Act, 1977	The whole
Act No. 8 of 1978	Bophuthatswana Border Extension Act, 1978	The whole

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 13 of 1978	National States Citizenship Amendment Act, 1978	The whole
Act No. 36 of 1978	Alteration of Provincial Boundaries Act, 1978	The whole
Act No. 107 of 1979	Status of Venda Act, 1979	The whole
Act No. 2 of 1980	Borders of Particular States Extension Act, 1980	The whole
Act No. 101 of 1980	Republic of South Africa Constitution Fifth Amendment Act, 1980	The whole
Act No. 77 of 1981	Borders of Particular States Extension Amendment Act, 1981	The whole
Act No. 101 of 1981	Republic of South Africa Constitution Second Amendment Act, 1981	The whole
Act No. 102 of 1981	Financial Relations Amendment Act, 1981	The whole
Act No. 110 of 1981	Status of Ciskei Act, 1981	The whole
Act No. 34 of 1982	Financial Relations Amendment, 1982	The whole
Act No. 25 of 1983	Borders of Particular States Extention Amendment Act, 1983	The whole
Act No. 88 of 1983	Provincial Affairs Act, 1983	The whole except section 5.

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 109 of 1983	Borders of Particular States Extension Second Amendment Act, 1983	
The whole	Republic of South Africa Constitution Act, 1983	The whole
Act No. 110 of 1983.		
Act No. 105 of 1984	Constitution Amendment Act, 1984	The whole
No. 114 of 1984	Financial Relations Amendment Act, 1984	The whole
Act No. 26 of 1985	Alteration of Provincial Boundaries Act, 1985	The whole
Act No. 104 of 1985	Constitutional Affairs Amendment Act, 1985	The whole
	Provincial Government Act, 1986	The whole
Act No. 69 of 1986		
Act No. 80 of 1986	Joint Executive Authority for KwaZulu and Natal Act, 1986	The whole
Act No. 112 of 1986.	Borders of Particular States Extension Amendment Act, 1986	The whole
Act No. 32 of 1987	Constitutional Laws Amendment Act, 1987	The whole, except sections 1, 21, 22, 24, 25, 30, 33, 34, 35, and 36
Act No. 43 of 1988	Constitutional Laws Amendment Act, 1988	Sections 10 to 13

Act No. 50 of 1988

Constitution Amendment Act, 1988

The whole

Act No. 59 of 1988

Borders of Particular States Extension
Act, 1988

The whole

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 85 of 1988	National States Constitution Amendment Act, 1988	The whole
Act No. 86 of 1988	Promotion of Constitution Development Act, 1988	The whole
Act No. 42 of 1989	Incorporation of Certain Land in the Republic of South Africa Act, 1989	The whole
No. 71 of 1989	Constitution Fourth Amendment Act, 1989	The whole
Act No. 61 of 1990	Constitution Amendment Act, 1990	The whole
Act No. 111 of 1990	National States Constitution Amendment Act, 1990	The whole
Act No. 59 of 1991	Provincial Matters Amendment Act, 1991	The whole
Act No. 62 of 1991	Financial Relations Amendment Act, 1991	The whole
Act No. 74 of 1991	Joint Executive Authority for KwaZulu and Natal Amendment Act, 1991	The whole
Act No. 146 of 1992	Constitution Second Amendment Act, 1992	The whole
Act No. 149 of 1992	Constitution Amendment Act, 1992	The whole
Act No. 82 of 1993	Constitution Amendment Act, 1993	The whole