JOINT STATEMENT BY THE STATE PRESIDENT, MR F W DE KLERK, LEADER OF THE NATIONAL PARTY, MR N R MANDELA, PRESIDENT OF THE AFRICAN NATIONAL CONGRESS AND CHIEF MINISTER M G BUTHELEZI, PRESIDENT OF THE INKATHA FREEDOM PARTY

Delegations led by the State President, Mr F W de Klerk, Leader of the National Party, Mr N R Mandela, President of the African National Congress and Chief Minister M G Buthelezi, President of the Inkatha Freedom Party, met this morning at the Union Buildings and reached agreement on the attached Memorandum of Agreement.

The Agreement follows intensive discussions between the parties yesterday and during the preceding days. The parties would, in particular, like to extend their warm thanks to Prof W A J Okumu of Kenya who played an important and helpful role in this process.

The parties expressed their satisfaction that the Agreement will substantially contribute to their common goal of creating circumstances which will be conducive to the holding of a free, fair and peaceful election. It will help to ensure much greater inclusivity in the election process and will significantly address the underlying causes of tension and violence, particularly in KwaZulu/Natal and the East Rand.

The repeated the urgent appeal to their followers and to all South Africans which they made after the Skukuza summit on 8 April to end violence, to exercise maximum restraint and to pursue their objectives by peaceful means.

PRETORIA 19 APRIL 1994

MEMORANDUM OF AGREEMENT FOR RECONCILIATION AND PEACE BETWEEN THE INKATHA FREEDOM PARTY/KWAZULU GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN GOVERNMENT/NATIONAL PARTY.

We, the undersigned, pledge ourselves to Peace and Reconciliation in South Africa and agree to commit ourselves to the following:

1. The Inkatha Freedom Party agrees to participate in the April 26-28, 1994 elections for both the National Assembly and Provincial Legislatures.

2. All the undersigned parties reject violence and will therefore do everything in their power to ensure free and fair elections throughout the Republic of South Africa.

3. The undersigned parties agree to recognise and protect the institution, status and role of the constitutional position of the King of the Zulus and the Kingdom of KwaZulu, which institutions shall be provided for

in the Provincial Constitution of KwaZulu/Natal immediately after the holding of the said elections. The 1993 Constitution shall for this purpose be amended before 27 April in accordance with Addendum A.

4. Any outstanding issues in respect of the King of the Zulus and the 1993 Constitution as amended will be addressed by way of international mediation which will commence as soon as possible after the said elections.

5. The South African Government undertakes to place the necessary facilities at the disposal of the Independent Electoral Commission (IEC) as it may require in order to facilitate the full participation of the IFP in the April 26-28, 1994 election.

6. The undersigned parties will facilitate proper provision for:

i) Registration of the IFP
ii) The IFP Candidates list
iii) Marking by voters of ballot papers.

The undersigned parties hereby undertake to abide by the technical arrangements to be made by the Independent Electoral Commission to implement the matters referred to in subparagraphs (i), (ii) and (iii) above in accordance with the details set out in Addendum B.

This agreement shall be implemented with immediate effect.

SIGNED BY:

MANGOSUTHO G BUTHELEZI President: Inkatha Freedom Party and Chief Minister of the KwaZulu Government

STATE PRESIDENT F W DE KLERK South African Government/National Party

PRESIDENT N MANDELA African National Congress

WITNESSED BY: PROF W A J OKUMU

19 April 1994

ADDENDUM A

Amendment of section 160 of Act 200 of 1993.

1. Section 160 of the Constitution is hereby amended by the substitution for the proviso to subsection (3) of the following proviso:

"Provided that a provincial constitution may - (a) provide for legislative and executive structures and procedures different from those provided for in this Constitution in respect of a province; and, (b) where applicable, provide for the institution, role, authority and status of a traditional monarch in the province, and shall make such provision for the Zulu Monarch in the case of the province of KwaZulu/Natal".

Amendment of Schedule 4 to Act 200 of 1993

2. Schedule 4 to the Constitution is hereby amended by the addition of the following paragraph to constitutional principle XIII:

"Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution".

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993

[ASSENTED TO 25 JANUARY 1994] . . . .[DATE OF COMMENCEMENT: 27 APRIL 1994]

(Unless otherwise indicated: see s. 251 (2))

(Afrikaans text signed by the State President)

ACT

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

TABLE OF CONTENTS

CHAPTER 1 7
Constituent and Formal Provisions

CHAPTER 2 9
Citizenship and Franchise

CHAPTER 3 10
Fundamental Rights

CHAPTER 4 17
Parliament
The Adoption of the new Constitution

CHAPTER 6 29
The National Executive

CHAPTER 7 38
The Judicial Authority and the Administration of Justice

CHAPTER 8 46
The Public Protector, Human Rights Commission, Commission on Gender Issues and Restitution of Land Rights

CHAPTER 9 53
Provincial Government

CHAPTER 10 73
Local Government

CHAPTER 11 76
Traditional Authorities

CHAPTER 11A 78
Volkstaat Council

CHAPTER 12 79
Finance

CHAPTER 13 87
Public Service Commission and Public Service

CHAPTER 14 90
Police and Defence

CHAPTER 15 97
General and Transitional Provisions
National Unity and Reconciliation

SCHEDULE 1 117
PART 1
Definitions of Provinces
PART 2
Affected Areas

SCHEDULE 2 125
System for Election of National Assembly and Provincial Legislatures

SCHEDULE 3 134
Oaths of Office and Solemn Affirmations

SCHEDULE 4 136
Constitutional Principles

SCHEDULE 5 142
Procedure for Election of President

SCHEDULE 6 143
Legislative Competences of Provinces

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:

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993

[ASSENTED TO 25 JANUARY 1994] . . . .[DATE OF COMMENCEMENT: 27 APRIL 1994]

CHAPTER 1

Constituent and Formal Provisions

1. Republic of South Africa

(1) The Republic of South Africa shall be one, sovereign state.
(2) The national territory of the Republic shall comprise the areas defined in Part 1 of Schedule 1.

2. National symbols

(1) The national flag of the Republic shall be the flag the design of which is determined by the President by proclamation in the *Gazette*.
(2) The national anthem of the Republic shall be as determined by the President by proclamation in the *Gazette*.
(3) The coat of arms of the Republic and the seal of the Republic under the previous Constitution shall be the national coat of arms of the Republic and the seal of the Republic under this Constitution.

3. Languages

(1) Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu 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 provision shall be made by an Act of Parliament 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 any public administration at the national level of government 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 resolution adopted by a majority of at least two-thirds of all its members, declare 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 powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitution, shall be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in 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 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 any level 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 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) the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and

(f) the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10) *(a)* Provision shall be made by an Act of Parliament 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.

(b) The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.

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

4. Supremacy of the Constitution

(1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.

(2) This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.

CHAPTER 2

Citizenship and Franchise

5. Citizenship

(1) There shall be a South African citizenship.

(2) South African citizenship and the acquisition, loss and restoration of South African citizenship shall, subject to section 20 read with section 33(1), be regulated by an Act of Parliament.

(3) Every person who is a South African citizen shall, subject to this Constitution, be entitled to enjoy all rights, privileges and benefits of South African citizenship, and shall be subject to all duties, obligations and responsibilities of South African citizenship as are accorded or imposed upon him or her in terms of this Constitution or an Act of Parliament. _f

6. The franchise

Every person who is -

(a) (i) a South African citizen; or

(ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;

(b) of or over the age of 18 years; and

(c) not subject to any disqualifications as may be prescribed by law,

shall be entitled to vote in elections of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.

CHAPTER 3

Fundamental Rights

7. Application

(1) This Chapter shall bind all legislative and executive organs of state at all levels of government.

(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 Constitution.

(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) The relief referred to in paragraph *(a)* may be sought 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 seek such relief 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.

8. Equality

(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 subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.

(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.

9. Life

Every person shall have the right to life.

10. Human dignity

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

11. Freedom and security of the person

(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.

12. Servitude and forced labour

No person shall be subject to servitude or forced labour.

13. Privacy

Every person shall have the right to his or her personal privacy, which shall include the right 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.

14. Religion, belief and opinion

(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 religious observances are conducted on an equitable basis and attendance at them is free and voluntary.

(3) Nothing in this Chapter shall preclude legislation recognising -

(a) a system of personal and family law adhered to by persons professing a particular religion; and

(b) the validity of marriages concluded under a system of religious law subject to specified procedures.

15. Freedom of expression

(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.

16. Assembly, demonstration and petition

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

17. Freedom of association

Every person shall have the right to freedom of association.

18. Freedom of movement

Every person shall have the right to freedom of movement anywhere within the national territory.

19. Residence

Every person shall have the right freely to choose his or her place of residence anywhere in the national territory.

20. Citizens' rights

Every citizen shall have the right to enter, remain in and leave the Republic, and no citizen shall without justification be deprived of his or her citizenship.

21. Political rights

(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.

22. Access to court

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

23. Access to information

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 exercise or protection of any of his or her rights.

24. Administrative justice

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.

25. Detained, arrested and accused persons

(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) promptly to be informed, in a language which he or she understands, 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, if the said period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, 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 before 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.

26. Economic activity

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

(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.

27. Labour relations

(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 33(1).

28. Property

(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, to 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.

29. Environment

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

30. Children

(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 interest shall be paramount.

31. Language and culture

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

32. Education

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.

33. Limitation

(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 Constitution, 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 or conferred by common law, customary law or legislation to the extent that they are not inconsistent with 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 Constitution promoting fair employment practices, orderly and equitable collective bargaining and the regulation of 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 2A of the Labour Relations Act, 1956 (Act No. 28 of 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 said Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto.

34. State of emergency and suspension

(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 national 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 taken, including any regulation enacted, in consequence thereof, shall be of force for a period of not more than 21 days, unless it is extended for a period of not longer than three months, or consecutive periods of not 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 taken, including any regulation enacted, 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, including any regulation enacted, 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 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 33(1) and (2).

(6) Where a person is detained under a state of emergency the detention 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 section 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) a detainee shall at any stage after the expiry of a period of 10 days after 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.

35. Interpretation

(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 such law shall be construed as having a meaning in accordance with the said more restricted interpretation.

(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

36. Constitution of Parliament

Parliament shall consist of the National Assembly and the Senate.

37. Legislative authority of Republic

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

38. Duration of Parliament

(1) Parliament as constituted in terms of the first election under this Constitution shall, subject to subsection (2), continue for five years as from the date of the first sitting of the National Assembly under this Constitution.

(2) If during the period referred to in subsection (1) Parliament is dissolved under section 73(9) or 93(1) or (3) *(c)*, the Houses of Parliament as constituted then, shall continue for the period up to the day immediately preceding the commencement of polling for the election of the National Assembly held in pursuance of such dissolution.

(3) Notwithstanding any dissolution of Parliament -

(a) every person who at the date of the dissolution is a member of the National Assembly or the Senate shall remain a member thereof;

(b) the National Assembly and the Senate shall remain competent to perform their functions; and

(c) the President shall be competent to summon Parliament by proclamation in the *Gazette* to an extraordinary sitting for the despatch of urgent business,

during the period for which the Houses of Parliament continue in terms of subsection (2) after the dissolution.

(4) If Parliament is dissolved and a new Parliament is constituted as contemplated in section 39, this section shall apply *mutatis mutandis* in respect of such new Parliament save that the new Parliament shall continue for the unexpired part of the period referred to in subsection (1).

39. Elections

(1) Upon a dissolution of Parliament in terms of section 73(9) or 93(1) or (3) *(c)*, the President shall by proclamation in the *Gazette* -

(a) call an election of the National Assembly, which election shall take place within 90 days after the dissolution of Parliament on a date or dates specified in the proclamation; and

(b) request parties represented in the provincial legislatures to nominate persons as senators for the respective provinces in accordance with section 48(1)*(b)*.

(2) An election referred to in subsection (1) *(a)* shall be held in accordance with the Electoral Act, 1993.

THE NATIONAL ASSEMBLY

40. Composition of National Assembly

(1) The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters as provided for in Schedule 2 and the Electoral Act, 1993.

(2) A person nominated as a candidate for election to the National Assembly on a regional list contemplated in Schedule 2, shall, subject to subsection (3), at the time of the nomination be ordinarily resident in the province in respect of which that regional list applies.

(3) Notwithstanding subsection (2), a regional list may contain the names of candidates who are not ordinarily resident in the province in respect of which that list applies, provided that no such list shall contain the names of more than one such candidate or more than 10 per cent of the total number of candidates the party concerned is entitled to nominate on that list, whichever is the greater number.

(4) For the purposes of this section, a person shall be deemed to be ordinarily resident at the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence, including the place where he or she was previously so ordinarily resident and to which he or she returns regularly after any period of absence.

(5) If a regional list contemplated in subsection (2) contains more names of candidates not ordinarily resident in the province in respect of which that list applies than are permissible under that subsection, the surplus of such names so contained shall be deleted *mutatis mutandis* in accordance with section 22(8) of the Electoral Act, 1993.

41. Speaker and Deputy Speaker of National Assembly

(1) At its first sitting after it has been convened under section 46(2), and after the election of the President, the National Assembly, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the 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 and functions assigned to him or her by this Constitution, an Act of Parliament and the rules and orders.

(4) If the Speaker is absent or for any reason unable to exercise or perform the powers 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) If any of the circumstances described in subsection (4) applies with reference to both the Speaker and the Deputy Speaker, a member of the National Assembly designated in terms of the rules and orders shall act as Speaker while the said circumstances prevail.

(6) The Deputy Speaker or the member designated under subsection (5), while acting as Speaker, may exercise the powers and shall perform the functions vested in the office of Speaker.

(7) The Speaker, the Deputy Speaker or any other member of the National Assembly designated for that purpose in terms of the rules and orders, shall preside over sittings of the National Assembly.

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

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

(10) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly, under the chairpersonship of the Chief Justice or a judge as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the Speaker shall in such event preside at the election of the Deputy Speaker.

42. Qualification for membership of National Assembly

(1) No person shall become or remain a member of the National Assembly unless he or she is a South African citizen and is and remains qualified in terms of section 6 to vote in an election of the National Assembly, or if he or she -

(a) at the time of the first election of the National Assembly held under this Constitution is

serving a sentence of imprisonment of more than 12 months without the option of a fine;

(b) at any time after the promulgation of this Constitution is convicted of an offence in the Republic, or outside the Republic if the conduct constituting such offence would have constituted an offence in the Republic, 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;

(c) is an unrehabilitated insolvent;

(d) is of 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 under the Republic for the purpose of this paragraph, namely -

(i) an Executive Deputy President, a Minister or a Deputy Minister;

(ii) a person in receipt of a pension paid from public funds or from a pension fund aided by public funds;

(iii) a justice of the peace or appraiser; or

(iv) a member of any council, board, committee, commission or similar body established by or under law or a 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) *(b)* no person shall be deemed as having been convicted of an offence until any appeal against the conviction or sentence has been determined, or, if no appeal against the conviction or sentence has been noted, the time for noting such an appeal has expired.

43. Vacation of seats

A member of the National Assembly shall vacate his or her seat if he or she -

(a) ceases to be eligible to be a member of the National Assembly in terms of section 42;

(b) ceases to be a member of the party which nominated him or her as a member of the National Assembly;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary to Parliament;

(d) without having obtained leave in accordance with the rules and orders, absents himself or herself voluntarily from sittings of the National Assembly or any other parliamentary forum of which he or she is a member, for 15 consecutive days on which the National Assembly or any such forum sat; or

(e) becomes a member of the Senate, a provincial legislature or a local government.

44. Filling of vacancies

(1) If a member of the National Assembly vacates his or her seat, the vacancy shall be filled by a person nominated in terms of subsection (2) by the party which nominated the vacating member.

(2) The party entitled in terms of subsection (1) to fill a vacancy shall nominate a person -

(a) whose name appears on that list of candidates of that party, compiled in terms of Schedule 2, from which the vacating member was nominated to the National Assembly; and

(b) who according to the order of preference of the candidates on such list is the next qualified and available person entitled in terms of Schedule 2 to represent that party in the National Assembly.

(3) A nomination in terms of this section shall be submitted in writing to the Speaker.

45. Oath or affirmation by members of National Assembly

Every member of the National Assembly, before taking his or her seat, shall make and subscribe 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 a member nominated under section 44, before the Speaker.

46. Sittings of National Assembly

(1) The National Assembly shall sit at the Houses of Parliament in Cape Town, unless the Speaker, in accordance with the rules and orders and in consultation with the President of the Senate, directs otherwise on the grounds of public interest, security or convenience.

(2) The Chief Justice shall convene the National Assembly within 10 days after an election of the National Assembly.

(3) The National Assembly shall sit during such periods and on such days and during such hours as it may determine: Provided that the President may at any time by proclamation in the *Gazette* summon the National Assembly to an extraordinary sitting for the despatch of urgent business.

47. Quorum

The presence of at least one third or, when a vote is taken on a Bill, of at least one half of all the members of the National Assembly, other than the Speaker or other presiding member, shall be necessary to constitute a meeting of the National Assembly.

THE SENATE

48. Composition of Senate

(1) The Senate shall be composed of 10 senators for each province, nominated by the parties represented in a provincial legislature within 10 days of -

(a) the first sitting of such legislature after an election of the legislature; or

(b) an election of the National Assembly held in pursuance of a dissolution of Parliament.

(2) Each party represented in a provincial legislature shall be entitled to nominate a senator or senators for the relevant province in accordance with the principle of proportional representation as determined by the following formula:

(a) The number of senators each party shall be entitled to nominate, shallsubject to paragraph *(b)* be determined by multiplying the number of seats such party holds in the provincial legislature by 10 and dividing the result by the total number of seats in the legislature plus one.

(b) If the application of paragraph *(a)* yields a surplus not absorbed by the number of senators allocated to that party, such surplus shall compete with similar surpluses accruing to any other party or parties, and any undistributed senatorial seat or seats shall be allocated to the party or parties concerned in sequence of the highest surplus.

(3) A member of a provincial legislature or local government nominated as a senator in terms of this section, shall vacate his or her seat in the provincial legislature or local government upon his or her acceptance of such nomination.

49. President and Deputy President of Senate

(1) At its first sitting after it has been convened under section 53(2), and before proceeding to dispatch any other business, the Senate, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the chairperson, shall elect one of its members to be the President of the Senate, and shall thereafter elect another of its members to be the Deputy President of the Senate.

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

(3) The President of the Senate shall be vested with all the powers and functions assigned to him or

her by this Constitution, an Act of Parliament and the rules and orders.

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

(5) If any of the circumstances described in subsection (4) applies with reference to both the President and the Deputy President of the Senate, a senator designated in terms of the rules and orders shall act as President of the Senate while the said circumstances prevail.

(6) The Deputy President of the Senate or the senator designated under subsection (5), while acting as President of the Senate, may exercise the powers and shall perform the functions vested in the office of President of the Senate.

(7) The President or Deputy President of the Senate or any other senator designated for that purpose in terms of the rules and orders shall preside over sittings of the Senate.

(8) While presiding at a sitting of the Senate, the President or Deputy President of the Senate or other senator presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

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

(10) If the office of President or Deputy President of the Senate becomes vacant, the Senate, under the chairpersonship of the Chief Justice or a judge as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the President of the Senate shall in such event preside at the election of the Deputy President of the Senate.

50. Qualification for membership of Senate

No person shall be qualified to become or remain a senator unless he or she is or remains qualified to become a member of the National Assembly.

51. Vacation of seats by senators and filling of vacancies

(1) A senator shall vacate his or her seat if he or she -

(a) ceases to qualify to be a senator in terms of section 50;

(b) ceases to be a member of the party which nominated him or her as a senator in terms of section 48;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary to Parliament;

(d) without having obtained leave in accordance with the rules and orders, absents himself or herself voluntarily from sittings of the Senate or any other parliamentary forum of which he or she is a member, for 15 consecutive days on which the Senate or any such forum sat; or

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

(2) *(a)* If a senator vacates his or her seat, the vacancy shall be filled by a person nominated by the party which nominated the vacating senator and who is qualified and available to fill the vacancy.

(b) A nomination in terms of this subsection shall be submitted in writing to the President of the Senate.

(3) If a provincial legislature is dissolved, the senators from the province in question shall vacate their seats in the Senate with effect from the date of the first sitting of such legislature after the election of such legislature held in pursuance of such dissolution, whereupon the vacancies shall be filled in terms of section 48(1) *(a)*.

52. Oath or affirmation by senators

Every senator, before taking his or her seat, shall make and subscribe 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 a senator nominated under section 51(2), before the President of the Senate.

53. Sittings of Senate

(1) The Senate shall sit at the Houses of Parliament in Cape Town, unless the President of the Senate, in accordance with the rules and orders and in consultation with the Speaker, directs otherwise on the grounds of public interest, security or convenience.

(2) The Chief Justice shall after an election of the National Assembly convene the Senate as soon as is practically possible, but not later than 30 days after such election.

(3) The Senate shall sit during such periods and on such days and during such hours as it may determine: Provided that the President may at any time by proclamation in the *Gazette* summon the Senate to an extraordinary sitting for the dispatch of urgent business.

54. Quorum

The presence of at least one third or, when a vote is taken on a Bill, of at least one half of all the senators, other than the President of the Senate or other presiding senator, shall be necessary to constitute a meeting of the Senate.

THE NATIONAL ASSEMBLY AND THE SENATE

55. Powers, privileges and immunities of Parliament and benefits of members

(1) Parliament shall have full power to control, regulate and dispose of its internal affairs, and shall have all such other powers, privileges and immunities as may, subject to this Constitution, be prescribed by an Act of Parliament.

(2) Subject to the rules and orders there shall be freedom of speech and debate in or before Parliament and any committee thereof, and such freedom shall not be impeached or questioned in any court.

(3) A member of Parliament shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to Parliament or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to Parliament or any committee thereof.

(4) There shall, subject to section 207(2), be paid out of and as a charge on the National Revenue Fund to a member of the National Assembly or the Senate such remuneration and allowances as may be prescribed by an Act of Parliament.

s55 amended by s1 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994.

56. Penalty for sitting or voting when disqualified by law

Any person who in terms of this Constitution is disqualified to sit as a member of a House and who, while so disqualified and knowing that he or she is so disqualified, sits or votes as a member of a House in question, shall be liable to a penalty determined by the rules and orders for each day on which he or she so sits or votes, which may be recovered for credit of the National Revenue Fund by action in a court of law.

57. Joint sittings of Houses

(1) Whenever necessary the National Assembly and the Senate shall convene in a joint sitting, which shall be presided over by the Speaker, the President of the Senate or any other member of the National Assembly or the Senate as may be determined by the rules and orders.

(2) While presiding at a joint sitting the Speaker, the President of the Senate or the other member presiding, shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

(3) Without derogating from the power of Parliament to regulate its business and proceedings, the President of the Republic may, whenever he or she deems it desirable, request by message to the Speaker and the President of the Senate that a joint sitting of the National Assembly and the Senate be convened.

58. Rules and orders

(1) The National Assembly or the Senate may make rules and orders in connection with the conduct of its business and proceedings, and the National Assembly and the Senate may make joint rules and orders in connection with the conduct of their joint business and proceedings, including rules and orders regulating -

(a) the establishment, constitution, powers and functions, procedures and duration of committees of Parliament;

(b) restrictions on access to such committees;

(c) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the Houses of Parliament; and

(d) the designation of members of the National Assembly and the Senate as presiding officers to preside over sittings of the National Assembly or the Senate or joint sittings of the National Assembly and the Senate, as the case may be, as and when the Speaker or the President of the Senate so requires.

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

59. Ordinary Bills

(1) An ordinary Bill may be introduced in either the National Assembly or the Senate and shall for its passing by Parliament, subject to subsection (2), be required to be adopted by each House.

(2) An ordinary Bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of both Houses and of all the parties represented in Parliament and willing to participate in the joint committee, to consider and report on any proposed amendments to the Bill, whereafter the Bill shall be referred to a joint sitting of both Houses, at which it may be passed with or without amendment by a majority of the total number of members of both Houses.

(3) All Bills, except the new constitutional text and those referred to in sections 60(1), 61 and 62, shall for the purposes of this Constitution be considered to be ordinary Bills.

60. Money Bills

(1) Bills appropriating revenue or moneys or imposing taxation shall be introduced in the National Assembly only.

(2) Bills appropriating revenue or moneys for services provided by the national government shall deal with such appropriation only.

(3) The National Assembly shall not consider any Bill appropriating revenue or moneys unless such Bill was initiated by the Minister responsible for national financial matters, or by any other Minister acting with the concurrence of the said Minister.

(4) The National Assembly shall not pass a Bill referred to in subsection (1) unless it has 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.

(5) 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.

(6) The Senate may not amend any Bill in so far as it appropriates revenue or moneys or imposes taxation.

(7) If the National Assembly passes a Bill imposing taxation or dealing with the appropriation of revenue or moneys and the Senate rejects it or proposes amendments to it or fails to pass it within 30 days after it has been passed by the National Assembly, the Bill shall be referred back to the National Assembly for reconsideration.

(8) The National Assembly may pass a Bill referred to in subsection (7), with or without amendment, and if passed by the National Assembly such Bill shall be deemed to have been passed by Parliament.

61. Bills affecting certain provincial matters

Bills affecting the boundaries or the exercise or performance of the powers and functions of the provinces shall be deemed not to be passed by Parliament unless passed separately by both Houses and, in the case of a Bill, other than a Bill referred to in section 62, affecting the boundaries or the exercise or performance of the powers or functions of a particular province or provinces only, unless also approved by a majority of the senators of the province or provinces in question in the Senate.

62. Bills amending Constitution

(1) Subject to subsection (2) and section 74, a Bill amending this Constitution shall, for its passing by Parliament, be required to be adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses.

(2) No amendment of sections 126 and 144 shall be of any force and effect unless passed separately by both Houses by a majority of at least two-thirds of all the members in each House: Provided that the boundaries and legislative and executive competences of a province shall not be amended without the consent of a relevant provincial legislature.

63. Requisite majorities

Save where otherwise required in this Constitution, all questions before the National Assembly or the Senate or before the National Assembly and the Senate in a joint sitting, shall be determined by a majority of votes cast.

64. Assent to Bills

(1) A Bill duly passed by Parliament in accordance with this Constitution shall be assented to by the President subject to section 82(1) *(b)*.

(2) A Bill referred to in subsection (1) to which the President has assented and a copy of which he or she has signed, shall upon its promulgation be an Act of Parliament.

65. Signature and enrolment of Acts

(1) An Act of Parliament referred to in section 64(2) shall be enrolled of record 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 copies of the Act so enrolled shall be conclusive evidence of the provisions of the Act.

(2) In the case of a conflict between 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 copies of an Act so enrolled, subject to such laws as may be passed by Parliament to protect the safety and durability of the said copies and with due regard to the convenience of the Registrar's staff.

66. Rights and duties of President, Executive Deputy Presidents, Ministers and Deputy Ministers in Houses

The President, an Executive Deputy President, a Minister and a Deputy Minister shall be entitled to sit and to speak in any House and at a joint sitting of the Houses, but may not vote in the House of which he or she is not a member or, if he or she is not a member of any of the Houses, in any House or at a joint sitting of the Houses.

[S. 66 substituted by s. I of Act No. 14 of 1994.]

67. Public access to Parliament

Sittings of the National Assembly or the Senate and joint sittings of the National Assembly and the Senate shall be held in public, and the public, including the media, shall have access to such sittings: Provided that reasonable measures may be taken to regulate such access and to provide for the search and, where appropriate, the refusal of entry or the removal of any person.

CHAPTER 5

The Adoption of the new Constitution

68. Constitution-making Body

(1) The National Assembly and the Senate, sitting jointly for the purposes of this Chapter, shall be the Constitutional Assembly.

(2) The Constitutional Assembly shall draft and adopt a new constitutional text in accordance with this Chapter.

(3) *(a)* The first sitting of the Constitutional Assembly shall be convened by the President of the Senate not later than seven days as from the first sitting of the Senate under this Constitution.

(b) Any subsequent sittings of the Constitutional Assembly shall be convened by the Chairperson of the Constitutional Assembly after consultation with the Speaker and the President of the Senate.

(4) Subject to the rules and orders contemplated in section 70 and save where clearly inappropriate, sections 55 and 56 and the provisions of this Constitution with regard to joint sittings of the National Assembly and the Senate shall apply *mutatis mutandis* in respect of the Constitutional Assembly.

69. Chairperson and Deputy Chairperson

(1) At its first sitting and before proceeding to dispatch any other business, the Constitutional Assembly, with the President of the Senate presiding, shall elect one of the members of the Constitutional Assembly to be the Chairperson and another of its members to be the Deputy Chairperson of the Constitutional Assembly.

(2) The provisions of Schedule 5 shall apply *mutatis mutandis* in respect of the election of the Chairperson and the Deputy Chairperson of the Constitutional Assembly.

(3) The Chairperson shall be vested with all powers and functions assigned to him or her under this Constitution, an Act of Parliament and the rules and orders.

(4) Section 49(4) to (10) shall apply *mutatis mutandis* in respect of the Chairperson and Deputy Chairperson of the Constitutional Assembly, and in any such application references in the said sections to the Senate and a senator shall be construed as references to the Constitutional Assembly and a member of the Constitutional Assembly, respectively.

70. Rules and orders

(1) The Constitutional Assembly may make rules and orders in connection with the conduct of its business and proceedings.

(2) The provisions of section 58 shall apply *mutatis mutandis* in respect of the Constitutional Assembly.

71. Constitutional Principles and certification

(1) A new constitutional text shall -

(a) comply with the Constitutional Principles contained in Schedule 4; and

(b) be passed by the Constitutional Assembly in accordance with this Chapter.

(2) The new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles referred to in subsection (1) *(a)*.

(3) A decision of the Constitutional Court in terms of subsection (2) certifying that the provisions of the new constitutional text comply with the Constitutional Principles, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.

(4) During the course of the proceedings of the Constitutional Assembly any proposed draft of the constitutional text before the Constitutional Assembly, or any part or provision of such text, shall be referred to the Constitutional Court by the Chairperson if petitioned to do so by at least one fifth of all the members of the Constitutional Assembly, in order to obtain an opinion from the Court as to whether such proposed text, or part or provision thereof, would, if passed by the Constitutional Assembly, comply with the Constitutional Principles.

72. Appointment of commissions, committees and bodies

(1) The Constitutional Assembly shall, in addition to appointing committees of its members, be competent to appoint any commissions, technical committees and other advisory bodies to assist it in the performance of its functions.

(2) The Constitutional Assembly shall, subject to subsection (3), appoint an independent panel of seven South African citizens being recognised constitutional experts, not being members of Parliament or any other legislature and not holding office in any political party, to advise it, or the Chairperson, on matters pertaining to its functions, and to perform such other tasks as are provided for in this Constitution.

[Sub-s. (2) substituted by s. 1 of Act No. 24 of 1994

(3) A majority of at least two-thirds of all the members of the Constitutional Assembly shall be required for the appointment of the panel of constitutional experts, and, in the event of such majority not being achieved, a panel of constitutional experts complying with the requirements mentioned in subsection (2) and consisting of a nominee of each party which holds at least 40 seats in the Constitutional Assembly and wishes to make such a nomination, shall be appointed.

73. Adoption of new constitutional text

(1) The Constitutional Assembly shall pass the new constitutional text within two years as from the date of the first sitting of the National Assembly under this Constitution.

(2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.

(3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with subsection (2), but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the panel of constitutional experts referred to in section 72(2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2).

(4) An amended draft text unanimously recommended by the panel of constitutional experts and submitted to the Constitutional Assembly within the said period of 30 days, shall be considered by the Constitutional Assembly, and if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa.

(5) Should the panel of constitutional experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the panel, or should such an amended draft text not be passed by the

Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6).

(6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71(2), be referred by the President for a decision by the electorate by way of a national referendum.

(7) The question put before the electorate in the referendum shall be the acceptance or rejection of the text approved under subsection (5).

(8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.

(9) If the relevant text is not approved in the referendum in accordance with subsection (8), or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1), the President shall dissolve Parliament by proclamation in the *Gazette* within 14 days after the referendum or the expiry of the said period, whereupon an election contemplated in section 39(1) *(a)* shall be held.

(10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election.

(11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 per cent of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 per cent of all the members of the Senate.

(12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply *mutatis mutandis* in respect of the Constitutional Assembly referred to in subsection (10) of this section.

(13) A new constitutional text adopted in terms of this Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa.

74. Amendments relating to this Chapter and Schedule 4

(1) No amendment or repeal of -

(a) this section or the Constitutional Principles set out in Schedule 4; or

(b) any other provision of this Chapter in so far as it relates to -

(i) the Constitutional Principles; or

(ii) the requirement that the new constitutional text shall comply with the Constitutional Principles, or that such text shall be certified by the Constitutional Court as being in compliance therewith,

shall be permissible.

(2) The other provisions of this Chapter may be amended by the Constitutional Assembly by resolution of a majority of at least two-thirds of all its members.

CHAPTER 6

The National Executive

75. Executive authority of the Republic

The executive authority of the Republic with regard to all matters falling within the legislative competence of Parliament shall vest in the President, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution.

76. Head of State

The President shall be the Head of State.

77. Election of President

(1) *(a)* The National Assembly shall at its first sitting after it has been convened in terms of section 46(2) elect one of its members as the President.

(b) The National Assembly and the Senate shall thereafter, as often as it again becomes necessary to elect a President, elect at a joint sitting one of the members of the National Assembly as the President.

(2) *(a)* The Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over any sitting at which an election referred to in subsection (1) takes place.

(b) An election referred to in subsection (1) shall be conducted in accordance with Schedule 5.

(3) The election of a President in terms of subsection (1) *(b)* shall take place at a time and on a date fixed by the Chief Justice: Provided that -

(a) if such an election of a President is occasioned by reason of a dissolution of Parliament, it shall take place within 10 days after the Senate was convened after the election of the National Assembly held in pursuance of such dissolution; or

(b) if such an election of a President is occasioned by reason of a vacancy in the office of President, it shall take place within 30 days after the vacancy arose.

(4) On being elected, the President shall vacate his or her seat in the National Assembly.

(5) During the period in which the President continues in office in terms of section 80(1) *(b)*, he or she shall for the purposes of section 42(1) *(e)* be deemed not to hold an office of profit under the Republic.

78. Oath or affirmation

The President-elect shall, before formally assuming office, make and subscribe 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.

79. Remuneration of President

There shall be paid to the President out of and as a charge on the National Revenue Fund and apart from any privilege which he or she may enjoy, such remuneration and allowances, and upon his or her retirement, or to his or her widow or widower or

dependent or nominee (including his estate) as he or she may elect, on his or her death, such pension and pension benefits, as may be determined from time to time by resolution of Parliament.

[S.79 substituted by s. 1 of Act No. 29 of 1994.]

80. Tenure of office of President

(1) The President elected in terms of section 77(1) *(a)* shall, subject to sections 87 and 93(2), hold office -

(a) for the period terminating on a date five years as from the date of the first sitting of the National Assembly under this Constitution; or

(b) if Parliament is dissolved during such period, for the period until a President has been elected in terms of section 77(1) *(b)* after such dissolution and has assumed office.

(2) A President elected in terms of section 77(1) *(b)* shall, subject to subsection (1) *(b)* of this section and sections 87 and 93(2), hold office for the unexpired part of the period referred to in subsection (1) *(a)* of this section.

81. Responsibilities of President

(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 and uphold the Constitution as the supreme law of the land.

(2) The President shall with dignity provide executive leadership in the interest of national unity in accordance with this Constitution and the law of the Republic.

(3) The President shall not hold any other public office and shall not perform remunerative work outside the duties of his or her office.

82. Powers and functions of President

(1) The President shall be competent to exercise and perform the following powers and functions, namely -

(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;

(d) to refer disputes of a constitutional nature between parties represented in Parliament or between organs of state at any level of government to the Constitutional Court or other appropriate institution, commission or body for resolution;

(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 other 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 national 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 functions contemplated in section 84(5) to an Executive Deputy President;
(d) regarding appointments under subsection (1) *(f)* ; and
(e) before exercising any of the competences referred to in subsection (1) *(g)* to *(k)*.

(3) The President shall exercise and perform all powers and functions assigned to him or her by this Constitution or any other law, except those specified in subsections (1) and (2) or where otherwise expressly or by implication provided in this Constitution, in consultation with the Cabinet: Provided that the Cabinet may delegate its consultation function in terms of this subsection, with reference to any particular power or function of the President, to any Minister or Ministers.

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

(b) The President may -

(i) with the approval of Parliament, declare a state of national defence;
(ii) employ the National Defence Force in accordance with and subject to sections 227 and 228; and
(iii) confer upon members of the National Defence Force permanent commissions and cancel such commissions.

83. Confirmation of executive acts of President

(1) Decisions of the President taken in terms of section 82 shall be expressed in writing under his or her signature.

(2) Any instrument signed by the President in the exercise or performance of a power or function referred to in section 82(3) shall be countersigned by a Minister.

(3) The signature of the President on any instrument shall be confirmed by the seal of the Republic.

84. Executive Deputy Presidents

(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 from among the members of the National Assembly.

(3) On being designated as such, an Executive Deputy President may elect to vacate or not to vacate his or her seat in the National Assembly.

(4) Section 81 shall apply *mutatis mutandis* to an Executive Deputy President.

(5) An Executive Deputy President may exercise the powers and shall perform the functions vested in the office of Executive Deputy President by this Constitution or assigned to him or her by the President.

(6) An Executive Deputy President shall, before formally assuming office, make and subscribe 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.

85. Tenure of office of Executive Deputy Presidents and filling of vacancies

(1) An Executive Deputy President shall, subject to section 87, hold office -

(a) for the period terminating on a date five years as from the date of the first sitting of the National Assembly under this Constitution, unless he or she is before the expiry of such period replaced as Executive Deputy President by the party which designated him or her; or

(b) if Parliament is dissolved during such period, for the period until a President has been elected in terms of section 77(1) *(b)* after such dissolution and has assumed office.

(2) If an Executive Deputy President vacates his or her office, section 84(1) or (2) shall apply *mutatis mutandis* in respect of the filling of the vacancy.

(3) An Executive Deputy President designated to fill a vacancy shall, subject to subsection (1) *(b)* of this section and section 87, hold office for the unexpired part of the period referred to in subsection (1) *(a)* of this section.

86. Acting President

(1) The President shall appoint one of the Executive Deputy Presidents, or if no Executive Deputy President is available, a Minister, to act as President during his or her absence or temporary incapacity.

(2) In designating an Acting President under subsection (1), the President shall take into consideration the exigencies of government and the spirit underlying the concept of a government of national unity.

(3) Should it be necessary that an Acting President be appointed and the President is absent or unable to make such an appointment, or if the office of President is vacant, the other members of the Cabinet shall make such appointment, taking into consideration the exigencies of government and the spirit underlying the concept of a government of national unity.

(3A) *(a)* The person appointed as Acting President shall, subject to paragraph (b), before formally assuming office make and subscribe 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.

(b) An oath or solemn affirmation made and subscribed by a person appointed as Acting President shall for purposes of any subsequent appointment of that person as Acting President during the term of office of a particular President, be deemed to be an oath or solemn declaration made and subscribed by that person also in respect of such subsequent appointment.

[Sub-s. (3A) inserted by s. 2 of Act No. 29 of 1994.1

(4) An Acting President shall while acting as President have all the powers and functions vested in the office of President.

87. Removal from office of President or Executive Deputy President

The President or an Executive Deputy President shall cease to hold office on a resolution adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of the Houses and impeaching the President or such Executive Deputy President on the ground of a serious violation of this Constitution or the other laws of the Republic, or of misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions in accordance with section 81 or 84(4), as the case may be.

88. Cabinet

(1) The Cabinet shall consist of the President, the Executive Deputy Presidents and -

(a) not more than 27 Ministers who are members of Parliament and appointed in terms of subsections (2) to (6); and

(b) not more than one Minister who is not a member of Parliament and appointed in terms of subsection (6A), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties, deems the appointment of such a Minister expedient.

[Sub-s. (1) substituted by s. *2 (a)* of Act No. 14 of 1994.]

(2) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, shall be entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection *(1)* (a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.

[Sub-s. (2) substituted by s. 2 *(b)* of Act No. 14 of 1994.]

(3) Cabinet portfolios shall for the purposes of subsection (2) be allocated to the respective participating parties in accordance with the following formula:

(a) A quota of seats per portfolio shall be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1) *(a)* are to be appointed, plus one.

[Para. (a) substituted by s. 2 *(c)* of Act No. 14 of 1994.]

(b) The result, disregarding third and subsequent decimals, if any, shall be the quota of seats per portfolio.

(c) The number of portfolios to be allocated to a participating party shall be determined by dividing the total number of seats held by such party in the National Assembly by the quota referred to in paragraph (b).

(d) The result shall, subject to paragraph (e), indicate the number of portfolios to be allocated to such party.

(e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, such surplus shall compete with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated shall be allocated to the party or parties concerned in sequence of the highest surplus.

(4) The President shall after consultation with the Executive Deputy Presidents and the leaders of the participating parties-

(a) determine the specific portfolios to be allocated to the respective

participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);

(b) appoint in respect of each such portfolio a member of Parliament who is a member of the party to which that portfolio was allocated under paragraph *(a),* as the Minister responsible for that portfolio;

(c) if it becomes necessary for the purposes of this Constitution or in the interest of good government, vary any determination under paragraph (a) subject to subsection (3);

(d) terminate any appointment under paragraph (b)-

(i) if he or she is requested to do so by the leader of the party of which the Minister in question is a member; or

(ii) if it becomes necessary for the purposes of this Constitution or in the interest of good government; or

(e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.

(5) Subsection (4) shall be implemented in the spirit underlying the concept of a government of national unity, and the President and the other functionaries concerned shall in the implementation of that subsection endeavour to achieve consensus at all times: Provided that if consensus cannot be achieved on-

(a) the exercise of a power referred to in paragraph *(a), (c)* or (d) (ii) of that subsection, the President's decision shall prevail;

(b) the exercise of a power referred to in paragraph *(b), (d)* (i) or *(e)* of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which such person is a member shall prevail; and

(c) the exercise of a power referred to in paragraph (b) *or (e)* of that subsection affecting a person who is a member of the President's party, the President's decision shall prevail.

(6) If any determination of portfolio allocations is varied under subsection (4) *(c)* the affected Ministers shall vacate their portfolios but shall be eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.

(6A) The President shall-

(a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties-

(i) determine a specific portfolio for a Minister referred to in subsection (1) (b) should it become necessary pursuant to a decision of the President under that subsection;

(ii) appoint in respect of such a portfolio a person who is not a member of Parliament, as the Minister responsible for that portfolio;

(iii) fill, if necessary, a vacancy in respect of that portfolio; or

(b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties terminate any appointment under paragraph (a) if it becomes necessary for the purposes of this Constitution or in the interest of good government.

[Sub-s. (6A) inserted by s. 2 *(d)* of Act No. 14 of 1994.]

(7) A Minister shall, before formally assuming office, make and subscribe 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.

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

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

(10) There shall, subject to section 207 (2), be paid out of and as a charge on the National Revenue Fund to an Executive Deputy President and to a Minister such remuneration and allowances as may be prescribed by or determined under an Act of Parliament.

[Sub-s. (10) substituted by s. 2 of Act No. 13 of 1994.]

89. Cabinet procedure

(1) Meetings of the Cabinet shall be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents shall preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit underlying the concept of a government of national unity otherwise dictate.

(2) The Cabinet shall function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

(3) Where an Executive Deputy President presides over a meeting of the Cabinet otherwise than in the capacity of Acting President, a decision in the Cabinet on any matter shall be submitted to the President before its implementation and shall upon its ratification by the President be deemed to be a decision taken in consultation with the Cabinet in accordance with section 82(3).

90. Temporary assignment of Minister's powers and functions to another Minister

Whenever a Minister is absent or for any reason unable to exercise and perform any of the powers and functions assigned to him or her, or whenever a Minister has vacated his or her office and a successor has not yet been appointed, the President may appoint any other Minister to act in the said Minister's stead, either generally or in the exercise or performance of any specific power or function.

91. Transfer of Minister's powers and functions to another Minister

(1) The President may assign the administration of a law which is entrusted to any particular Minister or which entrusts to any particular Minister any power or function, to any other Minister.

(2) Any reference in such a law to a particular Minister as the Minister to whom the administration of such law is entrusted, shall upon the assignment under subsection (1) of its administration to another Minister, be construed as a reference to the latter.

92. Accountability of Ministers and Cabinet

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

(4) If the Minister concerned fails to comply with a requirement of the President under subsection (3), the President may

(a) in the case of a Minister referred to in section 88 (1) *(a)*, after consultation with the Minister and, if the Minister is not a member of the President's party, or is not the leader of a participating party, also after consultation with the leader of such Minister's party; or

(b) in the case of a Minister referred to in section 88 (1) (b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties,

remove the Minister from office.

[Sub-s. (4) substituted by s. 3 of Act No. 14 of 1994.]

93. Votes of no confidence

(1) If Parliament passes a vote of no confidence in the Cabinet, including the President, the President shall, unless he or she resigns, dissolve Parliament and call an election in accordance with section 39.

(2) If Parliament passes a vote of no confidence in the President, but not in the other members of the Cabinet, the President shall resign.

(3) If Parliament passes a vote of no confidence in the Cabinet, excluding the President, the President may -

(a) resign;

(b) reconstitute the Cabinet in accordance with section 88(4); or

(c) dissolve Parliament and call an election in accordance with section 39.

(4) The President shall where required, or where he or she elects, to do so in terms of this section, dissolve Parliament by proclamation in the *Gazette* within 14 days of the relevant vote of no confidence.

94. Appointment of Deputy Ministers

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

(2) A party shall be entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula as that in which the portfolios in the Cabinet are allocated to it.

(3) The provisions of section 88(4) to (6) and (7) to (10) shall apply *mutatis mutandis* in respect of Deputy Ministers, and in such application a reference to -

(a) a Minister or portfolio shall be construed as a reference to a Deputy Minister and a deputy ministerial post, respectively; and

(b) subsection (3) of section 88 shall be construed as a reference to subsection (2) of this section.

[Sub.s. (3) amended by s. 4 of Act No.14 of 1994]

(4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister

(a) such Deputy Minister shall exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to such Minister in terms of any law or otherwise which may, subject to the directions of the President, be assigned to him or her by such Minister; and

(b) any reference in any law to such a Minister shall be construed as including a reference to the Deputy Minister acting in pursuance of an assignment under paragraph *(a)* by the Minister for whom he or she acts.

(5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of his or her office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific power or function.

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

(1) If every party entitled to designate an Executive Deputy President, other than the President's party, fails to do so, the Executive Deputy President of the President's party shall exercise and perform the powers and functions of the Executive Deputy Presidents.

(2) If any party entitled to Cabinet portfolios declines to serve in the Cabinet, such party shall be disregarded in the determination of portfolio allocations in terms of section 88.

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

CHAPTER 7

The Judicial Authority and the Administration of Justice

96. Judicial authority

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

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

(3) No person and no organ of state shall interfere with judicial officers in the performance of their functions.

97. Appointment of Chief Justice and President of Constitutional Court

(1) There shall be a Chief Justice of the Supreme Court of South Africa, who shall, subject to section 104, be appointed by the President in consultation with the Cabinet and after consultation with the Judicial Service Commission.

(2) *(a)* There shall be a President of the Constitutional Court, who shall, subject to section 99, be appointed by the President in consultation with the Cabinet and after consultation with the Chief Justice.

(b) Unless the new constitutional text provides otherwise, the President of the Constitutional Court shall hold office for a non-renewable period of seven years.

98. Constitutional Court and its jurisdiction

(1) There shall be a Constitutional Court consisting of a President and 10 other judges appointed in terms of section 99.

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

(a) any alleged violation or threatened violation of any fundamental right entrenched in Chapter 3;

(b) any dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state;

(c) any inquiry into the constitutionality of any law, including an Act of Parliament, irrespective of whether such law was passed or made before or after the commencement of this Constitution;

(d) any dispute over the constitutionality of any Bill before Parliament or a provincial legislature, subject to subsection (9);

(e) any dispute of a constitutional nature between organs of state at any level of government;

(f) the determination of questions whether any matter falls within its jurisdiction; and

(g) the determination of any other matters as may be entrusted to it by this Constitution or any other law.

(3) The Constitutional Court shall be the only court having jurisdiction over a matter referred to in subsection (2), save where otherwise provided in sections 101(3) and (6) and 103(1) and in an Act of Parliament.

(4) A decision of the Constitutional Court shall bind all persons and all legislative, executive and judicial organs of 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 any other competent authority, within a period specified by the Court, to correct the defect in the law or provision, which shall then remain in force pending correction or the expiry of the period so specified.

(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 a provision thereof -

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

(b) passed after such commencement, shall invalidate everything done or permitted in terms thereof.

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

(9) The Constitutional Court shall exercise jurisdiction in any dispute referred to in subsection (2) *(d)* only at the request of the Speaker of the National Assembly, the President of the Senate or the Speaker of a provincial legislature, who shall make such a request to the Court upon receipt of a petition by at least one-third of all the members of the National Assembly, the Senate or such provincial legislature, as the case may be, requiring him or her to do so.

s98 amended by s3 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

99. Composition of Constitutional Court and appointment of judges of Constitutional Court

(1) Unless the new constitutional text provides otherwise, the judges of the Constitutional Court shall be appointed by the President for a non-renewable period of seven years.

(2) No person shall be qualified to be appointed President or a 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) (i) is a judge of the Supreme Court 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, practised as an advocate or an attorney or lectured in law at a university; or

(ii) 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 the law of the Republic.

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

(4) Subject to subsection (5), six judges of the Constitutional Court shall be appointed by the President in consultation with the Cabinet and after consultation with the President of the Constitutional Court: Provided that not more than two persons may be

appointed from the category of persons referred to in subsection (2)*(c)*(ii).

(5) *(a)* Subject to subsection (6), an appointment or appointments under section 97(2) or subsection (4) or (7) of this section shall only be made from the recommendations of the Judicial Service Commission, and with due regard to its reasons for such recommendations, of not more than three nominees in excess of the number of persons required to be appointed: Provided that in respect of the first appointment after the commencement of this Constitution of the six judges referred to in subsection (4), the Judicial Service Commission shall submit a list of ten nominees.

(b) If the appointing authorities decide not to accept any or some of such recommendations, the Judicial Service Commission shall be informed thereof and be furnished with the reasons therefor.

(c) After having been informed in terms of paragraph *(b)*, the Judicial Service Commission shall, in accordance with paragraph *(a)*, submit further recommendations, whereafter the appointing authorities shall make the appointment or appointments from the recommendations as supplemented in terms of this paragraph.

(d) In submitting its recommendations to the appointing authorities in terms of paragraphs *(a)* and *(c)* the Judicial Service Commission shall have regard to the need to constitute a court which is independent and competent and representative in respect of race and gender.

(6) Subsection (5) shall not apply to the first appointment after the commencement of this Constitution of the President of the Constitutional Court under section 97(2).

(7) Vacancies in the Constitutional Court shall be filled -

(a) in the case of a vacancy in the office of a judge appointed under subsection (3), in accordance with that subsection; and

(b) in the case of a vacancy in the office of a judge appointed under subsection (4), in accordance with that subsection.

(8) Whenever the President of the Constitutional Court is absent or unable to perform his or her functions, or if the office of President of the Constitutional Court becomes vacant, the President may in consultation with the Cabinet and after consultation with the Chief Justice and, if he or she is available, the President of the Constitutional Court, appoint a judge of the Constitutional Court as Acting President of the Constitutional Court for the period of absence or inability of the President of the Constitutional Court or until the vacancy is filled.

[Sub-s. (8) added by s. 3 of Act No. 29 of 1994.]

(9) Whenever a judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the judges of the Constitutional Court arises, the President may, on the recommendation of the Minister responsible for the administration of justice made in consultation with the President of the Constitutional Court and the Chief Justice, appoint any person qualified in terms of subsection (2), as an acting judge of the Constitutional Court for the period of absence or inability of the judge concerned or until the vacancy is filled: Provided that at all times at least four judges of the Constitutional Court, including acting judges, shall be judges who have been appointed from among the judges of the Supreme Court.

[Sub-s. (9) added by s. 3 of Act No. 29 of 1994.]

(10) A person may be appointed as Acting President or acting judge of the Constitutional Court irrespective of whether he or she was appointed on a previous occasion as Acting President or acting judge of the Constitutional Court: Provided that no person shall act as an acting judge for a period exceeding six months.

[Sub-s. (10) added by s. 3 of Act No. 29 of 1994.]

(11) Any appointment made under this section shall be deemed to have been

made also in respect of any period during which the person appointed is necessarily engaged in connection with the disposal of any proceedings in which he or she has participated as a judge of the Constitutional Court and which have not Yet been disposed of at the expiry of the period for which he or she was appointed.

[Sub-s. (11) added by s. 3 of Act No. 29 of 1994.]

100. Engaging the Constitutional Court

(1) The conditions upon which the Constitutional Court may be seized of any matter within its jurisdiction, and all matters relating to the proceedings of and 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 *Gazette*.

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

101. Supreme Court

(1) There shall, subject to sections 241 and 242, be a Supreme Court of South Africa, which shall consist of an Appellate Division and such provincial and local divisions, and with such areas of jurisdiction, as may be prescribed by law.

(2) Subject to this Constitution, the Supreme Court shall have the jurisdiction, including the inherent jurisdiction, vested in the Supreme Court immediately before the commencement of this Constitution, and any further jurisdiction conferred upon it by this Constitution or by any law.

(3) Subject to this Constitution, a provincial or local division of the Supreme Court shall, within its area of jurisdiction, have jurisdiction in respect of the following additional matters, namely -

(a) any alleged violation or threatened violation of any fundamental right entrenched in Chapter 3;

(b) any dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state;

(c) any inquiry into the constitutionality of any law applicable within its area of jurisdiction, other than an Act of Parliament, irrespective of whether such law was passed or made before or after the commencement of this Constitution;

(d) any dispute of a constitutional nature between local governments or between a local and a provincial government;

(e) any dispute over the constitutionality of a Bill before a provincial legislature, subject to section 98(9);

(f) the determination of questions whether any matter falls within its jurisdiction; and

(g) the determination of any other matters as may be entrusted to it by an Act of Parliament.

(4) For the purposes of exercising its jurisdiction under subsection (3), a provincial or local division of the Supreme Court shall have the powers of the Constitutional Court in terms of section 98(5), (6), (7), (8) and (9) relating to the interpretation, protection and enforcement of this Constitution.

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

(6) If the parties to a matter falling outside the additional jurisdiction of a provincial or local division of the Supreme Court in terms of subsection (3), agree thereto, a

provincial or local division shall, notwithstanding any provision to the contrary, have jurisdiction to determine such matter: Provided that a provincial or local division shall not acquire jurisdiction in terms of this subsection with regard to any matter referred to in section 102(12).

s101 amended by s4 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

102. Procedural matters

(1) If, in any matter before a provincial or local division of the Supreme Court, there is an issue which may be decisive for the case, and which falls within the exclusive jurisdiction of the Constitutional Court in terms of section 98(2) and (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 before a local or provincial division, there is any issue other than an issue referred to the Constitutional Court in terms of subsection (1), the provincial or local division shall, if it refers the relevant 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 in terms of subsection (3).

(5) If the Appellate Division is able to dispose of an appeal brought in terms of subsection (4), without dealing with any constitutional issue that has been raised, it shall do so.

(6) If it is necessary for the purposes of disposing of the said 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 make 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 any such appeal has been heard by the Appellate Division.

(8) If any division of the Supreme Court disposes of a matter in which a constitutional issue has been raised and such court is of the opinion that the constitutional issue is 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 issue to the Constitutional Court for a decision.

(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 responsible for the administration of justice shall, at the request of the President of the Constitutional Court, appoint counsel to argue such constitutional issue.

(10) If the validity of a law is in dispute in any matter, and a relevant government is not a party to the proceedings, it shall be entitled to intervene as a party before the court in question, 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 101(3) and which relate to issues of constitutionality shall lie to the Constitutional Court.

(13) If a dispute arises between organs of state (other than a dispute referred to in section 101(3) *(d)*) regarding the question whether or not any executive or administrative act or conduct or any threatened executive or administrative act or conduct of one of those organs is consistent with this Constitution, the organ disputing the validity of the act or conduct may apply to a provincial or local division to refer the question of the validity of such act or conduct to the Constitutional Court for its decision.

(14) If the provincial or local division concerned is of the opinion that the act or conduct or threatened act or conduct referred to in subsection (13) may be unconstitutional, it shall refer the matter to the Constitutional Court.

(15) If evidence is necessary for the purpose of deciding a matter referred to in subsections (13) and (14), 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 (14), shall be appealable to the Constitutional Court.

(17) If, in any matter before a provincial or local division, the only issue raised is a constitutional issue within the exclusive jurisdiction of the Constitutional Court in terms of section 98(2) and (3), a refusal to refer such issue to the Constitutional Court shall be appealable to the Constitutional Court.

103. Other courts

(1) The establishment, jurisdiction, composition and functioning of all other courts shall, subject to sections 241 and 242, be as prescribed by or under a law.

(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 its inconsistency with a provision of this Constitution and the court does not have the competency to enquire into the validity of such a law or provision, 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 interest of justice to do so, he or she may postpone the proceedings to enable the party who has alleged that a relevant law or provision is invalid, to apply to a provincial or local division of the Supreme Court for relief in terms of subsection (4).

(4) If the provincial or local division hearing an application referred to in 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 before the court referred to in subsection (1), and that there is a reasonable prospect that the relevant law or provision will be held to be invalid, and that it is in the interest of justice to do so, the provincial or local division shall -

(a) if the issue raised is within its jurisdiction, deal with such issue itself, and if it is in the exclusive jurisdiction of the Constitutional Court, refer it to the Constitutional Court for its decision after making a finding 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 provincial or local division or the Constitutional Court, as the case may be.

s103 amended by s5 of the Constitution of the Republic of South Africa Third

Amendment Act 13 of 1994

104. Appointment, removal from office and remuneration of judges

(1) Judges of the Supreme Court shall be fit and proper persons appointed by the President acting on the advice of the Judicial Service Commission: Provided that the appointment of acting judges shall be as may be provided for in an Act of Parliament.

(2) Judges of the Constitutional Court and the Supreme Court shall receive such remuneration as may be prescribed by or under law, and their remuneration shall not be reduced during their continuation in office.

(3) Any judge shall, before commencing to perform the functions of his or her office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before any other judge.

(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 praying for such removal.

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

s104 amended by s6 of the Constitution of the Republic of South Africa Act 13 of 1994

105. Judicial Service Commission

(1) There shall be a Judicial Service Commission, which shall, subject to 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 responsible for the administration of justice or his or her nominee;

(e) two practising advocates designated by the advocates' profession;

(f) two practising attorneys designated by the attorneys' profession;

(g) one professor of law designated by the deans of all the law faculties at South African universities;

(h) four senators designated *en bloc* by the Senate by resolution adopted by a majority of at least two-thirds of all its members;

(i) four persons, two 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 104;

(b) to make recommendations regarding the removal from office of judges of the Constitutional Court in terms of section 104(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 four 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.

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

106. Seats of Constitutional Court and Appellate Division

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

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

107. Languages

(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, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished.

108. Attorneys-General

(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 and functions of an attorney-general shall be as prescribed by or under law.

(3) No person shall be appointed as an attorney-general unless he or she is appropriately qualified in terms of a law regulating the appointment of attorneys-general in the Republic.

109. Magistrates Commission

There shall be a Magistrates Commission established by law to ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against magistrates, take 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 victimization or improper influencing of magistrates occurs.

CHAPTER 8

The Public Protector, Human Rights Commission, Commission on Gender Issues and Restitution of Land Rights

THE PUBLIC PROTECTOR

110. Establishment and appointment

(1) There shall be a Public Protector for the Republic.

(2) The President shall, whenever it becomes necessary, appoint as the Public Protector a person -

(a) nominated by a joint committee of the Houses of Parliament composed of one member of each party represented in Parliament and willing to serve on the committee; and

(b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph *(b)*, the joint committee shall nominate another person.

(3) The first appointment of a person as the Public Protector after the commencement of this Constitution shall be made as soon as possible after the first sitting of the Senate under this Constitution.

[Sub.s 3 substituted by s. 7 of Act 13 of 1994 and by s. 4 of Act No. 29 of 1994]

(4) 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 for a period of at least 10 years in the administration of justice, public administration or public finance.

(5) Unless the new constitutional text provides otherwise, the Public Protector shall hold office for a period of seven years.

(6) The remuneration and other terms and conditions of employment of the Public Protector shall be as prescribed by or under an Act of Parliament,

and such remuneration shall not be reduced, nor shall such terms and conditions be adversely altered, during his or her term of office.

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

(8) The Public Protector may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence, determined by a joint committee of the Houses of Parliament, composed as provided in subsection (2) *(a)*, and upon receipt of an address from both the National Assembly and the Senate requesting such removal.

(9) A Public Protector who is the subject of an investigation by a joint committee in terms of subsection (8), may be suspended by the President pending a decision in such investigation.

s110 amended by s7 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

111. Independence and impartiality

(1) The Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.

(2) The Public Protector and the persons appointed in terms of section 113(1) shall have such immunities and privileges as may be assigned to them by or under an Act of Parliament for the purpose of ensuring the independent and impartial exercise and performance of their powers and functions.

(3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with the Public Protector or a person appointed under section 113 in the exercise and performance of his or her powers and functions.

(4) All organs of 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 exercise and performance of his or her powers and functions.

112. Powers and functions

(1) The Public Protector shall, in addition to any powers and functions assigned to him or her by any law, be competent -

(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 government at any level;

(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;

(iii) improper or dishonest act, or omission or corruption, with respect to public money;

(iv) improper or unlawful enrichment, or 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) act or omission by a person in the employ 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;

(ii) advising, where necessary, any complainant regarding appropriate remedies; or

(iii) any other means that may be expedient in the circumstances; or

(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 an investigation, 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 public body or authority.

(2) Nothing in subsection (1) shall be construed as empowering the Public Protector to

investigate the performance of judicial functions by any court of law.

(3) 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, be competent 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.

(4) The Public Protector or any member of his or her staff shall be competent, but not compellable, to answer questions in any proceedings in or before a court of law or 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.

(5) Recourse to, or the exercise and performance of any powers and functions of, the Public Protector shall not oust the jurisdiction of a court of law to hear any matter or cause whatsoever.

(6) The Public Protector shall report in writing on his or her activities to Parliament at least once every year.

113. Staff and expenditure

(1) The Public Protector may appoint, on such terms and conditions of service as may be determined by or under a 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 powers or functions to persons referred to in subsection (1) subject to such conditions as may be determined by or under a law.

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

114. Provincial public protectors

(1) A provincial legislature may, subject to subsections (2) and (3), by law provide for the establishment, appointment, powers and functions of a provincial public protector and for matters in connection therewith.

(2) A provincial law referred to in subsection (1) shall not in any way derogate from the powers and functions of the Public Protector.

(3) A provincial public protector shall be appointed by the Premier of a province in consultation with the Public Protector, provided that the appointment shall be confirmed by resolution of a majority of at least two-thirds of all the members of the provincial legislature.

(4) A provincial public protector shall exercise and perform his or her powers and functions in consultation with the Public Protector, who shall have concurrent jurisdiction in the provinces.

HUMAN RIGHTS COMMISSION

115. Establishment and appointments

(1) There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.

(2) The members of the Commission shall be appointed as provided in subsection (3) and vacancies in the Commission shall be filled accordingly.

(3) The President shall, whenever it becomes necessary, appoint as a member of the Commission a person -

(a) nominated by a joint committee of the Houses of Parliament composed of one member of each party represented in Parliament and willing to participate in the committee; and

(b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph *(b)*, the joint committee shall nominate another person.

(4) The first members of the Commission after the commencement of this Constitution, shall be appointed as soon as possible after the first sitting of the Senate under this Constitution.

(5) A Chairperson and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number.

[*s115 amended by s8 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994 and by s.5 of Act No. 29 of 1994]*

116. Powers and functions

(1) The Commission shall, in addition to any powers and functions assigned to it by law, be competent and be obliged to -

(a) promote the observance of, respect for and the protection of fundamental rights;

(b) develop an awareness of fundamental rights among all people of the Republic;

(c) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and this Constitution, as well as appropriate measures for the further observance of such rights;

(d) undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; and

(e) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights.

(2) If the Commission is of the opinion that any proposed legislation might be contrary to Chapter 3 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.

(3) The Commission shall be competent 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, in so far 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.

117. Staff and expenditure

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

(2) Expenditure incidental to the exercise and performance of the powers and functions of the Commission in terms of this Constitution or any other law shall be defrayed from money appropriated by Parliament.

118. Reports

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

COMMISSION ON GENDER EQUALITY

119. Establishment

(1) There shall be a Commission on Gender Equality, which shall consist of a chairperson and such number of members as may be determined by an Act of Parliament.

(2) The Commission shall consist of persons who are fit and proper for appointment, South African citizens and broadly representative of the South African community.

(3) The object of the Commission shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women.

120. Composition and functioning

The Act of Parliament referred to in section 119 shall provide for the composition, powers, functions and functioning of the Commission on Gender Equality and for all other matters in connection therewith.

s120 amended by s9 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994.

RESTITUTION OF LAND RIGHTS

121. Claims

(1) An Act of Parliament shall provide for matters relating to the restitution of land rights, as envisaged in this section and in sections 122 and 123.

(2) A person or a community shall be entitled to claim restitution of a right in land from the state if -

(a) such person or community was dispossessed of such right at any time after a date to be fixed by the Act referred to in subsection (1); and

(b) such dispossession was effected under or for the purpose of furthering the object of a law which would have been inconsistent with the prohibition

of racial discrimination contained in section 8(2), had that section been in operation at the time of such dispossession.

(3) The date fixed by virtue of subsection (2) *(a)* shall not be a date earlier than 19 June 1913.

(4) *(a)* The provisions of this section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law incorporating by reference that Act, or the provisions of that Act with regard to compensation, if just and equitable compensation as contemplated in section 123(4) was paid in respect of such expropriation.

(b) In this section Expropriation Act, 1975 shall include any expropriation law repealed by that Act.

(5) No claim under this section shall be lodged before the passing of the Act contemplated in subsection (1).

(6) Any claims under subsection (2) shall be subject to such conditions, limitations and exclusions as may be prescribed by such Act, and shall not be justiciable by a court of law unless the claim has been dealt with in terms of section 122 by the Commission established by that section.

122. Commission

(1) The Act contemplated in section 121(1) shall establish a Commission on Restitution of Land Rights, which shall be competent to -

(a) investigate the merits of any claims;

(b) mediate and settle disputes arising from such claims;

(c) draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court; and

(d) exercise and perform any such other powers and functions as may be provided for in the said Act.

(2) The procedures to be followed for dealing with claims in terms of this section shall be as prescribed by or under the said Act.

123. Court orders

(1) Where a claim contemplated in section 121(2) is lodged with a court of law and the land in question is -

(a) in the possession of the state and the state certifies that the restoration of the right in question is feasible, the court may, subject to subsection (4), order the state to restore the relevant right to the claimant; or

(b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (4), order the state to purchase or expropriate such land and restore the relevant right to the claimant.

(2) The court shall not issue an order under subsection (1) *(b)* unless it is just and equitable to do so, taking into account all relevant factors, including the history of the dispossession, the hardship caused, the use to which the property is being put, the history of its acquisition by the owner, the interests of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under subsection (1) *(b)* shall be subject to the payment of compensation calculated in the manner provided for in section 28(3).

(3) If the state certifies that any restoration in terms of subsection (1) *(a)* or any acquisition in terms of subsection (1) *(b)* is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (4), order the state, in lieu of the restoration of the said right -

(a) to grant the claimant an appropriate right in available alternative state-owned land designated by the state to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;

(b) to pay the claimant compensation; or

(c) to grant the claimant any alternative relief.

(4) *(a)* The compensation referred to in subsection (3) shall be determined by the court as being just and equitable, taking into account the circumstances which prevailed at the time of the dispossession and all such other factors as may be prescribed by the Act referred to in section 121(1), including any compensation that was paid upon such dispossession.

(b) If the court grants the claimant the relief contemplated in subsection (1) or (3), it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.

CHAPTER 9

Provincial Government

124. Establishment of provinces

(1) The following provinces are hereby established, which for the purposes of this Constitution, but subject to subsection (2), shall be recognised as the provinces of the Republic:

(a) Eastern Cape;
(b) Eastern Transvaal;
(c) KwaZulu/Natal;
(d) Northern Cape;
(e) Northern Transvaal;
(f) North-West;
(g) Orange Free State;
(h) Pretoria-Witwatersrand-Vereeniging; and
(i) Western Cape:

Provided that Parliament shall at the request of a provincial legislature alter the name of a province in accordance with the request of such legislature.

(2) The areas of the respective provinces shall be as defined in Part 1 of Schedule 1: Provided that the establishment of the Northern Cape as a separate province, the establishment in the area of the Eastern Cape of one province, and the inclusion of the areas specified in paragraphs *(a)* to *(f)* and *(i)* to *(n)* of Part 2 of Schedule 1 within the provinces as defined in Part 1 of Schedule 1, shall be subject to alteration in accordance with this section.

(3) *(a)* A referendum may be held in terms of this section in each of the areas specified in paragraphs *(a)* to *(n)* of Part 2 of Schedule 1 (hereinafter referred to as an affected area) to determine the views of the voters ordinarily resident in such area regarding an issue referred to in subsection (5) or (6).

(b) A referendum referred to in paragraph *(a)* shall be held in an affected area within three months of the lodging with the Secretary to Parliament of a petition signed by persons entitled to vote and ordinarily resident in such area.

(c) The number of signatures on such a petition shall be at least equal in number to such percentage of the votes recorded in terms of subsection (4) in respect of the affected area in question, as may be determined by the Independent Electoral Commission.

(d) The Independent Electoral Commission shall not be dissolved in terms of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), after the first election held under this Constitution until it has made a determination in terms of paragraph *(c)* in respect of all the affected areas.

(e) Such a petition shall be lodged with the Secretary to Parliament within a period of six months of the commencement of this Constitution or a period referred to in subsection (10), whichever period expires first.

(4) In the first election of the National Assembly and the provincial legislatures held under this Constitution, votes cast in each of the affected areas shall be counted separately and recorded for use for the purposes of this section.

(5) Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph *(e), (f), (g)* or *(h)* of Part 2 of Schedule 1, shall be the determination of the views of voters ordinarily resident in such an area, concerning, as the case may be -

(a) the continued inclusion of the area referred to in the said paragraph *(e)* in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of KwaZulu/Natal;

(b) the continued inclusion of the area referred to in the said paragraph *(f)* in the provincial territory of Pretoria-Witwatersrand-Vereeniging, or its

inclusion in the provincial territory of the Eastern Transvaal;

(c) the continued existence of the area referred to in the said paragraph *(g)* as one province, or its division into two separate provinces on either side of the line forming the eastern boundaries of the districts of Venterstad, Steynsburg, Hofmeyr, Tarka, Fort Beaufort, Albany and Bathurst; or

(d) the continued existence of the area referred to in the said paragraph *(h)* as a separate province, or its discontinuance as a separate province, in which event those districts of the said area north of the Orange River shall be included in the provincial territory of the North-West, and those districts south of the Orange River shall be included in the provincial territory of the Western Cape:

Provided that in the case of a referendum regarding an issue referred to in -

(i) paragraphs *(a)* and *(b)* of this subsection, a majority of votes cast shall be required to sanction the inclusion of the areas in question in the provincial territories of KwaZulu/Natal or the Eastern Transvaal, as the case may be;

(ii) paragraph *(c)* of this subsection, a majority of at least 60 per cent of the votes cast in either of the two blocks mentioned in paragraph *(g)* of Part 2 of Schedule 1 shall be required to sanction the division of the said area into two separate provinces; and

(iii) paragraph *(d)* of this subsection, a majority of at least 60 per cent of the votes cast shall be required to sanction the discontinuance of the Northern Cape as a separate province.

(6) Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph *(a), (b), (c), (d), (i), (j), (k), (l), (m)* or *(n)* of Part 2 of Schedule 1, shall be the determination of the views of the majority of the voters ordinarily resident in such an area, concerning -

(a) in the case of the area referred to in the said paragraph *(a)*, the continued inclusion of such area in the provincial territory of the Northern Transvaal, or its inclusion in the provincial territory of the Eastern Transvaal;

(b) in the case of the area referred to in the said paragraph *(b)*, the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the Western Cape;

(c) in the case of the area referred to in the said paragraph *(c)*, the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of the Northern Transvaal;

(d) in the case of the area referred to in the said paragraph *(d)*, the continued inclusion of such area in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of KwaZulu/Natal;

(e) in the case of the area referred to in the said paragraph *(i)*, the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;

(f) in the case of the area referred to in the said paragraph *(j)*, the continued inclusion of such area in the provincial territory of the Orange Free State, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;

(g) in the case of the area referred to in the said paragraph *(k)*, the continued inclusion of such area in the provincial territory of the Western Cape, or its inclusion in the provincial territory of the Northern Cape;

(h) in the case of the area referred to in the said paragraph *(l)*, the continued

inclusion of such area in the provincial territory of KwaZulu/Natal, or its inclusion in the provincial territory of the Eastern Cape;

(i) in the case of the area referred to in the said paragraph *(m)*, the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the North-West; or

(j) in the case of the area referred to in the said paragraph *(n)*, the continued inclusion of such area in the provincial territory of the North-West, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging.

(7) *(a)* The Independent Electoral Commission shall be competent to make regulations or give directions concerning the implementation of this section, including -

(i) the formulation of the question to be put before the electorate in any particular referendum;

(ii) the determination of the sequence of referendums with reference to a province in respect of which more than one petition contemplated in subsection (3) *(e)* or (10) is received;

(iii) the drawing up and registering of party lists for an affected area;

(iv) the identification of persons entitled to vote in a referendum or election held in terms of this section;

(v) procedures relating to the drawing up of petitions for the purposes of this section; and

(vi) any other matters which it considers necessary for such implementation.

(b) This subsection shall come into operation on the date of promulgation of this Constitution.

(8) A party or parties representing a majority of voters in an affected area may within a period of one month of the date of the first election under this Constitution of members of the provincial legislature of the province within which such area falls in terms of Part 1 of Schedule 1, petition the Independent Electoral Commission to publish a notice in terms of subsection (9).

(9) If a petition is lodged with the Independent Electoral Commission in terms of subsection (8), requesting that an affected area be altered as contemplated in subsection (5) or (6), and the Independent Electoral Commission is satisfied that the petition has the support of a party or parties representing a majority of voters in that affected area, it shall forthwith cause to be published in the *Gazette*, notice of the fact that it has received such a petition.

(10) Within five months of the date of publication of a notice referred to in subsection (9) a petition may be lodged with the Secretary to Parliament, calling for a referendum contemplated in subsection (3) to be held in the area in respect of which such notice was published.

(11) If a petition for a referendum as provided for in subsection (10) is lodged with the Secretary to Parliament, the petition lodged with the Independent Electoral Commission under subsection (8) will lapse, and the result of the referendum in respect of such area will be decisive.

(12) If a petition for a referendum as provided for in subsection (10) is not lodged with the Secretary to Parliament within the period referred to in that subsection, the Independent Electoral Commission shall, upon the expiry of that prescribed period, forthwith cause to be published in the *Gazette*, notice of that fact, and the alteration contemplated in the notice published in terms of subsection (9) shall thereupon be implemented in accordance with subsection (13).

(13) *(a)* For the purpose of implementing an alteration in terms of subsection (12), or an alteration pursuant to a referendum held in terms of subsection (3), the Independent Electoral Commission shall, if it considers it necessary to do so as a result of an alteration to be made, give directions concerning -

(i) the establishment of a new provincial legislature or the reconstitution of an existing provincial legislature;
(ii) the holding of an election of a new or reconstituted provincial legislature;
(iii) the allocation of seats within such new or reconstituted provincial legislature; and
(iv) the names of the persons who will become or remain members of such provincial legislature.

(b) The Independent Electoral Commission shall for the purposes of any directions under paragraph *(a)* have regard to -

(i) representations made to it by political parties who will or may be affected by any such directions;
(ii) party lists compiled by parties for the purpose of the election of the provincial legislatures which will be dissolved or reconstituted;
(iii) party lists compiled pursuant to any regulation made or directions given by it in terms of subsection (7);
(iv) the provisions of Schedule 2 (without necessarily being bound thereby in regard to the sequence in which seats are to be awarded or forfeited); and
(v) all other factors which in its opinion are relevant to such directions:

Provided that if it is of the opinion that any particular alteration does not require an existing provincial legislature to be reconstituted, it may direct that notwithstanding such alteration, such provincial legislature shall not be reconstituted.

(c) If a Premier, member of the Executive Council of a province, senator or other officer has been elected, appointed or nominated in terms of this Constitution by the members of any provincial legislature affected by directions given by the Independent Electoral Commission in terms of paragraph *(a)*, the Independent Electoral Commission may also give directions that new elections, appointments or nominations be made, in which event such elections, appointments or nominations shall be carried out in accordance with this Constitution, and within such times as the Independent Electoral Commission may prescribe.

(14) The President shall by proclamation in the *Gazette*, to take effect on such date as may be determined by the Independent Electoral Commission, amend subsection (1) and Schedule 1 to give effect to any alteration made in terms of this section.

(15) Notwithstanding the provisions of section 62, Parliament may by a majority of votes in each House, effect consequential amendments to this Constitution arising out of any alterations to provinces or provincial boundaries, or directions given by the Independent Electoral Commission in terms of this section.

s124 amended by s1 of Constitution of the Republic of South Africa Amendment Act 2 of 1994

PROVINCIAL LEGISLATIVE AUTHORITY

125. Provincial legislature

(1) There shall be a legislature for each province.

(2) The legislative authority of a province shall, subject to this Constitution, vest in the provincial legislature, which shall have the power to make laws for the province in accordance with this Constitution.

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

126. Legislative competence of provinces

(1) A provincial legislature shall be competent, subject to subsections (3) and (4), 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.

(2A) Parliament shall be competent, subject to subsections (3) and (4), to make laws with regard to matters referred to in subsections (1) and (2).

(3) A law passed by a provincial legislature in terms of this Constitution shall prevail over an Act of Parliament which deals with a matter referred to in subsection (1) or (2) except in so far as-

(a) the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation;

(b) the Act of Parliament 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;

(c) the Act of Parliament is necessary to set minimum standards across the nation for the rendering of public services;

(d) the Act of Parliament is necessary for the maintenance of economic unity, the protection of the environment, the promotion of interprovincial 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, or impedes the implementation of national economic policies.

(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 with each other.

(6) 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 or in respect of which an Act of Parliament prevails over a provincial law in terms of subsection (3).

s126 amended by s2 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

127. Composition of provincial legislatures

(1) A provincial legislature shall consist of not fewer than 30 and not more than 100 members elected in accordance with the system of proportional representation of voters provided for in Schedule 2 and the Electoral Act, 1993.

(2) The number of seats in a provincial legislature shall, subject to subsection (1), be determined in accordance with Schedule 2.

(3) The members of a provincial legislature shall be elected from provincial lists of party candidates for the province in question.

128. Duration and dissolution of provincial legislatures

(1) A provincial legislature, as constituted in terms of an election of such legislature under this Constitution, shall, subject to subsection (2), continue for five years as from

the date of such election, at the expiry of which it shall be dissolved.

(2) If during the period referred to in subsection (1) a provincial legislature is dissolved in terms of section 154(1) or (3) *(c)* or 162, the provincial legislature as constituted then, shall continue for the period up to the day immediately preceding the commencement of polling for the election of the provincial legislature held in pursuance of such dissolution.

(3) Notwithstanding any dissolution of a provincial legislature -

(a) every person who at the date of the dissolution is a member of the provincial legislature shall remain a member thereof;

(b) the provincial legislature shall remain competent to perform its functions; and

(c) the Premier of the province shall be competent to summon the provincial legislature by proclamation in the *Provincial Gazette* to an extraordinary sitting for the dispatch of urgent business,

during the period for which the provincial legislature continues in terms of subsection (2) after the dissolution.

129. Elections

(1) If a provincial legislature is dissolved in terms of section 128(1), 154(1) or (3) *(c)* or 162, the Premier of the province shall upon such dissolution, by proclamation in the *Provincial Gazette* call an election of such legislature, which election shall take place within 90 days after the dissolution of the legislature on a date or dates specified in the proclamation.

(2) An election referred to in subsection (1), shall be conducted in accordance with the Electoral Act, 1993.

130. Sittings of provincial legislature

(1) The Secretary of a provincial legislature shall convene such legislature within seven days after an election of such legislature.

(2) The provincial legislature shall sit during such periods and on such days and during such hours as it may determine: Provided that the Premier of a province may at any time by proclamation in the *Provincial Gazette* summon the provincial legislature to an extraordinary sitting for the dispatch of urgent business.

131. Speaker and Deputy Speaker of provincial legislature

(1) At its first sitting after it has been convened under section 130(1), and after the election of the Premier of the province, a provincial legislature with a judge of the Supreme Court designated by the Chief Justice acting as the chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker of such legislature.

(2) The provisions of Schedule 5 and section 41(3) to (10) shall apply *mutatis mutandis* in respect of the Speaker and the Deputy Speaker of a provincial legislature.

132. Qualification for membership of provincial legislatures

(1) No person shall be qualified to become or remain a member of a provincial legislature unless he or she is qualified to become a member of the National Assembly.

(2) A member of a provincial legislature who is elected as the Premier or appointed as a member of the Executive Council of a province shall for the purposes of section 42(1) *(e)* be deemed not to hold an office of profit under the Republic.

(3) The provisions of section 40(2), (3), (4) and (5) shall *mutatis mutandis* apply to a

person nominated as a candidate for election to a provincial legislature, and in any such application a reference in that section to a regional list shall be construed as a reference to a provincial list as contemplated in Schedule 2.

133. Vacation of seats and filling of vacancies

(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 in terms of section 132;

(b) ceases to be a member of the party which nominated him or her as a member of the provincial legislature;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary of the provincial legislature;

(d) absents himself or herself voluntarily from sittings of the provincial legislature for 30 consecutive sitting days, without having obtained the leave of the provincial legislature in accordance with the rules and orders; or

(e) becomes a member of the National Assembly or the Senate.

(2) The provisions of section 44(1) and (2) shall apply *mutatis mutandis* in respect of the filling of vacancies in a provincial legislature, and in any such application a reference to -

(a) the National Assembly shall be construed as a reference to a provincial legislature; and

(b) a list of party candidates shall be construed as a reference to a list referred to in section 127(3).

(3) A nomination in terms of this section shall be submitted in writing to the Speaker of the provincial legislature in question.

134. Oath or affirmation by members

Every member of a provincial legislature, before taking his or her seat, shall make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a member nominated under section 133, before the Speaker of the provincial legislature.

135. Powers, privileges and immunities of provincial legislatures and benefits of members

(1) A provincial legislature shall have full power to control, regulate and dispose of its internal affairs and shall have all such other powers, privileges and immunities as may, subject to this Constitution, be prescribed by a law of such legislature.

(2) Subject to the rules and orders of a provincial legislature there shall be freedom of speech and debate in or before such legislature and any committee thereof, and such freedom shall not be impeached or questioned in any court.

(3) A member of a provincial legislature shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to such legislature or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to such legislature or any committee thereof.

(4) There shall, subject to section 207(2), be paid out of and as a charge on the Provincial Revenue Fund of a province to a member of the legislature of that province such remuneration and allowances as may be prescribed by or determined under a law of the provincial legislature.

s135 amended by s10 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

136. Penalty for sitting or voting when disqualified

Any person who in terms of this Constitution is disqualified to sit as a member of a provincial legislature and who, while so disqualified and knowing that he or she is so disqualified, sits or votes as such a member, shall be liable to a penalty determined by the rules and orders for each day on which he or she so sits or votes, which may be recovered for credit of the Provincial Revenue Fund concerned by action in a court of law.

137. Rules and orders

(1) A provincial legislature may make rules and orders in connection with the conduct of its business and proceedings.
(2) The provisions of section 58 shall apply *mutatis mutandis* in respect of a provincial legislature.

138. Quorum

The presence of at least one third or, when a vote is taken on a Bill, of at least one half of all the members of the provincial legislature other than the Speaker or other presiding member, shall be necessary to constitute a sitting of such legislature.

139. Requisite majorities

Save where otherwise required in this Constitution, all questions before a provincial legislature shall be determined by a majority of votes cast.

140. Assent to Bills

(1) A Bill duly passed by a provincial legislature in accordance with this Constitution shall be assented to by the Premier of the province subject to section 147(1) *(b)*.
(2) A Bill referred to in subsection (1) to which the Premier has assented and a copy of which he or she has signed, shall upon its promulgation be a law of the provincial legislature in question.

141. Signature and enrolment of provincial laws

(1) A law of a provincial legislature referred to in section 140(2) shall be enrolled of record 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 copies of the law so enrolled shall be conclusive evidence of the provisions of such law.
(2) In the case of a conflict between 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 copies of a law so enrolled, subject to such laws as may be passed by Parliament to protect the safety and durability of the said copies and with due regard to the convenience of the Registrar's staff.

142. Public access to provincial legislatures

Sittings of a provincial legislature shall be held in public, and the public, including the

media, shall have access to such sittings: Provided that reasonable measures may be taken to regulate such access, and to provide for the search of and, where appropriate, the refusal of entry or the removal of any person.

143. Administration of provincial legislatures

(1) For the purposes of setting up a provisional administration of a provincial legislature, the Transitional Executive Council shall as soon as possible after the commencement of this Constitution appoint for each provincial legislature a provisional secretary, who shall hold office as Secretary until an appointment is made in terms of subsection (2).

(2) The Executive Council of a province shall after consultation with the Commission on Provincial Government appoint a Secretary and such other staff as may be necessary for the discharge of the work of such legislature.

(3) Persons appointed under this section shall be remunerated out of and as a charge on the Provincial Revenue Fund of the province.

PROVINCIAL EXECUTIVE AUTHORITY

144. Executive authority of provinces

(1) The executive authority of a province shall vest in the Premier of the province, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution.

(2) A province shall have executive authority over all matters in respect of which such province has exercised its legislative competence, matters assigned to it by or under section 235 or any law, and matters delegated to it by or under any law.

145. Election of Premiers

(1) *(a)* The provincial legislature of a province shall at its first sitting after it has been convened in terms of section 130(1), elect one of its members as the Premier of the province.

(b) A provincial legislature shall thereafter, as often as it again becomes necessary to elect a Premier, elect one of its members as the Premier of the province.

(c) The provisions of Schedule 5 shall apply *mutatis mutandis* in respect of the election of the Premier of a province.

(2) A judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over an election referred to in subsection (1).

(3) The election of a Premier in terms of subsection (1) *(b)* shall take place at a time and on a date fixed by the judge so designated: Provided that -

(a) if such election of a Premier is occasioned by reason of a dissolution of the provincial legislature, it shall take place within 14 days after the election of the provincial legislature held in pursuance of such dissolution; or

(b) if such election of a Premier is occasioned by reason of a vacancy in the office of Premier, it shall take place within 30 days after the vacancy arose.

146. Tenure of and removal from office of Premiers

(1) The Premier of a province elected in terms of section 145(1) shall, subject to

subsection (2) and section 154(2), hold office -

(a) for the period referred to in section 128(1); or

(b) if the provincial legislature is dissolved during such period, for the period until such dissolution,

and shall thereafter remain in office until a Premier has been elected in terms of section 145(1) *(b)* after the dissolution and has assumed office.

(2) The Premier of a province shall cease to hold office on a resolution adopted by the provincial legislature by a majority of at least two-thirds of all its members and impeaching the Premier on the ground of a serious violation of this Constitution or the other laws of the Republic or the province in question, or of misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions in accordance with section 147.

147. Responsibilities, powers and functions of Premiers

(1) The Premier of a province shall be responsible for the observance of the provisions of this Constitution and all other laws by the executive of the province, and shall be competent to exercise and perform the following powers and functions, namely -

(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) to appoint commissions of enquiry;

(e) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any other law; and

(f) to proclaim referenda and plebiscites in terms of this Constitution or a provincial law.

(2) The Premier of a province shall exercise and perform all powers and functions assigned to him or her by this Constitution or any other law, except those specified in subsection (1) or where otherwise expressly or by implication provided in this Constitution, in consultation with the Executive Council of the province: Provided that the Executive Council may delegate its consultation function in terms of this subsection, with reference to any particular power or function of the Premier, to any member or members of the Executive Council.

148. Acting Premiers

(1) The Premier of a province shall appoint one of the members of the Executive Council of the province to act as Premier during his or her absence or temporary incapacity.

(2) Should it be necessary that an Acting Premier be appointed and the Premier is absent or unable to make such an appointment, or if the office of Premier is vacant, the other members of the Executive Council shall make such appointment.

(3) An Acting Premier shall while acting as Premier have all the powers and functions vested in the office of Premier.

149. Executive Councils

(1) The Executive Council of a province shall consist of the Premier and not more than 10 members appointed by the Premier in accordance with this section.

(2) A party holding at least 10 per cent of the seats in a provincial legislature and

which has decided to participate in the Executive Council, shall be entitled to be allocated one or more of the 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 participating parties.

(3) Executive Council portfolios shall for the purposes of subsection (2) be allocated *mutatis mutandis* in accordance with the formula set out in paragraphs *(a)* to *(e)* of section 88(3), to the respective participating parties.

(4) The Premier of a province shall after consultation with the leaders of the participating parties -

(a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);

(b) appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph *(a)*, as the member of the Executive Council responsible for that portfolio;

(c) if it becomes necessary for the purposes of this Constitution or in the interest of good government, vary any determination under paragraph *(a)*, subject to subsection (3);

(d) terminate any appointment under paragraph *(b)* -

(i) if he or she is requested to do so by the leader of the party of which the relevant member of the Executive Council is a member; or

(ii) if it becomes necessary for the purposes of this Constitution or in the interest of good government; or

(e) fill when necessary, subject to paragraph *(b)*, a vacancy in the office of a member of the Executive Council.

(5) Subsection (4) shall be implemented in the spirit underlying the concept of a government of national unity, and the Premier and the other functionaries concerned shall for the purposes of subsection (4) endeavour to achieve consensus at all times: Provided that if consensus cannot be achieved on -

(a) the exercise of a power referred to in paragraph *(a)*, *(c)* or *(d)* (ii) of that subsection, the Premier's decision shall prevail;

(b) the exercise of a power referred to in paragraph *(b)*, *(d)* (i) or *(e)* of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member shall prevail; and

(c) the exercise of a power referred to in paragraph *(b)* or *(e)* of that subsection affecting a person who is a member of the Premier's party, the Premier's decision shall prevail.

(6) If any determination of portfolio allocations is varied under subsection (4) *(c)*, the affected members of the Executive Council shall vacate their portfolios but shall be eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.

(7) The Premier or a member of the Executive Council shall, before formally assuming office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before a judge of the Supreme Court designated by the Chief Justice for this purpose.

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

(9) No member of the Executive Council shall use his or her position as such, or directly or indirectly use information entrusted confidentially to him or her in such

capacity, to enrich himself or herself or any other person.

(10) There shall, subject to section 207(2), be paid out of and as a charge on the Provincial Revenue Fund of a province to the Premier and to a member of the Executive Council of such province such remuneration and allowances as may be prescribed by or determined under a law of the provincial legislature

s149 amended by s11 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994.

150. Executive Council procedure

(1) Meetings of the Executive Council shall be presided over by the Premier.

(2) The Executive Council shall function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

151. Temporary assignment of powers and functions to Executive Council members

Whenever a member of an Executive Council of a province is absent or for any reason unable to exercise and perform any of the powers and functions assigned to him or her, or whenever a member of an Executive Council has vacated his or her office and a successor has not yet been appointed, the Premier may appoint any other member of the Council to act in the said member's stead, either generally or in the exercise or performance of any specific power or function.

152. Transfer of powers and functions from one member to another member

(1) The Premier of a province may assign the administration of a law which is entrusted to any particular member of the Executive Council or which entrusts to any particular member of the Council any power or function, to any other member of the Council.

(2) Any reference in such a law to a particular member of the Executive Council as the member to whom the administration of such a law is entrusted, shall upon the assignment under subsection (1) of the administration of such a law to another member of the Council, be construed as a reference to the latter.

153. Accountability of members of Executive Councils

(1) A member of an Executive Council of a province shall be accountable individually both to the Premier and the provincial legislature of the province for the administration of the portfolio allocated to him or her, and all members of an 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 an Executive Council shall administer his or her portfolio in accordance with the policy determined by the Executive Council.

(3) If a member of an Executive Council of a province fails to administer his or her portfolio in accordance with the policy of the Executive Council, the Premier of the province may require the member concerned to bring the administration of the portfolio into conformity with such policy.

(4) If the member concerned fails to comply with a requirement of the Premier under subsection (3), the Premier may, after consultation with the member, and if the member is not a member of the Premier's party, or is not the leader of a participating party, also after consultation with the leader of such member's party, remove the member from office.

154. Votes of no confidence

(1) If a provincial legislature passes a vote of no confidence in the Executive Council, including the Premier, the Premier shall, unless he or she resigns, dissolve such legislature and call an election in accordance with section 129.

(2) If a provincial legislature passes a vote of no confidence in the Premier, but not in the other members of the Executive Council, the Premier shall resign.

(3) If a provincial legislature passes a vote of no confidence in the Executive Council, excluding the Premier, the Premier may -

(a) resign;

(b) reconstitute the Executive Council in accordance with section 149(4); or

(c) dissolve such legislature and call an election in accordance with section 129.

(4) The Premier shall where required, or where he or she elects, to do so in terms of this section, dissolve the provincial legislature by proclamation in the *Provincial Gazette* within 14 days of the vote of no confidence.

PROVINCIAL FINANCE AND FISCAL AFFAIRS

155. Provinces' share of revenue collected nationally

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

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

(a) a percentage, as fixed by an Act of Parliament, of income tax on individuals which is collected nationally;

(b) a percentage, as fixed by an Act of Parliament, of value-added tax or other sales tax which is collected nationally ;

(c) a percentage, as fixed by an Act of Parliament, of any national levy on the sale of fuel;

(d) any transfer duty, collected nationally, on the acquisition, sale or transfer of any property situated within the province concerned; and

(e) any other conditional or unconditional allocations out of national revenue to a province.

(2A) Sections 59(3) and 60 shall not apply to an Act referred to in subsection (2), and such an Act shall be passed by the National Assembly and the Senate sitting separately.

(3) The percentages referred to in paragraphs *(a),(b)* and *(c)* of subsection (2), and the conditions referred to in paragraph *(e)* of that subsection, shall be fixed reasonably in respect of the different provinces after taking into account the national interest and recommendations of the Financial and Fiscal Commission, and all transfers to the provinces shall be effected expeditiously and without any deduction therefrom.

(4) Allocations referred to in subsection (2)*(e)* shall be determined in accordance with an 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 from sources referred to in subsection (2)*(a),(b),(c)* and *(d)*, 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.

s155 amended by s3 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

156. Levying of taxes by provinces

(1) A provincial legislature shall be competent to raise taxes, levies and duties, other than income tax or value-added or other sales tax, and to impose surcharges on taxes, provided that-

(a) it is authorised to do so by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission on the draft text of any such Act have been submitted to and considered by Parliament; and

(b) there is no discrimination against non-residents of that province who are South African citizens.

(1A) Sections 59(3) and 60 shall not apply to an Act referred to in subsection (1), and such an Act shall be passed by the National Assembly and the Senate sitting separately.

(1B) A provincial legislature shall notwithstanding subsection (1) have exclusive competence within its province to impose taxes, levies and duties (excluding income tax or value-added or other sales tax) on -

(a) casinos;

(b) gambling, wagering and lotteries; and

(c) betting.

(2) A provincial legislature shall not be entitled to levy taxes detrimentally affecting national economic policies, inter-provincial commerce or the national mobility of goods, services, capital and labour.

(3) A provincial legislature shall be competent to enact legislation authorising the imposition of user charges: Provided that -

(a) such legislation may only be enacted after consideration by the provincial legislature of any recommendations made by the Financial and Fiscal Commission concerning the criteria according to which such charges should be determined ; and

(b) there is no discrimination against non-residents of that province who are South African citizens.

s156 amended by s4 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

157. Raising of loans by provinces

(1) A province -

(a) shall, subject to subsection (2), not be competent to raise loans for current expenditure; and

(b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.

(1A) Sections 59(3) and 60 shall not apply to an Act referred to in subsection (1) *(b)*, and such an Act shall be passed by the National Assembly and the Senate sitting separately

(2) Loans referred to in subsection (1) *(a)* may be raised for bridging finance during a

fiscal year, subject to the condition that they shall be redeemed within 12 months and subject to such further, reasonable conditions as may be prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.

(3) A province may not guarantee a loan unless -

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

(b) [deleted by s5(d) of Act 2 of 1994]

s157 amended by s5 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

158. Financial allocations by national government

Financial allocations by the national government -

(a) to a provincial or local government, shall be made in terms of an appropriation Act; and

(b) to a local government, shall ordinarily be made through the provincial government of the province in which the local government is situated.

s158 amended by s6 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

159. Provincial Revenue Funds

(1) There is hereby established in the administration of each province a Provincial Revenue Fund, into which shall be paid all revenue collected by or accruing to the provincial government, and all financial allocations referred to in section 158 made by the national government to such a provincial government and to local governments within the province of such a provincial government.

(2) No money may be withdrawn from a Provincial Revenue Fund otherwise than by virtue of an appropriation made in accordance with a law of the provincial legislature concerned.

s159 amended by s7 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

PROVINCIAL CONSTITUTIONS

160. Adoption of provincial constitutions

(1) The provincial legislature shall be entitled to pass a constitution for its province by a resolution of a majority of at least two-thirds of all its members.

(2) A provincial legislature may make such arrangements as it deems appropriate in connection with its proceedings relating to the drafting and consideration of a provincial constitution.

(3) A provincial constitution shall not be inconsistent with a provision of this Constitution, including the Constitutional Principles set out in Schedule 4: Provided that a provincial constitution may-

(a) provide for legislative and executive structures and procedures different from those provided for in this Constitution in respect of a province; and

(b) where applicable, provide for the institution, role, authority and status of a traditional monarch in the province. and shall make such provision for

the Zulu Monarch in the case of the province of KwaZulu/Natal.

(4) The text of a provincial constitution passed by a provincial legislature, or any provision thereof, shall be of no force and effect unless the Constitutional Court has certified that none of its provisions is inconsistent with a provision referred to in subsection (3), subject to the proviso to that subsection.

(5) A decision of the Constitutional Court in terms of subsection (4) certifying that the text of a provincial constitution is not inconsistent with the said provisions, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.

s160 amended by s8 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994 and by s1 of the Constitution of the Republic of South Africa Second Amendment Act 3 of 1994

161. Development of provincial constitutional dispensation

(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 any recommendations of the Commission on Provincial Government and any comments thereon by the respective provincial governments.

(2) Any recommendations of the Commission to the Constitutional Assembly shall include draft provisions for inclusion in the new constitutional text in so far as they relate to matters falling within the ambit of the Commission's object in terms of section 164.

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

(4) Draft provisions recommended by the Commission which are not adopted by the Constitutional Assembly shall lapse, except if the Constitutional Assembly by resolution of a majority of the members present and voting refers the recommended provisions 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*.

162. Election of new provincial governments

A provincial government may at any time after the commencement of a provincial constitution contemplated in section 160 or of the constitutional dispensation contemplated in section 161, petition the Constitutional Assembly to dissolve its provincial legislature and to call an election for the establishment of a new provincial legislature and executive authority in that province.

COMMISSION ON PROVINCIAL GOVERNMENT

163. Establishment of Commission on Provincial Government

There is hereby established a Commission on Provincial Government consisting of not less than 10 and not more than 15 members appointed by the President subject to section 165.

164. Object and functions of Commission

(1) The object of the Commission is to facilitate the establishment of provincial government, and the Commission shall for the achievement of that object be competent -

(a) to advise the Constitutional Assembly on the development of a constitutional dispensation with regard to provincial systems of government;

(b) to advise the national government or a provincial government on the establishment and consolidation of administrative institutions and structures in a province or on any matter arising out of the application of section 124; and

(c) to make recommendations to the national government or a provincial government on the rationalisation of statutory enactments or public sector resources directed at the introduction and maintenance of an effective system of provincial government.

(2) Advice to the Constitutional Assembly in terms of subsection (1) *(a)*, shall include recommendations 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 the provincial governments;

(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 set out in Schedule 4;

(c) historical boundaries, including those set out in Part 1 of Schedule 1, former provincial boundaries, magisterial district boundaries and infrastructures;

(d) administrative considerations, including the availability or non-availability of infrastructures and nodal points for service;

(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; and

(k) cultural and language realities.

165. Constitution of Commission

(1) The members of the Commission shall be appointed by the President within 30 days of the commencement of this Constitution.

(2) Unless the President otherwise determines, the members of the Commission shall be appointed in a full-time capacity.

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

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

(5) A member appointed in a full-time capacity shall not perform or commit himself or herself to perform remunerative work outside his or her functions as a member of the Commission.

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

166. Chairperson and Deputy Chairperson

(1) The President shall designate one of the members of the Commission as the Chairperson and another as the Deputy Chairperson.

(2) *(a)* If the Chairperson is absent or unable to perform his or her functions as chairperson, or when there is a vacancy in the office of Chairperson, the Deputy Chairperson shall act as Chairperson, and if both the Chairperson and the Deputy Chairperson are absent or unable to perform the functions of the Chairperson, the Commission shall elect another member to act as Chairperson.

(b) While acting as Chairperson the Deputy Chairperson or such member may exercise the powers and shall perform the functions of the Chairperson.

167. Vacation of office and filling of vacancies

(1) A member of the Commission shall vacate his or her office if he or she resigns or if he or she becomes disqualified in terms of section 165 to hold office or is removed from office under subsection (2).

(2) A member of the Commission may be removed from office by the President only on the grounds of misbehaviour, incapacity or incompetence established by a judge of the Supreme Court after an enquiry.

(3) If a member of the Commission ceases to hold office, the President may, subject to section 165, appoint a person to fill the vacancy.

168. Meetings of Commission

(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 shall 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.

169. Committees

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

(2) The Commission shall designate one of the members of a 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.

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

(a) delegate any power granted to it by or under section 164 to such a committee; and

(b) authorise such a committee to perform any function assigned to the Commission by section 164.

(4) The Commission shall not be divested of a power so delegated and the performance of a function so authorised, and may amend or withdraw any decision of a committee.

170. Co-option of persons to committees

(1) A committee may co-opt any person to serve on it 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 such matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

171. Remuneration of members of Commission and other persons

Members of the Commission and persons referred to in section 170 who are not in the employment of the state, shall be paid, from moneys appropriated by Parliament for the purpose, such remuneration and allowances as the Minister responsible for national financial affairs may determine.

172. Appointment of staff

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 Public Service Commission, determine the remuneration and conditions of service of staff members who are not public servants seconded to the service of the Commission.

173. Regulations

The President may make regulations -

(a) prescribing procedures in connection with any function of the Commission or a committee thereof;

(b) prohibiting conduct aimed at influencing or attempting to influence the Commission or any committee or member thereof and prescribing penalties for any contravention of such a prohibition; and

(c) prescribing any other matter in connection with the achievement of the object of the Commission

CHAPTER 10

Local Government

174. Establishment and status of local government

(1) Local government shall be established for the residents of areas demarcated by law of a competent authority.

(2) A law referred to in subsection (1) may make provision for categories of metropolitan, urban and rural local governments with differentiated powers, functions and structures according to considerations of demography, economy, 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 or under law, shall be entitled to regulate its affairs.

(4) Parliament or a provincial 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.

(5) Proposed legislation which materially affects the status, powers or functions of local governments or the boundaries of their jurisdictional areas, shall not be introduced in Parliament or a provincial legislature unless it has been published for comment in the *Gazette* or the *Provincial Gazette*, as the case may be, and local governments and interested persons, including organised local government, have been given a reasonable opportunity to make written representations in regard thereto.

175. Powers and functions of local government

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

(2) A local government shall be assigned such powers and functions as may be necessary to provide services for the maintenance and promotion of the well-being of all persons within its area of jurisdiction.

(3) A local government shall, to the extent determined in any applicable law, make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health services, education, housing and security within a safe and healthy environment, provided that such services and amenities can be rendered in a sustainable manner and are financially and physically practicable.

(4) A local government shall have the power to make by-laws not inconsistent with this Constitution or an Act of Parliament or an applicable provincial law.

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

(6) A local government may, in its discretion, by means of a resolution of its council provide for the assignment of specified functions to local bodies or submunicipal entities within its area of jurisdiction as prescribed and regulated by or under law where, in the opinion of the council, such assignment of functions will facilitate or enhance the provision or administration of services, the adherence to municipal bylaws or, more generally, good governance in the public interest: Provided that such assignment of functions

(a) shall not be inconsistent with an Act of Parliament or an applicable provincial law; and

(b) shall not diminish the accountability of such local government.

176. Council resolutions

Matters before the council of a local government pertaining to -

(a) the budget of the local government, shall be decided by a resolution of the council adopted by a majority of at least two-thirds of all its members; and

(b) town planning, shall be decided by a resolution of the council adopted by at least a majority of all its members: Provided that a council may delegate the power to make decisions on matters pertaining to town planning to the executive committee or to a committee appointed for this purpose: Provided further that section 177 shall apply *mutatis mutandis* to the appointment and functioning of a committee appointed for this purpose.

177. Executive committees

A council of a local government shall elect, according to a system of proportional representation as may be prescribed by a law, from among its members, an executive committee to exercise such powers and perform such functions as may be determined by such council: Provided that -

(a) the council shall determine the number of members of and the quorum for the executive committee;

(b) the executive committee shall endeavour to exercise its powers and perform its functions on the basis of consensus among its members; and

(c) if consensus on any matter cannot be achieved, such matter may be decided by the committee by resolution of a majority of at least two-thirds of all its members, or the committee may, if a majority of the committee so decides, submit a report and recommendation (if any) on the matter to the council for a decision.

178. Administration and finance

(1) A 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 such conditions as may be prescribed by law of a competent legislature after taking into consideration any 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 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 174(2).

179. Elections

(1) A local government shall be elected democratically, and such election shall take place in terms of an applicable law and at intervals of not less than three and not more than five years: Provided that the first local government elections after the commencement 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 law referred to in subsection (1).

(3) Subject to section 6, every natural person shall be entitled to vote in an election of a local government if he or she -

(a) is ordinarily resident within the area of jurisdiction of that local government or is under law liable for the payment of property rates, rent, service charges or levies to that local government; and

(b) is registered as a voter on the voters' role of that local government.

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

(5) No person shall be qualified to become or remain a member of a local government if he or she -

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

(b) is a member of the National Assembly or the Senate;

(c) is not qualified to become a member of the National Assembly;

(d) is an employee of a local government (unless, with due regard to the public interest, exemption of this disqualification is given by the Executive Council of the province in which the local government is situated and proof of such exemption accompanies the nomination of such person); or

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

180. Code of conduct

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

CHAPTER 11

Traditional Authorities

181. Recognition of traditional authorities and indigenous law

(1) A traditional authority which observes a system of indigenous law and is recognised by law immediately before the commencement of this Constitution, shall continue as such an authority and continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority.

(2) Indigenous law shall be subject to regulation by law.

182. Traditional authorities and local government

The traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government referred to in Chapter 10, shall *ex officio* be entitled to be a member of that local government, and shall be eligible to be elected to any office of such local government.

183. Provincial House of Traditional Leaders

(1) *(a)* The legislature of each province in which there are traditional authorities and their communities, shall establish a House of Traditional Leaders consisting of representatives elected or nominated by such authorities in the province.

(b) Draft legislation providing, subject to this Chapter, for the establishment, the composition, the election or nomination of representatives, and the powers and functions of a House contemplated in paragraph *(a)*, and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of such a House, shall be introduced in a provincial legislature not later than six months after the election of the first Premier of such province in terms of this Constitution.

(c) The traditional authorities resident in a province shall before the introduction of draft legislation referred to in paragraph *(b)*, be consulted, in a manner determined by resolution of the provincial legislature, to establish their views on the content of such legislation.

(2) *(a)* A House referred to in subsection (1) *(a)*, shall be entitled to advise and make proposals to the provincial legislature or government in respect of matters relating to traditional authorities, indigenous law or the traditions and customs of traditional communities within the province.

(b) Any provincial Bill pertaining to traditional authorities, indigenous law or such traditions and customs, or any other matters having a bearing thereon, shall be referred by the Speaker of the provincial legislature to the House for its comments before the Bill is passed by such legislature.

(c) The House shall, within 30 days as from the date of such referral, indicate by written notification to the provincial legislature its support for or opposition to the Bill, together with any comments it wishes to make.

(d) If the House indicates in terms of paragraph *(c)* that it is opposed to the Bill, the provincial legislature shall not pass the Bill before a period of 30 days as from the date of receipt by the Speaker of such written notification has lapsed.

(e) If the House fails to indicate within the period prescribed by paragraph *(c)* whether it supports or opposes the Bill, the provincial legislature may proceed with the Bill.

184. Council of Traditional Leaders

(1) There is hereby established a Council of Traditional Leaders consisting of a chairperson and 19 representatives elected by traditional authorities in the Republic.

(2) The Chairperson and members of the Council shall be elected by an electoral college constituted by the members of the Houses of Traditional Leaders referred to in section 183.

(3) *(a)* Draft legislation providing, subject to this Chapter, for the composition, the election of representatives and the powers and functions of the Council established by subsection (1), and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of the Council, shall be introduced in Parliament not later than six months as from the commencement of this Constitution.

(b) Section 183(1) *(c)* shall apply *mutatis mutandis* in respect of draft legislation referred to in paragraph *(a)* of this subsection, and in such application a reference therein to a provincial legislature shall be construed as a reference to Parliament.

(4) The Council shall, in addition to any other powers and functions assigned to it by any other law, be competent -

(a) to advise and make recommendations to the national government with regard to any matter pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities anywhere in the Republic, or any other matters having a bearing thereon; and

(b) at the request of the President, to advise him or her on any matter of national interest.

(5) *(a)* Any parliamentary Bill pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities or any other matters having a bearing thereon, shall, after having been passed by the House in which it was introduced but before it is passed by the other House, be referred by the Secretary to Parliament to the Council for its comments.

(b) The Council shall, within 30 days as from the date of such referral, indicate by written notification to the Secretary to Parliament its support for or opposition to the Bill, together with any comments it wishes to make.

(c) If the Council indicates in terms of paragraph *(b)* its opposition to the Bill, the other House shall not pass the Bill before a period of 30 days as from the date of receipt by the said Secretary of such written notification has lapsed.

(d) If the Council fails to indicate within the period prescribed by paragraph *(b)* whether it supports or opposes the Bill, Parliament may proceed with the Bill.

CHAPTER 11A

Volkstaat Council

184A. Provision for establishment of Volkstaat Council

(1) The establishment of a Volkstaat Council is hereby authorised.

(2) The Council shall consist of 20 members elected by members of Parliament who support the establishment of a Volkstaat for those who want it.

(3) The Council shall conduct its affairs according to rules made by the Council.

184B. Functions of Council

(1) The Council shall serve as a constitutional mechanism to enable proponents of the idea of a Volkstaat to constitutionally pursue the establishment of such a Volkstaat, and shall for this purpose be competent

(a) to gather, process and make available information with regard to possible boundaries, powers and functions and legislative, executive and other structures of such a Volkstaat, its suggested constitutional relationship with government at national and provincial level, and any other matter directly relevant to the establishment of such a Volkstaat;

(b) to make feasibility and other relevant studies with regard to the matters referred to in paragraph *(a);*

(c) to submit representations and recommendations to the Constitutional Assembly and the Commission on Provincial Government with regard to the possible establishment of a Volkstaat and any matter in connection therewith; and

(d) to perform such other functions as may be prescribed by an Act of Parliament.

(2) The procedures to be followed by the Council in the performance of its functions under subsection (1), shall be prescribed by an Act of Parliament.

(3) The procedures provided for in this Constitution with regard to the finalisation of provincial boundaries, shall not be construed as precluding the establishment of such a Volkstaat, and in the event of the acceptance of the concept of a Volkstaat, alternative provision shall be made by an Act of Parliament for the finalisation of the boundaries of any affected province or provinces

Chapter 11A inserted by s9 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

CHAPTER 12

Finance

GENERAL FINANCIAL AFFAIRS

185. National Revenue Fund

(1) There is hereby established a National Revenue Fund, into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by an Act of Parliament in accordance with this Constitution: Provided that revenue to which a province is entitled in terms of section 155(2)*(a)*, *(b)*, *(c)* and *(d)* shall form a direct charge against the National Revenue Fund to be credited to the respective Provincial Revenue Funds.

s185 amended by s12 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

186. Annual budget

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

187. Procurement administration

(1) The procurement of goods and services for any level of government shall be regulated by an 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 referred to in subsection (1) shall be fair, public and competitive, and tender boards shall on request give reasons for their decisions to interested parties.

(3) No organ of state and no member of any organ of 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.

188. Guarantees by national government

The national government may not guarantee any provincial or local government loan, unless-

(a) the guarantee complies with the norms and conditions for such a guarantee as set out in an Act of Parliament; and

(b) the Financial and Fiscal Commission has made a recommendation concerning compliance of the guarantee concerned with such norms and conditions.

189. Special pensions

(1) Provision shall be made by an Act of Parliament for the payment of special pensions 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, including 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; or

(b) dependants of such persons.

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

190. Income tax of elected representatives

Without derogating from the Receiver of Revenue's powers and functions, the Receiver of Revenue shall annually assess the income tax returns of all elected representatives at all levels of government.

190A. Pensions of political office-bearers

(1) There shall be paid out of and as a charge on the pension fund referred to in subsection (2) to a political office-bearer upon his or her retirement as a political office-bearer, or to his or her widow or widower or dependent or any other category of persons as may be determined in the rules of such pension fund upon his or her death, such pension and pension benefits as may be determined in terms of the said rules.

(2) A pension fund shall be established for the purposes of this section, after consultation with a committee appointed by Parliament, and such a fund shall be registered in terms of and be subject to the laws governing the registration and control of pension funds in the Republic.

(3) All political office-bearers shall be members of the said pension fund.

(4) Contributions to the said fund by members of the fund shall be made at a rate to be determined in the rules of the fund, and such contributions shall be deducted monthly from the remuneration payable to members as political office-bearers.

(5) Contributions to the said fund by the State shall be made at a rate to be determined by the President, and such contributions shall be paid monthly from the National Revenue Fund and the respective Provincial Revenue Funds, according to whether a member serves at national or provincial level of government.

(6) In this section “political office-bearer” means-

(a) an Executive Deputy President;

(b) a Minister or Deputy Minister;

(c) a member of the National Assembly or the Senate;

(d) the Premier or a member of the Executive Council of province;

(e) a member of a provincial legislature;

(f) a diplomatic representative of the Republic who is not member of the public service, or

(g) any other political office-bearer recognised for purposes of this section by an Act of Parliament.

s190A inserted by s13 of the Constitution of Republic of South Africa Third Amendment Act 13 of 1994

AUDITOR-GENERAL

191. Establishment and appointment

(1) There shall be an Auditor-General for the Republic.

(2) The President shall whenever it becomes necessary appoint as Auditor-General a person-

(a) nominated by a joint committee of the Houses of Parliament, composed of one member of each party represented in Parliament and willing to participate in the committee; and

(b) approved by the National Assembly and the Senate by resolution adopted, without debate, by a majority of at least two-thirds of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph *(b)*, the joint committee shall nominate another person.

(3) 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.

(4) Unless the new constitutional text provides otherwise, the Auditor-General shall be appointed for a period of not less than five years and not more than ten years and shall not thereafter be eligible for re-appointment.

(5) If the Auditor-General is absent or unable to exercise and perform his or her powers and functions, or if the office of Auditor-General is vacant, the highest ranking member of the Auditor-General's staff shall act as Auditor-General until the vacancy is filled, and shall for that purpose have all the powers and functions of the Auditor-General.

(6) The remuneration and other conditions of service of the Auditor-General shall be as prescribed by or under 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 a joint committee of the Houses of Parliament composed as provided for in subsection (2) *(a)*, and upon receipt of a request for such removal made by Parliament in pursuance of a resolution to that effect adopted at a joint sitting of the National Assembly and the Senate.

(10) An Auditor-General who is the subject of an investigation by a joint committee in terms of subsection (9), may be suspended by the President pending a decision in such investigation.

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

192. Independence and impartiality

(1) The Auditor-General shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed under section 194(1) shall have such immunities and privileges as may be assigned to them by or under an Act of Parliament for the purpose of ensuring the independent and impartial exercise and performance of their powers and functions.

(3) No organ of state and no member or employee of an organ of state nor any other

person shall interfere with the Auditor-General or a person appointed under section 194(1) in the exercise or performance of his or her powers or functions.

(4) All organs of 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 exercise and performance of his or her powers and functions.

193. Powers and functions

(1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial level of government, 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 organisation established or constituted by or under any law and of which the accounts and financial statements are required in terms of a law to 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 duties or functions 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 194(1) exercises or performs 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 an Act of Parliament to receive them, and, unless otherwise provided by an Act of Parliament, such reports or a report by the Auditor-General on any other matter shall be submitted to Parliament within seven days after receipt thereof by such authority.

(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.

194. Staff and expenditure

(1) The Auditor-General may appoint, in accordance with a 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, subject to such conditions as may be prescribed by or under a law, delegate any of his or her powers to a person referred to in subsection (1), or authorise such a person to perform any function of the Auditor-General.

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

SOUTH AFRICAN RESERVE BANK

195. Central Bank

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

196. Primary objectives

(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 functions independently, subject only to an Act of Parliament referred to in section 197: Provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

197. Powers and functions

The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks, which powers and functions shall be determined by an Act of Parliament and shall be exercised or performed subject to such conditions as may be prescribed by or under such Act.

FINANCIAL AND FISCAL COMMISSION

198. Establishment

There is hereby established a Financial and Fiscal Commission.

199. Objects and functions

(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 financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;

(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 applicable thereto;

(e) criteria for the allocation of financial and fiscal resources; and

(f) any other matter assigned to the Commission by this Constitution or any other law.

(2) In performing its functions the Commission shall take into consideration, *inter alia*, the provisions of section 155(4) *(b)* and any other provision of this Constitution.

200. Constitution, expertise and impartiality

(1) The Commission shall consist of -

(a) a chairperson and deputy chairperson, appointed by the President in consultation with the Cabinet;

(b) a person designated by each of the various Executive Councils of the provinces, who shall be appointed by the President; and

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

(2) The first appointment of members of the Commission shall be effected within 120 days from the date of commencement of this Constitution.

(3) 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.

(4) *(a)* Unless the new constitutional text provides otherwise, a member of the Commission may be removed from office only by the President and only on account of misconduct, incapacity or incompetence.

(b) The President shall within 14 days after the removal from office of a member of the Commission, notify Parliament and the provincial legislatures by message of such removal and of the reasons therefor.

(5) Vacancies in the Commission shall be filled in accordance with the relevant provisions of this section under which the former member concerned was appointed.

(6) The chairperson and the deputy chairperson shall be appointed for a period of five years, and the other members of the Commission for a period of two years, but shall be eligible for re-appointment.

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

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

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

(10) It shall be an offence to influence or attempt to influence a member of the Commission to act otherwise than in accordance with the provisions of subsection (7).

(11) The chairperson and deputy chairperson -

(a) shall be the only full-time members of the Commission;

(b) shall be the chief executive officer and deputy chief executive officer, respectively, of the Commission.

s200 amended by s14 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994

201. Meetings of Commission

(1) *(a)* 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 shall be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the chairperson.

(b) If both the chairperson and deputy chairperson are absent from a meeting, the members present shall elect one from among their number to act as chairperson.

(2) A quorum for a meeting of the Commission shall be not 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.

202. Committees

(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 a 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 conferred upon it by or under section 199 to such a committee; and

(ii) grant authority that a function assigned to it by or under section 199 may be performed by such a committee.

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

203. Co-option of persons by committees

(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.

204. Remuneration and allowances of members and other persons

Members of the Commission and persons referred to in section 203 who are not in the employment of the state, shall be paid, from money appropriated by Parliament for that purpose, such remuneration and allowances as the Minister responsible for national financial affairs may determine.

205. Appointment of staff

(1) The Commission may appoint staff 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.

206. Regulations

The President may make regulations regarding -

(a) procedures in connection with the performance of any function of the Commission; and

(b) any other matter in connection with the achievement of the objects of the Commission.

COMMISSION ON REMUNERATION OF REPRESENTATIVES

207. Establishment

(1) There shall be established by an Act of Parliament a Commission on Remuneration of Representatives.

(2) The Commission shall make recommendations to Parliament, the provincial legislatures and local governments regarding the nature, extent and conditions of the remuneration and allowances of the members of all elected legislative bodies of the national government and of provincial and local governments, including members of the Provincial Houses of Traditional Leaders and the Council of Traditional Leaders.

208. Composition and functioning

(1) The composition, structure, powers, functions and procedures of the Commission and related matters shall be provided for in the Act referred to in section 207.

(2) Reports by the Commission shall be tabled in Parliament: Provided that the Commission shall report to Parliament on its activities at least once every year.

CHAPTER 13

Public Service Commission and Public Service

PUBLIC SERVICE COMMISSION

209. Establishment

(1) There shall be a Public Service Commission for the Republic, which shall have the powers and functions entrusted to it by this Constitution or by a law of a competent authority.

(2) The Commission shall in respect of the exercise and performance of its powers and functions be accountable to Parliament.

210. Powers and functions

(1) The Commission shall be competent -

(a) to make recommendations, give directions and conduct enquiries with regard to-

(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 in connection 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, to advise the President, a Minister or a member of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by Parliament or a provincial legislature;

(c) to exercise such other powers and perform such other functions as may be entrusted to it by a law of a competent authority; and

(d) subject to any limitation imposed by law, to delegate any of its powers to a member of the Commission or an official in the public service or authorise any such member or official to perform any of its functions.

(2) Until amended by law, the powers and functions of the Commission set out in subsection (1) shall be exercised and performed in accordance with the laws in force at the commencement of this Constitution.

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

(a) such recommendation or direction involves expenditure from public funds and the approval of the treasury for such expenditure 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 in connection with the exercise and the performance of the powers and functions of the Commission in terms of this Constitution or any<-eb;top;j>

other law shall be defrayed from money appropriated by Parliament and from fees raised or money obtained in a manner authorised by an Act of Parliament.

(6) On the recommendation of the Commission the President may assign by proclamation in the *Gazette* any power or function of the Commission to a provincial service commission.

(7) The Commission shall annually submit a report on its activities to Parliament.

211. Composition

(1) *(a)* The Commission shall consist of not fewer than three members and not more than five members appointed by the President, one of whom shall be designated as the Chairperson of the Commission 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 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 particulars of the removal, including the reasons therefor, shall be submitted by the President to Parliament within 14 days after such removal.

(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 such Act shall ensure the independence and impartiality of the Commission and the efficient and effective exercise and performance of its powers and functions.

212. The Public Service

(1) There shall be a public service for the Republic, structured in terms of a 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) promote an efficient public administration 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 and 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 organisational components, and the head of such department or organisational component shall be responsible for the efficient management and administration of his or her department or organisational 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 established 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 a member of a fund, the real value of the accrued benefits of such member of a fund, and his or her beneficiary, as represented by the fund's actuarial liability towards the member or his or her beneficiary, 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.

(8) For the purposes of this section the public service shall include the permanent force of the National Defence Force referred to in section 226(1).

213. Provincial Service Commissions

(1) A provincial legislature may provide by law for a provincial service commission and, subject to norms and standards applying nationally, such commission shall, in respect of public servants employed by the province, be competent -

(a) to make recommendations, give directions and conduct inquiries with regard to -

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

(ii) appointments, promotions, transfers, discharge and other career incidents of such public servants; and

(iii) the promotion of efficiency and effectiveness in departments of the province;

(b) when so requested, to advise the Premier or a member of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by a provincial legislature;

(c) subject to any limitation imposed by a law, to delegate any of its powers to a member of such commission or official in the public service or authorise any such member or official to perform any of its functions; and

(d) to exercise and perform such other powers and functions of the Public Service Commission assigned to it by the President with the approval of the Premier of the province.

(2) The provisions of sections 210(2), (3), (4), (5) and (7) and 211 pertaining to the Public Service Commission, shall *mutatis mutandis* apply to a provincial service commission, except that any reference to an Act of Parliament, Parliament or the President shall be deemed to be a reference to a provincial law, a provincial legislature or the Premier of a province, respectively.

CHAPTER 14

Police and Defence

SOUTH AFRICAN POLICE SERVICE

214. Establishment

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

(2) The Act of Parliament referred to in subsection (1) shall -

(a) subject to sections 216, 217 and 218, provide for the appointment of a Commissioner of the South African Police Service (hereinafter in this Chapter called the National Commissioner) and a Commissioner for each province (hereinafter in this Chapter called a Provincial Commissioner);

(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;

(iii) suspension, dismissal, disciplinary and grievance procedures;

(iv) the 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.

215. Powers and functions

The powers and functions of the Service shall be -

(a) the prevention of crime;

(b) the investigation of any offence or alleged offence;

(c) the maintenance of law and order; and

(d) the preservation of the internal security of the Republic.

216. Minister and National Commissioner

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

(2) *(a)* The President shall, subject to section 236(1) and (2), appoint the National Commissioner.

(b) The National Commissioner shall exercise executive command of the Service, subject to section 219(1) and the directions of the Minister referred to in subsection (1).

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

217. Powers of provinces

(1) The Premier of a province shall charge a member of the Executive Council of the province with responsibility for the performance by the Service in or in regard to that province of the functions set out in section 219(1).

(2) The member of the Executive Council referred to in subsection (1) -

(a) shall approve or veto the appointment of the relevant Provincial Commissioner in terms of section 218(1) *(b)* ; and

(b) may, if the Provincial Commissioner has lost the confidence of the Executive Council, institute appropriate proceedings against the said Commissioner in accordance with a law.

(3) A provincial legislature may pass laws not inconsistent with national legislation regarding the functions of the Service set out in section 219(1).

(4) No provincial law may -

(a) permit lower standards of performance of the functions of the Service than those provided for by an Act of Parliament; or

(b) detract from the rights which citizens have under an Act of Parliament.

218. Responsibilities of National Commissioner

(1) Subject to section 214 and the directions of the Minister referred to in section 216(1), the National Commissioner shall be responsible for -

(a) the maintenance of an impartial, accountable, transparent and efficient police service;

(b) the appointment of provincial commissioners, subject to section 217(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 214(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 of 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 assigned 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 214(1) 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) the establishment of a special task force for high risk operations which require specialised skills; and

(n) subject to section 219, such other functions as -

(i) are necessary to achieve the objectives referred to in section 215; and

[Sub-para. (i) substituted by s. 6 of Act No. 29 of 1994]

(ii) are appropriate for the National Commissioner to take responsibility for.

(2) The National Commissioner may after consultation with the Executive Council of the province concerned assign responsibility for any function set out in this section to a Provincial Commissioner: Provided that the National Commissioner shall ensure that sufficient resources are made available to the Provincial Commissioner for such purpose.

219. Provincial Commissioners

(1) Subject to sections 214 and 218 and the directions of the relevant member of the Executive Council referred to in section 217(1), 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) the promotion, up to the rank of lieutenant-colonel, of members of the Service performing functions in terms of this section.

(2) Subject to sections 214 and 218 and the directions of the National Commissioner, a Provincial Commissioner shall be responsible for -

(a) the maintenance and discipline of the Service in the province concerned;
(b) the recruitment of members of the Service responsible for the functions set out in subsection (1);
[Para. (b) substituted by s. 7 of Act No. 29 of 1994]
(c) such other functions as may be assigned to him or her by the National Commissioner under section 218(2); and
(d) subject to such procedures or mechanisms as may be established by the Board of Commissioners referred to in section 220(2), the transfer of members of the Service under his or her command to or from positions outside his or her jurisdiction.

220. Co-ordination and co-operation

(1) A committee consisting of the Minister referred to in section 216(1) and the respective members of the Executive Councils referred to in section 217(1) shall be established to ensure the effective co-ordination of the Service and effective co-operation between the various Commissioners.

(2) The Act referred to in section 214(1) shall provide for the appointment of a Board of Commissioners, consisting of the National Commissioner and the Provincial Commissioners and presided over by the National Commissioner or his or her nominee, in order to promote co-operation and co-ordination in the Service.

221. Local policing

(1) The Act referred to in section 214(1) shall provide for the establishment of community-police forums in respect of police stations.

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

(a) the promotion of accountability of the Service to local communities and co-operation 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 concerned.

(3) The Act referred to in section 214(1) shall make provision for the establishment by any local government of a municipal or metropolitan police service: Provided that -

(a) such a police service may only be established with the consent of the relevant member of the Executive Council of the province referred to in section 217(1);
(b) the powers of such a police service shall be limited to crime prevention and the enforcement of municipal and metropolitan by-laws;
(c) the said member of the Executive Council of the province shall, subject to paragraph *(b)* and the provisions of the said Act, determine the powers and functions of such a police service; and
(d) the said Act shall provide that its provisions shall, as far as practicable, apply *mutatis mutandis* to any such police service.

222. Independent complaints mechanism

There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner.

223. Acts of members outside their territorial jurisdiction

(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 relevant powers of the members of the Service to enable them to perform their functions outside their area of provincial jurisdiction.

NATIONAL DEFENCE FORCE

224. Establishment of National Defence Force

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

(2) The National Defence Force shall at its establishment consist of all members of -

(a) the South African Defence Force;
(b) any defence force of any area forming part of the national territory; and
(c) any armed force as defined in section 1 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993),

and whose names, at the commencement of this Constitution, are included in a certified personnel register referred to in section 16(3) or (9) of the said Act: Provided that this subsection shall not apply to members of any such defence or armed force if the political

organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did not take part in the first election of the National Assembly and the provincial legislatures under this Constitution.

(3) Save for the National Defence Force, no other armed force or military force or armed organisation or service may be established in or for the Republic other than -

(a) as provided for in this Constitution;

(b) a force established by or under an 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.

225. Chief of National Defence Force

Subject to section 236(1) and (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 responsible for defence and, during a state of national defence, of the President.

226. Members of National Defence Force

(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 as provided for by an 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 as provided for by an Act of Parliament.

(4) The National Defence Force shall be established in such a manner that it will provide a balanced, modern and technologically advanced military force, capable of executing its functions in terms of this Constitution.

(5) All members of the National Defence Force shall be properly trained in order to comply with international standards of competency.

(6) No member of the permanent 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 on armed conflict binding on the Republic.

(8) Provision shall be made by an Act of Parliament for the payment of adequate compensation to -

(a) a member of the National Defence Force who suffers loss due to physical or mental disability sustained in the execution of his or her duties as such a member; and

(b) the immediate dependants of a member of the National Defence Force who suffer loss due to the death or physical or mental disability of such a member resulting from the execution of his or her duties as such a member.

227. Functions of National Defence Force

(1) The National Defence Force may, subject to this Constitution, 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) 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 a 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) exercise its powers and perform its functions 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 this Constitution and any law;

(b) exercise its powers and perform its functions 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 exercise or performance of its powers and functions.

(3) The employment for service, training, organisation and deployment of the National Defence Force shall be effected in accordance with the requirements of subsection (2).

228. Accountability

(1) The Minister responsible for defence shall be accountable to Parliament for the National Defence Force.

(2) Parliament shall annually approve a budget for the defence of the Republic.

(3) *(a)* A joint standing committee of Parliament on defence shall be established, consisting of members of all political parties holding more than 10 seats in the National Assembly and willing to participate in the committee.

(b) The total membership of the committee shall be as determined by or under the rules and orders.

(c) Such a party shall be entitled to designate a member or members on the committee in accordance with the principle of proportional representation and as determined in accordance with the following formula:

(i) A quota of seats per member of the committee shall be determined by dividing the total number of seats in the National Assembly held jointly by all the parties referred to in paragraph *(a)* by the total number of members of the committee plus one.
(ii) The result, disregarding third and subsequent decimals, if any, shall be the quota of seats per member.
(iii) The number of members that a participating party shall be entitled to designate on the committee, shall be determined by dividing the total number of seats held by such party in the National Assembly by the quota referred to in subparagraph (ii).
(iv) The result shall, subject to subparagraph (v), indicate the number of

members that such party is entitled to designate on the committee.

(v) Where the application of the above formula yields a surplus not absorbed by the number of members allocated to a party, such surplus shall compete with other similar surpluses accruing to another party or parties, and any member or members which remain unallocated shall be allocated to the party or parties concerned in sequence of the highest surplus.

(d) The committee shall 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 perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

(4) *(a)* The President shall, when the National Defence Force is employed for service referred to in section 227(1) *(a)*, *(b)* or *(e)*, forthwith inform Parliament of the reasons for such employment.

(b) If, in the case of such an employment referred to in section 227(1) *(a)* or *(b)*, Parliament is not sitting, the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the commencement of such employment, and shall inform the committee of the reasons for such employment.

(5) Parliament may by resolution terminate any employment referred to in section 227(1) *(a)*, *(b)* or *(e)*, but such termination of employment shall not affect the validity of anything done in terms of such employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such employment.

CHAPTER 15

General and Transitional Provisions

229. Continuation of existing laws

Subject to this Constitution, all laws which immediately before the commencement of this Constitution were in force in any area which forms part of the national territory, shall continue in force in such area, subject to any repeal or amendment of such laws by a competent authority.

230. Repeal of laws

(1) The laws mentioned in Schedule 7 are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Notwithstanding the repeal of sections 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 had not been effected.

231. Continuation of international agreements and status of international law

(1) All rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic within the meaning of the previous Constitution, shall be vested in or binding on the Republic under this Constitution, unless provided otherwise by an Act of Parliament.

(2) Parliament shall, subject to this Constitution, be competent to agree to the ratification of or accession to an international agreement negotiated and signed in terms of section 82(1) *(i)*.

(3) Where Parliament agrees to the ratification of or accession to an international agreement under subsection (2), such international agreement shall be binding on the Republic and shall form part of the law of the Republic, provided Parliament expressly so provides and such agreement is not inconsistent with this Constitution.

(4) The rules of customary international law binding on the Republic, shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic.

232. Interpretation

(1) Unless it is inconsistent with the context or clearly inappropriate, a reference in a law referred to in section 229 -

(a) to the Republic or to any territory which after the commencement of this Constitution forms part of the national territory -

(i) as a constitutional institution, shall be construed as a reference to the Republic referred to in section 1; or

(ii) as a territorial area, shall be construed as a reference to that part of the national territory in which the law in question was in force immediately before such commencement, unless such law is applied by a law of a competent authority to the whole or any part of the national territory;

(b) to a Parliament, House of a Parliament or legislative assembly or body of any territory which after the commencement of this Constitution forms part of the national territory, shall -

(i) if the administration of such a law is allocated in terms of this Constitution to the national government, be construed as a reference to Parliament

referred to in section 36; or

(ii) if the administration of such law is allocated or assigned in terms of this Constitution to a government of a province, be construed as a reference to the provincial legislature of that province;

(c) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of any territory which after the commencement of this Constitution forms part of the national territory, shall -

(i) if the administration of such law is allocated in terms of this Constitution to the national government, be construed as a reference to the President acting in accordance with this Constitution; or

(ii) if the administration of such law is allocated or assigned in terms of this Constitution to a government of a province, be construed as a reference to the Premier of such province acting in terms of this Constitution;

(d) to an official language or to both official languages, shall be construed, with due regard to section 3, as a reference to any of the official South African languages under this Constitution.

(2) *(a)* Any reference in this Constitution to any particular law shall be construed as a reference to that law as it exists from time to time after any amendment or replacement thereof by a competent authority.

(b) An amendment, replacement or repeal of a law referred to in paragraph *(a)*, shall for the purposes of section 62 not be considered to be an amendment of this Constitution, and any such amendment, replacement or repeal of a law shall for its validity be dependent on its consistency with this Constitution in terms of section 4(1).

(3) No law shall be constitutionally invalid solely by reason of the fact that the wording used is *prima facie* capable of an interpretation which is inconsistent with a provision of this Constitution, provided such a law is reasonably capable of a more restricted interpretation which is not inconsistent with any such provision, in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation.

(4) In interpreting this Constitution a provision in any Schedule, including the provision under the heading *National Unity and Reconciliation*, to this Constitution shall not by reason only of the fact that it is contained in a Schedule, have a lesser status than any other provision of this Constitution which is not contained in a Schedule, and such provision shall for all purposes be deemed to form part of the substance of this Constitution.

(5) *(a)* Notwithstanding the provisions of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), the President may at any time after the dissolution of the Independent Electoral Commission in terms of section 9 of that Act, by proclamation in the *Gazette*, reconvene the Commission for the purposes of a referendum or election referred to in section 124.

(b) If any person who before its dissolution was a member of the Commission, cannot or is unwilling to serve as a member after it has been reconvened under paragraph *(a)*, Parliament may, by resolution adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses, appoint any suitably qualified person to replace any such member.

233. Definitions

(1) In this Constitution, unless the context otherwise indicates -

(i) Chief Justice means the Chief Justice of the Supreme Court of South Africa referred to in section 97(1); (ii)

(ii) Commission on Provincial Government means the Commission established

by section 163; (iv)

(iii) Financial and Fiscal Commission means the Commission established by section 198; (i)

(iv) House, in relation to Parliament, means the National Assembly or the Senate; (iii)

(v) Independent Electoral Commission means the Commission established by section 4 of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993); (viii)

(vi) National Defence Force means the Defence Force established by section 224(1); (vi)

(vii) National Revenue Fund means the Revenue Fund established by section 185; (v)

(viii) new constitutional text means the text of a new Constitution contemplated in Chapter 5; (vii)

(ix) organ of state includes any statutory body or functionary; (xii)

(x) previous Constitution means the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983); (xiv)

(xi) Provincial Revenue Fund means the Revenue Fund of a province established by section 159(1); (ix)

(xii) Public Service Commission means the Commission established by section 209; (xi)

(xiii) Republic means the Republic of South Africa referred to in section 1; (x)

(xiv) Transitional Executive Council means the Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993). (xiii)

(2) A reference in this Constitution to rules and orders shall according to the context be construed as a reference to the rules and orders of the National Assembly or the Senate, or the joint rules and orders of the National Assembly and the Senate, or the rules and orders of the Constitutional Assembly, or the rules and orders of a provincial legislature.

(3) Where in this Constitution any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary: Provided that if such other functionary is a body of persons it shall express its concurrence in accordance with its own decision-making procedures.

(4) Where in this Constitution any functionary is required to take a decision after consultation with another functionary, such decision shall be taken in good faith after consulting and giving serious consideration to the views of such other functionary.

234. Transitional arrangements: Legislative authorities

(1) A person who immediately before the commencement of this Constitution was a member of Parliament or of any other legislature (excluding a local government) which exercised legislative powers in respect of any area which forms part of the national territory, shall upon 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 employed by Parliament, shall after such commencement continue in such employment, subject to and in accordance with the applicable laws regulating such employment.

(3) The provisions of section 236(4), (5) and (6) 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 employed by a legislature referred to in subsection (1) other than Parliament, shall be deemed to be employed by the administration in that part of the national territory in

which such legislature exercised legislative powers, subject to and in accordance with the applicable laws regulating such employment, and sections 236 and 237 shall apply *mutatis mutandis* in respect of such person.

(5) Any matter before Parliament or any such other legislature which immediately before the commencement of this Constitution was not yet disposed of by Parliament or such legislature, 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 business and proceedings of Parliament under this Constitution, continue in force until amended or replaced in terms of this Constitution.

235. Transitional arrangements: Executive authorities

(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 a government under any other constitution or constitutional arrangement which was in force in an area which forms part of the national territory,

shall continue in office until the President has been elected in terms of section 77(1) *(a)* and has assumed office: Provided that a person referred to in paragraph *(a), (b)* or *(c)* shall for the purposes of section 42(1) *(e)* and while continuing in office, be deemed not to hold an office of profit under the Republic.

(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 which was 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 continue 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, force or other institution which was entrusted to, and to exercise and perform any power or function which was vested in, him or her or them immediately before the said commencement: Provided that -

(a) no such executive authority, power or function shall be exercised or performed if the Transitional Executive Council disapproves thereof; and

(b) once the election results of the National Assembly have been certified by the Independent Electoral Commission in terms of the Independent Electoral Commission Act, 1993, the State President referred to in subsection (1) *(a)* shall exercise and perform his or her powers and functions in consultation with the leader of the party which has received the largest number of votes in the said election.

(4) The Transitional Executive Council may by resolution of a majority of all its members at any time during the period in which the said State President continues in office in terms of subsection (1), require him or her, or any other appropriate authority, to take such steps in terms of any law as are necessary to maintain law and order, including the declaration of a state of emergency or of an area to be an unrest area in

terms of an applicable law.

(5) Upon the assumption of office by the President in terms of this Constitution -

(a) the executive authority of the Republic as contemplated in section 75 shall vest in the President acting in accordance with this Constitution; and

(b) the executive authority of a province as contemplated in section 144 shall, subject to subsections (8) and (9), vest in the Premier of that province acting in accordance with this Constitution, or while the Premier of a province has not yet assumed office, in the President acting in accordance with section 75 until the Premier assumes office.

(6) The power to exercise executive authority in terms of laws which, immediately prior to the commencement of this Constitution, were in force in any area which forms part of the national territory and which in terms of section 229 continue in force after such commencement, shall be allocated as follows:

(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 are matters referred to in paragraphs *(a)* to *(e)* of section 126(3) (which shall be deemed to include all policing matters until the laws in question have been assigned under subsection (8) and for the purposes of which subsection (8) shall apply *mutatis mutandis*),

shall be administered by a competent authority within the jurisdiction of the national government: Provided that any policing function which but for subparagraph (ii) would have been performed subject to the directions of a member of the Executive Council of a province in terms of section 219(1) shall be performed after consultation with the said member within that province.

(b) All laws with regard to matters which fall within the functional areas specified in Schedule 6 and which are not matters referred to in paragraphs *(a)* to *(e)* of section 126(3) 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 (8) to a competent authority within the jurisdiction of the government of such province; 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)*, subject to subsections (8) and (9) 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: Provided that this subparagraph shall not apply to policing matters, which shall be dealt with as contemplated in paragraph *(a)*.

(c) In this subsection and subsection (8) 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.

(7) *(a)* The President may, after consultation with the Premier of a province, by proclamation in the *Gazette* take such measures, including legislative measures, as he or she considers necessary for the better achievement of this section.

(b) A copy of a proclamation under paragraph *(a)*, shall be submitted to Parliament within 14 days after the publication thereof.

(c) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or 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.

(8) *(a)* The President may, and shall if so requested by the Premier of a province, and provided the province has the administrative capacity to exercise and perform the powers and functions in question, by proclamation in the *Gazette* assign, within the framework of section 126, the administration of a law referred to in subsection (6) *(b)* to a competent 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 matters relating to the transfer or secondment of persons (subject to sections 236 and 237) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(c) In regard to any policing power the President may only make that assignment effective upon the rationalisation of the police service as contemplated in section 237: Provided that such assignment to a province may be made where such rationalisation has been completed in such a province.

(d) Any reference in a law to the authority administering such law, shall upon the assignment of such law in terms of paragraph *(a)* be deemed to be a reference *mutatis mutandis* to the appropriate authority of the province concerned.

(9) *(a)* If for any reason a provincial government is unable to assume responsibility within 14 days after the election of its Premier, for the administration of a law referred to in subsection (6) *(b)*, 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 that provincial government is able to assume the said responsibility.

(b) Subsection (8) *(b)* and *(d)* shall *mutatis mutandis* apply in respect of an assignment under paragraph *(a)* of this subsection.

236. Transitional arrangements: Public administration

(1) A public service, department of state (including a police force), administration, military force as defined in section 224(2) *(a)* or *(b)* or other institution (excluding any local government) which immediately before the commencement of this Constitution performed governmental functions under the control of an authority referred to in section 235(1) *(a)*, *(b)* or *(c)*, shall, subject to subsection (7), continue to function as such in accordance with the laws applicable to it until it is, as the case may be, abolished or incorporated or integrated into any appropriate institution or is rationalised as

contemplated in any other Chapter, consolidated with any other institution or otherwise rationalised as contemplated in section 237, as the case may be: Provided that a military force referred to in this subsection shall not be employed for service referred to in section 227(1) *(a), (b)* or *(e)* otherwise than by the President and shall only be used for such service by the authority referred to in section 225 in accordance with section 227(2).

(2) A person who immediately before the commencement of this Constitution was employed by an institution referred to in subsection (1) shall continue in such employment subject to and in accordance with this Constitution and other applicable laws regulating such employment.

(3) Subject to subsections (1) and (2), all powers, directions, orders, instructions or delegations which were in force in respect of an institution which immediately before the commencement of this Constitution performed governmental functions as contemplated in subsection (1) shall, after the said commencement, continue in force for the purpose of the continued functioning within the contemplation of subsection (1) of any such institution, until cancelled or otherwise no longer in force in law.

(4) Subject to this Constitution and subsection (5), the terms and conditions of employment applicable to a person employed by an institution referred to in subsection (1) immediately before the commencement of this Constitution, shall continue to apply to him or her until amended by or under any law, including any law enacted in order to establish uniformity of the terms and conditions of employment in accordance with those generally prevailing at such commencement.

(5) Subject to any law relating to unfitness or incapacity of a person to carry out his or her 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 immediately before the commencement of this Constitution.

(6) 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 any class of such persons, may, at the instance of a Minister or a member of the Executive Council of a province, within one year of the commencement of this Constitution be reviewed by a commission appointed by the President and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the commission may reverse or alter the contract, appointment, promotion or award.

(7) *(a)* At the commencement of this Constitution the South African Police existing in terms of the Police Act, 1958 (Act No. 7 of 1958), and all other police forces established by law shall be deemed to constitute the South African Police Service referred to in section 214, and any reference to the South African Police or any such force in the said Act or law shall be deemed to be a reference to the said Service.

(b) Any reference in any law to the South African Police or any other police force (excluding a municipal police service) shall, unless the context indicates otherwise, be construed as a reference to the said South African Police Service.

(8) *(a)* The National Defence Force referred to in section 224 shall, subject to this Constitution and any Act of Parliament, *mutatis mutandis* be governed by the Defence Act, 1957 (Act No. 44 of 1957).

(b) Any reference in any law to a defence force referred to in section 224(2) *(a)* or *(b)*, shall be deemed to be a reference to the National Defence Force.

(c) If the number of the members of the National Defence Force exceeds the personnel strength determined in respect of the force design and structure for the Force, any member of the Force who, due to integration, consolidation and rationalisation of the National Defence Force is not accommodated in such force design and structure, shall be dealt with in accordance with a law.

(d) The continuance of membership of members of the National Defence Force referred to in section 224(2) *(c)* shall be subject to such members entering into an agreement for temporary or permanent appointment with the National Defence Force within a reasonable time: Provided that such agreements shall be in accordance with normal employment policies and terms and conditions of service.

237. Rationalisation of public administration

(1) *(a)* All institutions referred to in section 236(1), excluding military forces referred to in section 224(2), shall as soon as is possible after the commencement of this Constitution be rationalised with a view to establishing within the public service contemplated in section 212(1)-

(i) an effective administration at the national level of government to deal with matters within the jurisdiction of the national government referred to in section 235(5) *(a)* ; and

(ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government referred to in section 235(5) *(b)*.

(b) All military forces referred to in section 224(2) shall be rationalised for the purposes of the National Defence Force.

(2) *(a)* The responsibility for the rationalisation of -

(i) institutions referred to in section 236(1), excluding military forces, 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, and with due regard to the advice of the Public Service Commission: Provided that in the case of policing services, the national government shall exercise such responsibility in co-operation with the committee referred to in section 220(1) and the Board of Commissioners referred to in section 220(2); and

(ii) military forces shall rest with the national government.

(2) *(a)* The responsibility for the rationalisation of-

(i) institutions referred to in section 236 (1), excluding military forces, 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, and with due regard to the advice of the Public Service Commission: Provided that in the case of policing services, the national government shall exercise such responsibility in cooperation with the committee referred to in section 220 (1) and the Board of Commissioners referred to in section 220 (2); and

(ii) military forces shall rest with the national government.

(aA) In anticipation of the adoption of the Act of Parliament contemplated in section 214-

(i) the National Commissioner and Provincial Commissioners of the South African Police Service contemplated in section 214 (2) (a) may be appointed;

(ii) a meeting of the National Commissioner and the Provincial Commissioners or their nominees shall be deemed to be a meeting of the Board of Commissioners contemplated in section 220 (2) and any decision taken at such a meeting shall be deemed to be a decision of the Board;

(iii) the existing police forces, deemed in terms of section 236 (7) to constitute the South African Police Service contemplated in section 214, may be rationalised in accordance with this section; and

(iv) proclamations to regulate such rationalisation may be issued in terms of subsection (3).

[Para. (aA) inserted by s. 8 of Act No. 29 of 1994.1

(b) Subject to section 235(6), (7), (8) and (9), the responsibility for the internal rationalisation of an administration referred to in subsection (1) *(a)* (ii) shall primarily rest with the relevant provincial government, with due regard to the advice of the Public Service Commission and any relevant provincial service commission: Provided that the rationalisation of all police forces shall be dealt with in accordance with paragraph *(a)* (i).

(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 an institution referred to in section 236(1), or of any law referred to in section 236(2), or of any law which deals with any of the aforegoing matters in a consequential manner: Provided that if a law referred to in section 236(2) is repealed, provision shall be made for the application of any law of general application regulating the employment of persons or any class of persons in the employment of the state, to the persons or class of persons affected by such repeal; and

(ii) measures relating to the transfer or secondment of personnel, or the allocation of property, funds, rights and obligations, including administrative records, in order to establish the administrations referred to in subsection (2) and rationalise the South African Police Service and the National Defence Force.

(c) A copy of a proclamation under paragraph *(a)*, shall be submitted to Parliament within 14 days after the publication thereof.

(d) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or 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.

(4) *(a)* The labour appeal court established by section 17A of the Labour Relations Act, 1956 (Act No. 28 of 1956), sitting as a special tribunal in terms of an Act to be passed by Parliament, shall be competent to determine any claim or dispute of right in terms of a law regulating as at 1 November 1993 employment in an institution referred to in section 236(1) and arising out of the implementation of this section and section 236.

(b) The Act of Parliament contemplated in paragraph *(a)* shall prescribe expeditious procedures for the adjudication of claims and disputes contemplated in this section, 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 in such court.

(d) A decision of the court on any such claim or dispute shall be final and binding.

(e) This subsection and the Act of Parliament contemplated in paragraph *(a)* shall lapse one year from the commencement of this Constitution, save that any matter properly before the court referred to in paragraph *(a)* on that date shall be heard and determined as if this subsection and the said Act had not lapsed.

238. Transitional arrangements: Public service commissions

(1) A public service commission established for a public service referred to in section 236(1) shall, subject to subsections (3) and (4), after the commencement of this Constitution continue to function as such in accordance with the laws applicable to it.

(2) *(a)* A person who immediately before the commencement of this Constitution was the chairperson or member of a public service commission referred to in subsection (1) shall, subject to subsections (3) and (4) and section 237, after such commencement, continue in office in accordance with the laws regulating his or her appointment.

(b) Section 236(3), (4) and (5) shall apply *mutatis mutandis* in respect of a person referred to in paragraph *(a)* of this subsection.

(3) 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 members of the Public Service Commission referred to in section 209: Provided that a person who immediately before such appointment held office as the chairperson or a member of the Commission for Administration shall be entitled to be appointed as a member of the Public Service Commission.

(4) A public service commission, other than the Commission for Administration referred to in subsection (3), which continues to perform its functions in any part of the national territory, shall *mutatis mutandis* be subject to rationalisation under section 237 and shall cease to exist to the extent that it is superseded by the establishment of a provincial service commission contemplated in section 213 or otherwise rationalised or abolished under section 237.

(5) If -

(a) the chairperson or a member referred to in the proviso to subsection (3) elects not to be appointed to the Public Service Commission; or

(b) the chairperson or a member of a public service commission referred to in subsection (4), is not upon the abolition of such public service commission appointed to any provincial service commission,

the period of office for which such a chairperson or member has been appointed shall for the purpose of any applicable law regulating retirement benefits, be deemed to have been completed.

(6) Any reference in any law to the Commission for Administration referred to in subsection (3), shall be deemed to be a reference to the Public Service Commission.

239. Transitional arrangements: Assets and liabilities

(1) All assets, including funds and administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 235(1) *(a)*, *(b)* or *(c)*, or in a government, administration or force under the control of such an authority, shall be allocated as follows:

(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 referred to in paragraphs *(a)* to *(e)* of section 126(3) (which shall be deemed to include a police asset),

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 is not a matter referred to in paragraphs *(a)* to *(e)* of section 126(3), such asset shall, subject to paragraph *(c)*, vest in the relevant 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 235(6), (8) or (9), or to which the performance of that function is entrusted, or entrusted in the particular area, in terms of section 237.

(d) Where any asset cannot in terms of the aforegoing 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 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 guidelines for the resolution of disputes arising from such application.

(f) All assets under the control of a police force shall vest in the South African Police Service.

(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 this section, 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:

Provided that the servicing of all state debts and liabilities not provided for in this Constitution shall be undertaken by the national government until allocated to the relevant level of government.

(b) Parliament shall be competent to pass a law regulating the re-allocation of debts and liabilities to the national government and the respective provincial governments, but no such law shall be passed unless a report and recommendations of the Financial and

Fiscal Commission has been tabled in and considered by Parliament.

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

(5) Anything done in terms of this section shall be subject to audit by the Auditor-General.

240. Transitional arrangements: State Revenue Fund

(1) At the commencement of this Constitution the State Revenue Fund established in terms of section 81 of the previous Constitution shall continue to exist until an Act of Parliament contemplated in section 185(1) is adopted prescribing the administration of the National Revenue Fund.

(2) While the State Revenue Fund continues to exist it shall for all purposes be deemed to be the National Revenue Fund.

(3) The Accounts of the State Revenue Fund referred to in section 82 of the previous Constitution shall be phased out and closed as soon as circumstances permit.

(4) In the 1994-1995 financial year the head of the department of the Treasury, as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975), may, in consultation with the Minister responsible for national financial matters, from the Exchequer Account, on conditions aimed at ensuring financial control, grant advances to provincial governments as he or she deems necessary for the purposes of establishing and funding of structures of government at provincial level as contemplated in this Constitution until Parliament has appropriated money for such purposes.

(5) Any Revenue Fund established before the commencement of this Constitution by a law in force in an area which forms part of the national territory, excluding the State Revenue Fund referred to in subsection (1), shall, subject to subsection (6) and any laws governing the application and withdrawal of moneys from such Revenue Fund, continue to exist until the money therein is transferred under this Chapter to the National Revenue Fund or to any relevant Provincial Revenue Fund, as the case may be, or otherwise dealt with by a competent authority.

(6) Moneys in a Revenue Fund referred to in subsection (5) may only be withdrawn in order to meet expenditure for services in the area in respect of which the Fund was established and in respect of which an appropriation has been made for the current or in the immediately preceding financial year or for which there is other statutory authority: Provided that no withdrawal shall be made from such Revenue Fund other than with the concurrence of a person designated by the President for that purpose.

241. Transitional arrangements: Judiciary

(1) Every court of law existing immediately before the commencement of this Constitution in an area which forms part of the national territory, shall be deemed to have been duly constituted in terms of this Constitution or the laws in force after such commencement, and shall continue to function as such in accordance with the laws applicable to it until changed by a competent authority: Provided-

(a) that an appellate division of a supreme court which immediately before the commencement of this Constitution exercised jurisdiction in respect of an area which forms part of the national territory, other than the Appellate Division of the Supreme Court of South Africa, shall cease to exist with effect from the date of commencement of the Constitution of the Republic of South Africa Third Amendment Act, 1994;

(b) that any case pending before any such appellate division immediately before the said date shall be disposed of by such appellate division and the judges of appeal serving in such appellate division as if such division had not ceased to exist; and

(c) that any person who immediately before the said date was the chief justice in respect of any such appellate division, shall continue in office without any change in the terms and conditions of his or her service and shall be deemed to be the Judge President of the supreme court of which that appellate division previously formed part until the existing court structures have been rationalised as contemplated in section 242(1).

(1A) Until the court structures contemplated in Chapter 7 have been established as required by section 242(1), the jurisdiction of courts of law which existed immediately before the commencement of this Constitution and which continued to exist by virtue of subsection (1) of this section, shall be as follows:

(a) The Appellate Division of the Supreme Court of South Africa shall have the same jurisdiction as that which is vested in terms of this Constitution in the Appellate Division contemplated in section 101(1), and shall exercise such jurisdiction in respect of the whole of the national territory;

(b) a provincial or local division of the said Supreme Court of South Africa, and any other supreme court or general division thereof, shall have the same jurisdiction as that which is vested in terms of this Constitution in a provincial or local division contemplated in section 101(1), and shall exercise such jurisdiction in respect of the area of jurisdiction for which it was established; and

(c) any other court shall, in addition to the jurisdiction vested in it immediately before the commencement of this Constitution, have the same jurisdiction as that which is vested in terms of section 103 in a court of similar status contemplated therein, and shall exercise such jurisdiction in respect of the area of jurisdiction for which it was established.

(1B) For the purposes of the application of this Constitution while the existing court structures referred to in subsection (1) continue, any reference in this Constitution to any of the court structures contemplated in Chapter 7 shall, unless inconsistent with the context or clearly inappropriate, be deemed to be a reference to the corresponding existing court structure, and in such application a reference to a provincial division shall be construed also to refer to any of the other supreme courts, or general division of any such court, referred to in subsection (1A)*(b)*.

(2) The Chief Justice of South Africa, the judges-president and deputy judges-president of the various divisions of the Supreme Court of South Africa, the judges of appeal of the Appellate Division of the said Supreme Court, and the other judges of the said Supreme Court, holding office immediately before the commencement of this Constitution, shall be deemed to have been duly appointed to the corresponding positions in terms of Chapter 7 and shall continue to hold office in accordance with the applicable laws.

(2A) The chief justice of a supreme court referred to in the proviso to subsection (1) who in terms of that proviso continues in office as the Judge President of such supreme court, and the other judges of such supreme court, including the judges of any other supreme court which did not have an appellate division, holding office immediately before the commencement of this Constitution, shall be deemed to have been duly

appointed to the corresponding positions in terms of Chapter 7 and shall continue in office in accordance with the applicable laws.

(3) All other judicial officers holding office immediately before the commencement of this Constitution in terms of a law, shall continue to hold such office in accordance with such law.

(4) Every attorney-general holding office immediately before the commencement of this Constitution in terms of a law, shall continue to hold such office in accordance with such law.

(5) Subject to this Constitution, all measures which immediately before the commencement of this Constitution were in operation and applied to judicial officers and attorneys-general, including measures regarding the remuneration, pension and pension benefits, leave gratuity and any other term and condition of service, shall continue in operation and to apply to the said judicial officers and attorneys-general, until amended or repealed by a competent authority: Provided that no such measure shall, except in accordance with an applicable law, be changed in a manner which affects such judicial officers and attorneys-general to their detriment.

(6) The provisions of section 236(5) and (6) shall apply *mutatis mutandis* in respect of persons referred to in subsections (3) and (4) of this section.

(7) *(a)* Persons referred to in subsections (2), (2A), (3) and (4) shall within 30 days of the election of the President in terms of section 77(1)*(a)* make and subscribe 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 a person continuing in office or appointed as the Chief Justice or the President of the Constitutional Court, before the President.

(b) For the purposes of paragraph *(a)* a reference in the relevant oath of office or solemn affirmation set out in Schedule 3 to a Judge of the Supreme Court shall, in the case of a judicial officer referred to in subsection (3), be construed as a reference to the office of such judicial officer.

(8) All proceedings which immediately before the commencement of this Constitution were pending before any court of law, including any tribunal or reviewing authority established by or under law, exercising jurisdiction in accordance with the law then in force, shall be dealt with as if this Constitution had not been passed: Provided that if an appeal in such proceedings is noted or review proceedings with regard thereto are instituted after such commencement such proceedings shall be brought before the court having jurisdiction under this Constitution.

(9) Any legal proceedings instituted before or after the commencement of this Constitution by or against a government, authority or functionary which ceased to exist at or after such commencement, may be continued by or against the relevant government, authority or functionary which superseded the said government, authority or functionary.

(10) The laws and other measures which immediately before the commencement of this Constitution regulated the jurisdiction of courts of law, court procedures, the power and authority of judicial officers and all other matters pertaining to the establishment and functioning of courts of law, shall continue in force subject to any amendment or repeal thereof by a competent authority.

s241 amended by s15 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1944.

242. Rationalisation of court structures

(1) All jurisdictional areas and court structures appropriate thereto existing immediately before the commencement of this Constitution, shall as soon as possible after such commencement be rationalised in accordance with an Act of Parliament with a

view to establishing the jurisdictional areas and court structures contemplated in Chapter 7.

(2) The rationalisation of the jurisdictional areas and court structures referred to in subsection (1) shall be the responsibility of the national government after consultation with the Judicial Service Commission.

(3) The rationalisation contemplated in subsection (1) includes -

(a) the amendment, repeal or replacement of any law regulating the establishment, functions, jurisdiction and other matters relating to a court referred to in section 241(1), or of any law referred to in section 241(2), or of any law which deals with any of the aforegoing matters in a consequential manner: Provided that if a law referred to in section 241(2) is repealed, provision shall be made for the application of any law of general application regulating the service of judicial officers or any class of judicial officers, to the judicial officers or class of judicial officers affected by such repeal; and

(b) measures relating to the transfer or secondment of judicial officers, or the allocation of property, including court and administrative records, in order to establish the said jurisdictional areas or court structures.

Afrikaans text of s242 amended by s16 of the Constitution of the Republic of South Africa Third Amendment Act 13 of 1994.

243. Transitional arrangements: Ombudsman

(1) A person who immediately before the commencement of this Constitution was -

(a) the Ombudsman in terms of the Ombudsman Act, 1979 (Act No. 118 of 1979), shall continue to hold office and to exercise and perform the powers and functions of the Ombudsman in accordance with the said Act until the Public Protector has been appointed under section 110 and has assumed office;

(b) an assistant to the Ombudsman, shall continue as such until the Public Protector has been appointed and has assumed office, whereupon such person shall be deemed to have been appointed under section 113; or

(c) an ombudsman in terms of a law of an area which forms part of the national territory (other than the Ombudsman referred to in paragraph *(a)*), or in the employ of such an ombudsman, shall continue in such office or employment in accordance with the law which regulated such office or employment, until the office of such ombudsman is abolished or such ombudsman or person is appointed as, or to the office of, a provincial public protector contemplated in section 114.

(2) Section 236(4), (5) and (6) shall apply *mutatis mutandis* to a person referred to in subsection (1) *(c)*.

244. Transitional arrangements: Auditor-General

(1) A person who immediately before the commencement of this Constitution was -

(a) the Auditor-General in terms of the Auditor-General Act, 1989 (Act No. 52 of 1989), shall continue in office subject to section 191 and the laws applicable to such office;

(b) employed in terms of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), shall continue in such employment subject to and in accordance with this Constitution, the said Act and any other applicable law regulating such employment; and

(c) the auditor-general of any area which forms part of the national territory

(other than the Auditor-General referred to in paragraph *(a)*), shall continue in such office or employment in accordance with the laws regulating such office or employment, until such office of auditor-general is abolished by law: Provided that any such auditor-general shall be eligible for appointment under section 194: Provided further that should such a person not be appointed, he or she shall have the right to retire and if he or she so retires he or she shall be entitled to such pension as he or she would have been entitled to under the pensions law applicable to him or her if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(2) For the purpose of subsection (1), the persons referred to in that subsection shall not be dealt with less favourably than an officer or employee in a public service.

245. Transitional arrangements: Local government

(1) Until elections have been held in terms of the Local Government Transition Act, 1993, local government shall not be restructured otherwise than in accordance with 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 Chapter 10 and the Constitution as a whole.

(3) *(a)* For the purposes of the first election of members of a local government after the commencement of this Constitution, the area of jurisdiction of such local government shall be divided into wards in accordance with the Act referred to in subsection (1).

(b) Forty per cent of the members of the local government shall be elected according to the system of proportional representation applicable to an election of the National Assembly and regulated specifically by or under the Act referred to in subsection (1), and sixty per cent of the members shall be elected on the basis that each such member shall represent a ward as contemplated in paragraph (a): Provided that, notwithstanding anything to the contrary contained in this Constitution, where the area of jurisdiction of the local government includes-

(i) the area of jurisdiction of any institution or body as was referred to in section 84 *(1) (f)* of the Provincial Government Act, 1961 (Act No. 32 of 1961); and

(ii) any other area not falling within the area of jurisdiction of the institution or body referred to in subparagraph (i),

no area referred to in subparagraph (i) or (ii) shall be allocated less than half of the total number of wards of the local government concerned: Provided further that an area referred to in subparagraph (i) shall be deemed not to include any area for which a local government body referred to in Paragraphs *(a), (b)* and (c) of the definition of I local government body" in section I (1) of the Act referred to in subsection (1) of this section (as that Act exists at the commencement of this Constitution), has been established.

[Para. (b) amended by s. 9 of Act No. 29 of 1994.]

246. Transitional arrangements: Pensions of political office-bearers

The right of any person in terms of any law which at the commencement of this

Constitution provides for the payment of pensions from the exchequer or from any pension fund or arrangement to which the state contributes or has contributed, to or in respect of political office-bearers or former political office-bearers (including members and former members of Parliament and of any other legislative assembly which exercised legislative powers in respect of any area which forms part of the national territory) shall continue and shall not be diminished: Provided that those who have already received benefits that were due to them shall not benefit again by reason of the provisions of this section.

247. Special provisions regarding existing educational institutions

(1) The national government and the provincial governments as provided for in this Constitution 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 laws existing immediately before the commencement of this Constitution unless an agreement resulting from *bona fide* negotiation has been reached with such bodies and reasonable notice of any proposed alteration has been given.

(2) The national government shall not alter the rights, powers and functions of the controlling bodies of universities and technikons under laws existing immediately before the commencement of this Constitution, unless agreement resulting from *bona fide* negotiation has been reached with such bodies, and reasonable notice of any proposed alteration has been given.

(3) Should agreement not be reached in terms of subsection (1) or (2), the national government and the provincial governments shall, subject to the other provisions of this Constitution, not be precluded from altering 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, provided that interested persons and bodies shall be entitled to challenge the validity of any such alteration in terms of this Constituton.

(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.

248. National flag and anthem

(1) The State President may at any time before the commencement of this Constitution or while continuing in office in terms of section 235(1) *(a)*, exercise, on the advice of the Transitional Executive Council, the powers conferred upon the President by section 2(1) and (2), and if the State President in the exercise of such powers issues a proclamation referred to in that section, such proclamation shall for all purposes be deemed to form part of this Constitution.

(2) This section shall come into operation on the date of promulgation of this Constitution.

249. First election of National Assembly

(1) Notwithstanding the fact that Chapter 4 may not yet be in force, the State President may, by proclamation in the *Gazette*, call an election in terms of the Electoral Act, 1993, for the election of the members of the National Assembly and the provincial legislatures.

(2) Such election shall be conducted in accordance with Schedule 2 and the Electoral Act, 1993, as amended by the Constitution of the Republic of South Africa Amendment

Act, 1994, and the Electoral Amendment Act, 1994, respectively.

(3) This section shall come into operation on the date of promulgation of this Constitution.

250. Non-certification of election by Independent Electoral Commission

(1) If in the application of section 18 of the Independent Electoral Commission Act, 1993, the Independent Electoral Commission declares that it is unable to certify that any election referred to in that section was substantially free and fair, the Commission shall declare that either -

(a) it is able to determine a result based on the votes which could be counted; or

(b) it is unable to determine any result.

(2) If the Independent Electoral Commission declares as contemplated in subsection (1) *(a)*-

(a) a new election shall be held for the National Assembly and the provincial legislatures or a relevant provincial legislature, as the case may be, *mutatis mutandis* in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable but in any event not later than 12 months after the date of the election in question: Provided that any reference to the Transitional Executive Council in the said Act shall be deemed to be a reference to Parliament;

(b) Parliament and the provincial legislatures or a provincial legislature, as the case may be, shall be established on the basis of the result determined in terms of subsection (1) *(a)* : Provided that no provincial legislature shall be established unless the National Assembly is established;

(c) no amendment by a Parliament established on the basis of a declaration in terms of subsection (1) *(a)*, of this Constitution, the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993, or the Independent Broadcasting Authority Act, 1993, shall be permissible until the election contemplated in paragraph *(a)* has been certified as substantially free and fair in terms of the Independent Electoral Commission Act, 1993; and

(d) any provincial legislature established on the basis of a declaration in terms of subsection (1) *(a)*, shall have no legislative competence save for the enactment of laws necessary for the appropriation of revenue or moneys, or the imposition of taxation within the framework of section 126, until the election contemplated in paragraph *(a)* has been certified as substantially free and fair in terms of the Independent Electoral Commission Act, 1993.

(3) If the Independent Electoral Commission declares as contemplated in subsection (1) *(b)*-

(a) a new election shall be held for the National Assembly and the provincial legislatures, or a relevant provincial legislature, as the case may be, in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable, but in any event not later than within 10 weeks after the date of the election in question: Provided that a new election for the National Assembly and the provincial legislatures shall be held simultaneously; and

(b) the constitutional arrangements under the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), the Transitional Executive Council Act, 1993, the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission

Act, 1993, and the Independent Broadcasting Authority Act, 1993, shall apply, until the election referred to in paragraph *(a)* has been held.

(4) Notwithstanding the provisions of any other law, the Independent Electoral Commission shall continue to exist for the purposes set out in this section and the Commission shall exercise its function contemplated in section 18 of the Independent Electoral Commission Act, 1993, with reference to an election referred to in this section: Provided that section 232(5) *(b)* shall apply *mutatis mutandis* in respect of the replacement of members of the Commission.

251. Short title and commencement

(1) This Act shall be called the Constitution of the Republic of South Africa, 1993, and shall, subject to subsection (2), come into operation on 27 April 1994.

(2) The State President may, in consultation with the Transitional Executive Council, by proclamation in the *Gazette* provide that a provision of this Constitution specified in the proclamation shall come into operation on a date prior to the date referred to in subsection (1).

(3) Different dates may be fixed in terms of subsection (2) in respect of different provisions of this Constitution.

(4) 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.

National Unity and Reconciliation

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

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

PART 1

Definitions of Provinces

THE PROVINCE OF KWAZULU/NATAL

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Alfred	Kranskop	Nqutu*
Babanango	Lions River	Paulpietersburg
Bergville	Lower Tugela	Piet Retief (2)
Camperdown	Lower Umfolozi	Pietermaritzburg
Chatsworth	Mapumulo*	Pinetown
Dannhauser	Mhlabatini*	Polela
Dundee	Mooi River	Port Shepstone
Durban	Mount Currie (1)	Richmond
Eshowe	Msinga*	Ubombo
Estcourt	Mtonjaneni	Umbumbulu*
Glencoe	Mtunzini	Umlazi*
Hlabisa	Ndwedwe*	Umvoti
Impendle	New Hanover	Umzinto
Inanda	Newcastle	Underberg
Ingwavuma*	Ngotshe	Utrecht
Ixopo	Nkandhla*	Vryheid
Klip River	Nongoma*	Weenen

* Kwazulu districts, as they were on 1 February 1977.

(1) Excluding land mentioned in Proclamations R. 141 of 30 September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127.

(2) Only the Simdlangentsha and Pongola areas, described as:

PONGOLA

From the north-western beacon of Portion 45 (Diagram A 4265-55) of the farm Pongola 61 HU on the boundary between the Republic of South Africa and Swaziland; thence east along the said boundary between the Republic of South Africa and Swaziland to the north-eastern corner of the farm Devils Dive 79 HU, thence generally south along the said boundary to the south-eastern corner of the farm Lebombo's Poort 92 HU, thence generally west along the middle of the Pongola River, to the south-eastern corner of the farm Zwartkloof 60 HU; thence generally north along the boundaries of the following so as to exclude them out of this area: the said farm Zwartkloof 60 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4275-55) of the farm Pongola 61 HU to the north-eastern beacon of the last-named Portion 45, the place of beginning.

SIMDLANGENTSHA

From the north-western beacon of Portion 10 (Diagram A 1373-39) of the farm Voorslag 24 HU, in a south-eastern direction along the north-eastern boundary of the said Voorslag 24 HU to the north-western beacon of the farm Beginsel 56 HU; thence eastwards along the northern boundaries of the following properties: the said farm

Beginsel 56 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4265-55) of the farm Pongola 61 HU, to the north-eastern beacon of the latter portion; thence in a general southern direction along the boundaries of the following properties so as to include them in this area: the said Portion 45 HU, the farm Kranskloof 59 HU and Zwartkloof 60 HU to the south-eastern beacon of the latter farm in the middle of the Pongola River; thence in a general western direction along the middle of the said Pongola River to the northernmost beacon of the farm Gunsteling 45 HU; thence in a general north-eastern direction along the boundaries of the following properties so as to include them in this area: the said farm Gunsteling 45 HU, Prudentie 46 HU, Oranjedal 38 HU, Tobolsk 28 HU, Belgrade 27 HU and Portion 10 (Diagram A 1373-39) of the farm Voorslag 24 HU to the north-western beacon of the latter farm, the place of beginning.

THE PROVINCE OF NORTHERN CAPE

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Barkly West	Hartswater	Philipstown
Britstown	Hay	Postmasburg
Calvinia	Herbert	Prieska
Carnarvon	Hopetown	Richmond
Colesberg	Kenhardt	Sutherland
De Aar	Kimberley	Victoria West
Fraserburg	Kuruman (1)	Warrenton
Gordonia	Namaqualand	Williston
Hanover	Noupoort	

(1) Excluding the areas as described in Proclamation 103 of 31 October 1991.

THE PROVINCE OF NORTHERN TRANSVAAL

(a) Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Dzanani*	Phalaborwa	Thabazimbi (3)
Ellisras	Pietersburg	Vuvani*
Letaba 1	Potgietersrust	Warmbaths (4)
Letaba 2	Sibasa*	Waterberg
Messina (1)	Soutpansberg 1 (2)	
Mutale*	Soutpansberg 2	

(1) Including the areas as described in Proclamations 187 of 24 September 1982, R. 51 of 27 March 1986 and 178 of 28 October 1988
(2) Including the areas as described in Proclamation R. 51 of 27 March 1986
(3) Excluding the areas as described in Proclamation R. 222 of 28 November 1986
(4) Excluding the areas as described in Proclamation R. 98 of 30 June 1989
* Venda districts, as they were on 13 September 1979

(b) The area for which the Gazankulu Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971)

(c) The area for which the Lebowa Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), excluding the area consisting of the following properties -

(i) Remainder of the farm Elandsfontein 435 KT, in extent 5678,5521 hectares, according to Diagram A2306-1927; and

(ii) Portion 1, in extent 1457,4567 hectares, of the farm Dientjie 453 KT, according to Diagram A1939-1964.

THE PROVINCE OF NORTH-WEST

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Bloemhof	Lehurutshe*	Pretoria (7)
Bafokeng*	Lichtenburg (4)	Rustenburg 1 (8)
Brits (1)	Madikwe*	Rustenburg 2 (9)
Christiana	Mafeking (5)	Schweizer-Reneke
Coligny	Mankwe*	Swartruggens (10)
Delareyville (2)	Marico 1 (6)	Taung*
Ditsobotla*	Marico 2	Tlhaping-Tlharo*
Ganyesa*	Molopo	Ventersdorp
Klerksdorp	Moretele*	Vryburg (11)
Koster	Odi*	Warmbaths (12)
Kuruman (3)	Potchefstroom	Wolmaransstad

(1) Including -

(a) areas as described in Part 1 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);

(b) the areas as described in Proclamations R. 222 of 28 November 1986 and R. 98 of 30 June 1989

(2) Including the areas as described in Proclamation R. 98 of 30 June 1989

(3) Only -

(a) land as described in Part 4 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);

(b) the areas as described in Proclamation 103 of 31 October 1991

(4) Including the areas as described in Proclamation R. 98 of 30 June 1989

(5) Including -

(a) land as described in the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);

(b) the areas as described in Proclamations 70 of 1 April 1990 and 103 of 31 October 1991

(6) Including the areas as described in Proclamations R. 222 of 28 November 1986; 43 of 18 March 1988; R. 220 of 30 December 1988; R. 98 of 30 June 1989; 70 of 1 April 1990; and 103 of 31 October 1991

(7) Only those areas as described in Proclamations R. 137 of 25 September 1987 and R. 98 of 30 June 1989

(8) Including -

(a) land as described in Part 3 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);

(b) the areas as described in Proclamation 4 of 3 February 1989

(9) Including the areas as described in Proclamations 103 of 31 October 1991; 70 of 1 April 1990 and R. 98 of 30 June 1989

(10) Including the areas as described in Proclamation 103 of 31 October 1991
(11) Including -
(a) land as described in Part 5 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);
(b) the areas as described in Proclamations 103 of 31 October 1991; 70 of 1 April 1990; R. 98 of 30 June 1989; R. 23 of 28 February 1986; and R. 259 of 31 December 1981
(12) Only those areas as described in Proclamation R. 98 of 30 June 1989

* Districts of Bophuthatswana, as they were on 6 December 1977 as well as the areas as described in Proclamation R. 222 of 28 November 1986.

THE PROVINCE OF EASTERN CAPE

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

BLOCK "A"

Aberdeen
Adelaide
Albany
Alexandria
Bathurst
Bedford
Cradock
Fort Beaufort (1)
Graaff-Reinet
Hankey
Hofmeyr
Humansdorp
Jansenville
Joubertina
Kirkwood
Middelburg
Pearston
Port Elizabeth
Somerset East
Steynsburg
Steytlerville
Tarka
Uitenhage
Venterstad
Willowmore

BLOCK "B"

Albert
Aliwal North
Barkly East
Bizana#
Butterworth#
Cathcart (2)
Elliot
Elliotdale#
Engcobo#
Flagstaff#
Glen Grey#
Herschel#
Hewu*
Idutywa#
Indwe
Keiskammahoek*
Kentani#
King William's Town (3)
Komgha
Lady Grey
Libode#
Lusikisiki#
Maclear
Matatiele#
Mdantsane*
Middledrift*
Molteno
Mount Fletcher#
Mount Ayliff#
Mount Frere#
Mqanduli#
Ngqeleni#
Nqamakwe#
Peddie*
Port St Johns#
Queenstown (5)
Qumbu#
St Marks#
Sterkstroom
Stockenström (6)
Stutterheim (7)
Tabankulu#
Tsolo#
Tsomo#
Umtata#
Umzimkulu#
Victoria East*
Willowvale#
Wodehouse
Xalanga#
Zwelitsha*
East London (4)

(1) Including the areas as described in Proclamation 75 of 30 April 1987
(2) Including the areas as described in Proclamation 187 of 3 November 1989
(3) Including the areas as described in Proclamations 101 of 26 June 1987; 127 of 12 August 1988 and 187 of 3 November 1989, as corrected by Correction Notice 380 of 23 February 1990
(4) Including the areas as described in Proclamations 15 of 3 March 1989 and 187 of 3 November 1989
(5) Including the areas as described in Proclamations R. 211 of 29 October 1982 and 101 of 26 June 1987
(6) Including the areas as described in Proclamation 187 of 3 November 1989
(7) Including the areas as described in Proclamations 75 of 30 April 1987; R. 139 of 25 September 1987; and 15 of 3 March 1989
* Districts of the Ciskei, as they were on 4 December 1981
# Districts of the Transkei, as they were on 26 October 1976, including the land mentioned in Proclamations R. 141 of 30 September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127

THE PROVINCE OF EASTERN TRANSVAAL

(a) Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Amersfoort	Highveld Ridge	Pilgrim's Rest 1
Balfour	Kriel	Pilgrim's Rest 2
Barberton	Lydenburg	Piet Retief (2)
Belfast	Mathanjana (1)	Standerton
Bethal	Middelburg	Volksrust
Carolina	Moutse 1	Wakker-stroom
Delmas	Moutse 2	Waterval-Boven
Ermelo	Moutse 3	Witbank
Groblersdal	Nelspruit	White River

(1) As described in Part 2 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978);
(2) Excluding the Simdlangentsha and Pongola areas, described as:

PONGOLA

From the north-western beacon of Portion 45 (Diagram A 4265-55) of the farm Pongola 61 HU on the boundary between the Republic of South Africa and Swaziland; thence east along the said boundary between the Republic of South Africa and Swaziland to the north-eastern corner of the farm Devils Dive 79 HU; thence generally south along the said boundary to the south-eastern corner of the farm Lebombo's Poort 92 HU; thence generally west along the middle of the Pongola River, to the south-eastern corner of the farm Zwartkloof 60 HU; thence generally north along the boundaries of the following so as to exclude them out of this area: the said farm Zwartkloof 60 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4275-55) of the farm Pongola 61 HU to the north-eastern beacon of the last-named Portion 45, the place of beginning.

SIMDLANGENTSHA

From the north-western beacon of Portion 10 (Diagram A 1373-39) of the farm

Voorslag 24 HU, in a south-eastern direction along the north-eastern boundary of the said Voorslag 24 HU to the north-western beacon of the farm Beginsel 56 HU; thence eastwards along the northern boundaries of the following properties: the said farm Beginsel 56 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4265-55) of the farm Pongola 61 HU, to the north-eastern beacon of the latter portion; thence in a general southern direction along the boundaries of the following properties so as to include them in this area: the said Portion 45 HU, the farm Kranskloof 59 HU and Zwartkloof 60 HU to the south-eastern beacon of the latter farm in the middle of the Pongola River; thence in a general western direction along the middle of the said Pongola River to the northernmost beacon of the farm Gunsteling 45 HU; thence in a general north-eastern direction along the boundaries of the following properties so as to include them in this area: the said farm Gunsteling 45 HU, Prudentie 46 HU, Oranjedal 38 HU, Tobolsk 28 HU, Belgrade 27 HU and Portion 10 (Diagram A 1373-39) of the farm Voorslag 24 HU to the north-western beacon of the latter farm, the place of beginning.

(b) The area for which the Kangwane Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971)

(c) The area for which the Kwandebele Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971)

(d) As well as the following properties forming part of the area for which the Lebowa Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971):

(i) Remainder of the farm Elandsfontein 435 KT, in extent 5678,5521 hectares, according to Diagram A2306-1927; and

(ii) Portion 1, in extent 1457,4567 hectares, of the farm Dientjie 453 KT, according to Diagram A1939-1964.

THE PROVINCE OF THE ORANGE FREE STATE

(a) Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Bethlehem	Heilbron	Rouxville
Bethulie	Hennenman	Sasolburg
Bloemfontein (1)	Hoopstad	Senekal
Boshof	Jacobsdal	Smithfield
Bothaville	Jagersfontein	Thaba Nchu*
Botshabelo	Koffiefontein	Theunissen
Brandfort	Koppies	Trompsburg
Bultfontein	Kroonstad	Ventersburg
Excelsior(2)	Odendaalsrus	Vredefort
Fauresmith	Parys	Welkom
Ficksburg	Petrusburg	Wepener
Fouriesburg	Philippolis	Wesselsbron
Frankfort	Reddersburg	Winburg
Harrismith	Reitz	Zastron

(1) Including the areas as described in Proclamation R. 98 of 30 June 1989

(2) Including the areas as described in Proclamations R. 142 of 30 September 1983 and R. 98 of 30 June 1989

* Districts of Bophuthatswana, as described on 6 December 1977

(b) The area for which the QwaQwa Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971)

THE PROVINCE OF PRETORIA-WITWATERSRAND-VEREENIGING

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

BLOCK " A"

Alberton	Kempton Park	Springs
Benoni	Krugersdorp	Vanderbijl-park
Boksburg	Nigel	Vereeniging
Brakpan	Oberholzer	Westonaria
Germiston	Randburg	
Heidelberg	Randfontein	
Johannesburg	Roodepoort	

BLOCK "B"

Bronkhorstspruit	Pretoria (1)	Soshanguve 2
Cullinan	Soshanguve 1	Wonderboom

(1) Excluding the areas as described in Proclamations R. 137 of 25 September 1987 and R. 98 of 30 June 1989

THE PROVINCE OF THE WESTERN CAPE

Districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

Beaufort West	Ladismith	Simonstown
Bellville	Laingsburg	Somerset West
Bredasdorp	Malmesbury	Stellenbosch
Caledon	Mitchells Plain	Strand
Calitzdorp	Montagu	Swellendam
Ceres	Moorreesburg	Tulbagh
Clanwilliam	Mossel Bay	Uniondale
George	Murraysburg	Van Rhynsdorp
Goodwood	Oudtshoorn	Vredendal
Heidelberg	Paarl	Vredenburg
Hermanus	Piquetberg	Wellington
Hopefield	Prince Albert	Worcester
Knysna	Riversdale	Wynberg, Cape
Kuils River	Robertson	

PART 2

Affected Areas

(a) Bosbokrand Consisting of the Mala district of Gazankulu and the Mapumaleng district of Lebowa

(b) District of Namaqualand

(c) District of Groblersdal

(d) Northern Transkei/Pondoland - Consisting of the Bizana, Flagstaff, Lusikisiki, Mt Ayliff, Mt Frere, Mt Fletcher, Matatiele and Tabankulu districts of Transkei, as they were defined on 26 October 1976.

(e) District of Umzimkulu of Transkei, as it was defined on 26 October 1976

(f) The area consisting of the districts of block B envisaged in Part 1 in respect of the province of Pretoria-Witwatersrand-Vereeniging

(g) The areas consisting of the districts of the two blocks envisaged in Part 1 in respect of the province of Eastern Cape

(h) Province of Northern Cape

(i) The area for which the KwaNdebele Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), including the districts of Moutse 1, 2 and 3 and the district of Mathanjana as described in Part 2 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978)

(j) District of Sasolburg

(k) The area consisting of the districts of Clanwilliam, Vredendal and Van Rhynsdorp

(l) District of Mount Currie, including land mentioned in Proclamations R.141 of 30 September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127

(m) The area consisting of the districts of Kuruman, including the area defined in Proclamation 103 of 31 October 1991, Postmasburg and Hartswater

(n) The area consisting of (i) the district of Brits, excluding the areas as described in Part 1 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978), and Proclamations R.222 of 28 November 1986 and R.98 of 30 June 1989;

(i) the district of Brits, excluding the areas as described in Part 1 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act No. 8 of 1978), and Proclamations R.222 of 28 November 1986 and R.98 of 30 June 1989;

(ii) the districts of Moretele and Odi of Bophuthatswana, as they were defined on 6 December 1977

Part 2, para (d) substituted by s11 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

Schedule 1 amended by s 11 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

SCHEDULE 2

System for Election of National Assembly and Provincial Legislatures

Election of National Assembly

1. Parties registered in terms of the Electoral Act, 1993, and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and the Electoral Act, 1993.

2. The 400 seats in the National Assembly referred to in section 40(1), shall be filled as follows:

(a) 200 seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for a particular election, taking into account available scientifically based data in respect of voters, representations by interested parties and the following proposed determination in respect of the various regions:

Western Cape -21 seats
Eastern Cape -26 seats
Northern Cape -4 seats
KwaZulu/Natal -40 seats
Orange Free State -15 seats
North-West -17 seats
Northern Transvaal -20 seats
Eastern Transvaal -14 seats
Pretoria-Witwatersrand-Vereeniging -43 seats; and

(b) 200 seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.

3. The lists of candidates submitted by a party, shall in total contain the names of not more than 400 candidates, and each such list shall denote such names in such fixed order of preference as the party may determine.

4. A party's lists of candidates shall consist of -

(a) both a national list and a list for each region; or

(b) a list for each region,

with such number of names on each list as the party may determine subject to item 3.

5. The 200 seats referred to in item 2 *(a)* shall be allocated per region to the parties contesting an election, as follows:

(a) A quota of votes per seat shall be determined in respect of each region by dividing the total number of votes cast in a region by the number of seats, plus one, reserved for such region under item 2 *(a)*.

(b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular region.

(c) The number of seats to be awarded for the purposes of paragraph *(e)* in respect of such region to a party, shall, subject to paragraph *(d)*, be determined by dividing the total number of votes cast in favour of such party in a region by the quota of votes per seat indicated by paragraph *(b)* for that region.

(d) Where the result of the calculation referred to in paragraph *(c)* yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph *(c)*, shall be awarded to the party or parties concerned in sequence of the highest surplus.

(e) The aggregate of a party's awards in terms of paragraphs *(c)* and *(d)* in respect of a particular region shall indicate that party's provisional allocation of the seats reserved under item 2 *(a)* for that region.

(f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph *(e)*, shall indicate its provisional allocation of the seats referred to in item 2 *(a)*.

(g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 *(a)*, the provisional allocation of such seats in terms of paragraphs *(e)* and *(f)* shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.

6. The 200 seats referred to in item 2 *(b)* shall be allocated to parties contesting an election, as follows:

(a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by 401, and the result plus one, disregarding fractions, shall be the quota of votes per seat.

(b) The number of seats to be awarded to a party for the purposes of paragraph *(d)* shall, subject to paragraph *(c)*, be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph *(a)*.

(c) Where the result of the calculation in terms of paragraph *(b)* yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph *(b)*, shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph *(b)* and this paragraph.

(d) The aggregate of a party's awards in terms of paragraphs *(b)* and *(c)* shall be reduced by the number of seats provisionally allocated to it in terms of item 5 *(f)* and the result shall indicate that party's provisional allocation of the seats referred to in item 2 *(b)*.

(e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 *(b)*, the provisional allocation of such seats in terms of paragraph *(d)* shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.

7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular region in terms of item 5 *(e)*, such allocation shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5 *(e)* for the region in question, minus the number of seats forfeited by it

in respect of its list for such region, shall become its final allocation in respect of the seats reserved for such region in terms of item 2 *(a)*.

(b) An amended quota of votes per seat shall be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph *(a)*, by the number of seats, plus one, reserved for such region under item 2 *(a)*, minus the number of seats finally allocated to the said party in terms of paragraph *(a)*.

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such region for purposes of the said recalculation.

(d) The number of seats to be awarded for the purposes of paragraph *(f)* in respect of such region to a party participating in the recalculation, shall, subject to paragraph *(e)*, be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph *(c)* for such region.

(e) Where the result of the recalculation in terms of paragraph *(d)* yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph *(d)*, shall be awarded to the party or parties concerned in sequence of the highest surplus.

(f) The aggregate of a party's awards in terms of paragraphs *(d)* and *(e)* in respect of such region shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2 *(a)* for that region.

(3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6 *(d)*, such allocation shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 6 *(d)*, minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2 *(b)*.

(b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph *(a)*, by 401, minus the number of seats finally allocated to the said party in terms of paragraph *(a)*.

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation.

(d) The number of seats to be awarded for the purposes of paragraph *(f)* to a party participating in the recalculation shall, subject to paragraph *(e)*, be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph *(c)*.

(e) Where the result of the recalculation in terms of paragraph *(d)* yields a surplus not absorbed by the number of seats awarded to a

party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph *(d)*, shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph *(d)* and this paragraph.

(f) The aggregate of such a party's awards in terms of paragraphs *(d)* and *(e)* shall be reduced by the number of seats finally allocated to it in terms of item 5 *(g)*, and the result shall, subject to subitem (4), indicate that party's final allocation of the seats referred to in item 2 *(b)*.

(4) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the procedure provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

8. (1) Where a party submitted both a national list and regional lists, the seats finally allocated to it -

(a) in terms of item 5 *(g)*, shall be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and

(b) in terms of item 6 *(e)*, shall be filled from its national list in accordance with its final allocation of seats in terms of that item.

(2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) *(a)*, be filled only from such party's list for that particular region.

9. (1) Where a party submitted regional lists only, the seats finally allocated to it

(a) in terms of item 5 *(g)*, shall be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and

(b) in terms of item 6 *(e)*, shall be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph *(a)* are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5 *(g)* : Provided that if a party was not allocated any seats in terms of item 5 *(g)*, the seats allocated to it in terms of item 6 *(e)* shall be filled from its regional lists in proportion to the number of votes received by that party in each of the regions: Provided further that surplus fractions shall be disregarded save that any remaining seats shall be awarded to regions in sequence of the highest surplus fractions.

(2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) *(a)*, be filled only from such party's list for that particular region.

Election of provincial legislatures

10. The Commission shall determine the number of seats in each provincial

legislature, taking into account available scientifically based data in respect of voters, representations by interested parties and the following proposed determination:

Western Cape -42 seats
Eastern Cape -52 seats
Northern Cape -30 seats
KwaZulu/Natal -80 seats
Orange Free State -30 seats
North-West -34 seats
Northern Transvaal -40 seats
Eastern Transvaal -30 seats
Pretoria-Witwatersrand-Vereeniging -86 seats:

Provided that the Commission may for the purposes of any provincial election after the first election under this Constitution vary any determination under this item.

11. Parties registered in terms of the Electoral Act, 1993, and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and the Electoral Act, 1993.

12. Each party shall be entitled to submit only one list per province, which shall contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.

13. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows -

(a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, shall be the quota of votes per seat for such province.

(b) The number of seats to be awarded to a party for the purposes of paragraph *(d)* shall, subject to paragraph *(c)*, be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph *(a)*.

(c) Where the result of the calculation in terms of paragraph *(b)* yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph *(b)*, shall be awarded to the party or parties concerned in sequence of the highest surplus.

(d) The aggregate of a party's awards in terms of paragraphs *(b)* and *(c)*, shall indicate that party's provisional allocation of seats in the provincial legislature in question.

(e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph *(d)*, shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 shall become the final allocation of such seats to the various parties.

14. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 13 *(d)*, it

shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 *(d)*, minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned.

(b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph *(a)*, by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph *(a)*.

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation.

(d) The number of seats to be awarded for the purposes of paragraph *(f)* in respect of such province to a party participating in the recalculation, shall, subject to paragraph *(e)*, be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph *(c)* for such province.

(e) Where the result of the recalculation in terms of paragraph *(d)* yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph *(d)*, shall be awarded to the party or parties concerned in sequence of the highest surplus.

(f) The aggregate of such a party's awards in terms of paragraphs *(d)* and *(e)* in respect of such province shall, subject to subitem (3), indicate that party's final allocation of the seats determined under item 10 in respect of that province.

(3) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

Ballot papers

15. There shall be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures

Item 15 substituted by s12 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

Designation of representatives

16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election has

been certified by the Commission as having been free and fair or a declaration has been made by the Commission under section 250(1) *(a)*, the Commission shall, within two days after such certification or declaration, designate from each list of candidates published in terms of section 23 of the Electoral Act, 1993, the representatives of each party in each legislature.

(2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists of both the National Assembly and a provincial legislature and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said certification or declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate shall serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.

(3) The Commission shall forthwith publish the list of names of representatives in all legislatures.

Supplementation of lists of candidates

17. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 16, save where provided for by an Act of Parliament.

18. Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, if -

(a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;

(b) a representative is elected as a member of the Senate;

(c) a name is deleted from a list in terms of item 16(2); or

(d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.

19. Lists of candidates of a party published in terms of section 23 of the Electoral Act, 1993, may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.

20. The number of names on lists of candidates as supplemented in terms of item 18 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by a party

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:

(a) all vacancies may be supplemented;

(b) no more than 25 per cent of candidates may be replaced; and
(c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

Vacancies

23. (1) In the event of a vacancy occurring in the representation of a party in any legislature, such vacancy shall forthwith be filled in accordance with section 44 or 133.

(2) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 43 *(b)* or 133(1) *(b),* the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

Alteration of numbers and boundaries of provinces

24. If the numbers or boundaries of provinces are altered pursuant to section 124, the Commission shall review the determinations made in terms of items 2 and 10, and such revised determinations shall then be the basis of any elections for the National Assembly or the provincial legislatures held after any such alteration.

Definitions

25. In this Schedule -

"*Commission"* means the Independent Electoral Commission, established by the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), or, in relation to any election held after the first election under this Constitution, that Commission or any other body established or designated by an Act of Parliament;

"*national list"* means a list of candidates prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats on a national basis;

"*provincial list"* means a list of candidates prepared by a party for an election of a provincial legislature;

"*region"* means the territorial area of a province;

"*regional list"* means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats in respect of such region.

"*votes"* means -

(a) where it occurs in items 5, 6, 7 and 9, votes cast in the election for the National Assembly;

(b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and

(c) where it occurs in item 16, votes cast in the election for the National

Assembly and the provincial legislatures.

Item 25 amended by s12 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

Application of Schedule with reference to section 124

26. The provisions of this Schedule shall be subject to any regulations made or directions given by the Commission in terms of section 124(7) in so far as affected areas within the meaning of that section are concerned.

Schedule 2 amended by s12 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

SCHEDULE 3

Oaths of Office and Solemn Affirmations

Oath of office or solemn affirmation of President and Acting President

In the presence of those assembled here and in full realisation of the high calling I assume as President-Acting President in the service of the Republic of South Africa I, A.B., do hereby 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 Law of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people.
(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Executive Deputy Presidents

In the presence of those assembled here and in full realisation of the high calling I assume as Executive Deputy President in the service of South Africa I, A.B., do hereby 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 Law of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people.
(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Ministers and Deputy Ministers

I, A.B., do hereby swear-solemnly affirm to be faithful to the Republic of South Africa and undertake before those assembled here to hold my office as Minister-Deputy Minister with honour and dignity; to respect and uphold the Constitution and all other Law of the Republic 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 of office or solemn affirmation of Premiers and members of Executive Councils

I, A.B., do hereby swear-solemnly affirm to be faithful to the Republic of South Africa and undertake before those assembled here to hold my office as Premier-Member of the Executive Council of my province with honour and dignity; to respect and uphold the Constitution and all other Law of the Republic 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 of office or solemn affirmation of members of National Assembly, Senate or provincial legislature

I, A.B., do hereby swear-solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my functions 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 of office or solemn affirmation of Judges

I, A.B., do hereby swear-solemnly affirm that I will in my capacity as Judge of the Supreme Court-Constitutional Court of the Republic of South Africa uphold and protect the Constitution of the Republic and the fundamental rights entrenched therein and in so doing administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the Law of the Republic.
(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Attorneys-General

I, A.B., do hereby swear-solemnly affirm that I will in my capacity as Attorney-General uphold and protect the Constitution of the Republic of South Africa and the fundamental rights entrenched therein and in so doing enforce the Law of the Republic without fear, favour or prejudice, in accordance with the Constitution and the Law of the Republic.
(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, which shall be 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 shall 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.

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

1. 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 fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution.

Principle XIII substituted by s2 of the Republic of South Africa Constitution Act 3 of 1994

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

1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.
2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution.
3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.
4. 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, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds 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.
5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions

Principle XVIII substituted by s13 of the Constitution of the Republic of South Africa Amendment Act 2 of 1994

XIX

The powers and functions at 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 interprovincial 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* -

(a) for the purposes of provincial planning and development and the rendering of services; and

(b) in respect of aspects of government dealing with 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 government 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 government 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, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

XXV

The national government 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, shall 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 provisions of Principle XII, 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, an Auditor-General and a 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 public 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 or 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 functioning of the public service, as well as the terms and 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 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.

XXXIII

The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.

XXXIV

1. This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.
2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.
3. If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.

Principle XXXIV added by s13 of the Constitution of the Republic of South Africa Act 2 of 1994

SCHEDULE 5

Procedure for Election of President

1. Nominations of candidates for election as President shall be called for by the Chief Justice or the other judge presiding at the meeting at which the President is to be elected.

2. Every nomination shall be submitted on the form prescribed by the Chief Justice and shall be signed by two members of Parliament and also by the person nominated, unless the person nominated 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, 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 paragraph *(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 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 at and date on which a further meeting will be held, being a date not more than seven 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. (1) 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.

(2) Any such rules shall be made known in such manner as the Chief Justice may consider necessary.

SCHEDULE 6

Legislative Competences of Provinces

Agriculture
Abattoirs
Airports, other than international and national airports
Animal control and diseases
Casinos, racing, gambling and wagering
Consumer protection
Cultural affairs
Education at all levels, excluding university and technickon education
Environment
Health services
Housing
Indigenous law and customary law
Language policy and the regulation of the use of official languages within a province, subject to section 3
Local government, subject to the provisions of Chapter 10
Markets and pounds
Nature conservation, excluding national parks, national botanical gardens and marine resources
Police, subject to the provisions of Chapter 14
Provincial public media
Provincial sport and recreation
Public transport
Regional planning and development
Road traffic regulation
Roads
Soil conservation
Tourism
Trade and industrial promotion
Traditional authorities
Urban and rural development
Welfare services

Schedule 6 substituted by s14 of the Constitution of South Africa Amendment Act 2 of 1994