

DEMOCRATIC PARTY

24 April 1996

To: Constitutional Assembly

From: Dene Smuts MP

Herewith DP amendments to Chapter 2 of the Bill of Rights.

DENE SMUTS

DEMOCRATIC PARTY AMENDMENTS

CONSTITUTION BILL

CHAPTER 2 - BILL OF RIGHTS

8. Application

In subsection 8 (3) replace the existing wording with the following: When a right in the Bill of Rights binds a natural or juristic person and there is no law of general application that grants a remedy based on that right, a court must, in the application of the common law give effect to that right in accordance with the provisions of section 35 (1).

Alternatively delete the subsection.

9. Equality

In subsection 9 (2), after the word "designed" insert the words and likely.

In subsection 4, the words "directly or indirectly against anyone": are incorrectly placed and should be inserted after the word "discriminate" in line 1. The reference to national legislation should be reference to an act of Parliament.

At the commencement of the subsection, insert the words Subject to the right to privacy.

Delete the third sentence of subsection 4.

In subsection (5) insert the words "by the State" after the word "discrimination".

23. Labour Relations

In subsection 2 (b) delete the existing words and insert to engage in collective bargaining: and

In subsection 3 (b) delete the existing words and insert to engage in collective bargaining: and

In subsection 3 (c) delete the brackets and retain

(c) to lock-out

Alternatively delete both strike and lock-out.

Subsection 4 : delete the whole.

Subsection 5 : delete the whole.

25. Property

Delete the whole and insert

Theme Committee 4 text

- (1) Everyone has the right to acquire, hold, and dispose of property.
- (2) No one may be deprived of property except in accordance with a law of general application.
- (3) Property may be expropriated in terms of a law of general application -
 - (a) for a public purpose or in the public interest; and
 - (b) subject to payment of compensation which has been either -
 - (i) agreed, both in terms of the amount and the payment schedule; or
 - (ii) decided by a court of law to be just and equitable.
- (4) When any court decides either the amount or payment schedule of compensation in terms of subsection (3)(b)(ii), the court must consider all relevant factors, including, with respect to the amount of compensation -
 - (a) the current use of the property;
 - (b) the history of its acquisition;
 - (c) its market value;
 - (d) the value of the investment in the property by those affected; and
 - (e) the interests of those affected.
- (5) Anyone who, or any community that, was dispossessed of land before 27 April 1994 under any law that would have been inconsistent with subsection 2 had this Bill of Rights been effect at the time, has a right to claim restitution of that land, subject to and in accordance with the land restitution provisions of the constitution.

26. Housing

At the commencement of subsection (2) insert the words:

This right is not directly enforceable by a court but

27. Health care, food, water and social security

In subsection 1 (a) delete "including reproductive health care"

In subsection 1 (c) delete "social security including,"

In subsection 2, insert the words

This right is not directly enforceable by a court but

In the heading, delete "security" and insert assistance

28. Children

In subsection 1 (c) to insert at the commencement
to have access to

29. Education

In subsections (1) (a) and (c) delete "state or state aided education".

In subsection (2) delete the words "at their own expense" and insert after the word "institutions" the words based on a common culture, language religion or methodology provided that they

In (2) (c) delete existing words and insert maintain satisfactory scholastic standards.

New subsection (3).

The State may not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it has been established on the basis of a common language, culture or religion.

31. Access to information

In subsection 2 the words "national legislation" should be replaced by the words "an act of Parliament".

In subsection 2 delete the second sentence and insert

This legislation must be justifiable in an open and democratic society based on dignity, freedom and equality and must promote efficient, open administration.

Note: the limitation cannot apply only to the State.

32. Just administrative action

In subsection 3 replace the words "national legislation" with the words of an act of Parliament".

33. Access to courts

New wording:

(1) Everyone listed in this section has the right to have any dispute that can be resolved by law decided in a fair, public hearing in a court of law or, where appropriate or necessary, another independent or impartial forum.

(2) The persons who may seek relief are:
List as in 37 Enforcement of rights.

34. Arrested, detained and accused persons

In subsection 1 (f) to delete the present wording and to insert to be released with or without bail unless the interests of justice require that person to be detained

35. Limitation of rights

In subsection (1),
after the word "justifiable" insert the words
and where the nature of the right warrants it, necessary

New subsection (2)

Any limitation in terms of subsection (1) must be consistent with the Republic's obligations under international law.

Subsection (2) becomes (3).

36. States of Emergency

In subsection 2 (b) insert after the words "three months at a time" by a resolution adopted by two thirds of the members of the Assembly and delete the remaining words.

37. Enforcement of Rights

New wording

Anyone listed in section 33 (2) has the right to approach a competent court, alleging that a right declared in the Bill of Rights has been infringed or threatened, or to raise that allegation as a defence or in rebuttal, and the court may grant appropriate relief, including a declaration of rights.

Alternatively

Anyone listed in S33 (2) is entitled to appropriate relief from a competent court to enforce the rights in this Bill of Rights, including a declaration of rights.

SCHEDULE 5

TRANSITIONAL ARRANGEMENTS

BILL OF RIGHTS

In section 19, add

Subsection (4):

Sections 31 (1) and 32 (1) and (2) of the new Constitution come into effect on the passage of the legislation or the expiry of three years.

Chapter 1

Founding Provisions

Republic of South Africa

1. The Republic of South Africa is one sovereign democratic state founded on the following values-
 - (a) a commitment to promote and protect human dignity, to achieve equality and to advance human rights and freedoms;
 - (b) supremacy of the constitution;
 - (c) universal adult suffrage, a common voters roll, regular elections, and a multi-party system of democratic government;
 - (d) separation of powers of the legislature, the executive and the judiciary with checks and balances to ensure accountability, responsiveness and openness;
 - (e) co-operative government; and
 - (f) the independence of the courts.

The National Assembly

Composition and election

44. (1) The National Assembly consists of between [350 and 400] 300 and 320 women and men elected as members in terms of a system proportional representation based on a common voters roll, and prescribed by national legislation which provides for the election of members in terms of a system in which -
 - (a) is prescribed by national legislation;
 - (b) is based on a common voters' roll;
 - (c) provides for a minimum voting age of 18 years; [and]
 - (d) provides that some members are elected from lists of party candidates drawn up in a party's order of preference, and some members are elected directly as constituency representatives; and
 - (e) in a manner which results in the total number of members elected reflecting the proportion of the total number of votes recorded for the respective parties.

Dissolution of National Assembly before expiry of its term

48. (1) The President may dissolve the National Assembly if the Assembly, by a resolution adopted by a majority of its members supports dissolution.
- (2) The Acting-President must dissolve the National Assembly if -
- (a) there is a vacancy in the office of President; and
 - (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

Sittings and recess periods

49. (1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct urgent business.
- (3) The National Assembly sits at the Houses of Parliament in Cape Town; but the Assembly, in the national interest and by a resolution adopted by two thirds of its members, may determine that it sits elsewhere.

National Council of Provinces

Composition of National Council

58. (1) The National Council is composed of a single delegation from each province consisting of ten delegates.
- (2) The ten delegates are -
- (a) [four] three special delegates comprising -
 - (i) the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council; and
 - (ii) [three] two other special delegates, designated in terms of section 59(3) by the legislature either generally or for any specific business before the National Council; and
 - (b) [six] seven permanent delegates appointed in terms of section 59 (2).
- (3) The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the delegation heads the delegation.

Sittings of National Council

61. (1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods.
- (2) The President may summon the National Council to an extraordinary meeting at any time to conduct urgent business.
- (3) The National Council meets in the same place as the National Assembly. Meetings at other places are permitted on the grounds of public interest, security or convenience, and in a manner provided for in the rules and orders of the Council.

Decisions

63. (1) Except where the Constitution provides otherwise -
- (a) each province has one vote which is cast on behalf of the province by the head of its delegation; and
- (b) all questions before the National Council of Provinces are decided by a vote of at least five provinces.
- (2) An Act of Parliament enacted in terms of section 74, and supported by a vote of at least five provinces, must provide for a uniform procedure in terms of which provinces confer authority on their delegations to cast votes on their behalf.

Bills amending the Constitution

72. (1) The Constitution may be amended by a Bill passed by -
- (a) the National Assembly by a vote of at least two thirds of its members, provided that any amendment to Chapter 2 shall require at least three quarters of its members voting in favour of such amendment; and
- (b) the National Council of Provinces by a vote of at least six provinces if it is a Bill that -
- (i) affects the Council;
- (ii) alters provincial boundaries, powers, functions or institutions; or
- (iii) amends a provision which deals specifically with a provincial matter.
- (2) If a Bill referred to in subsection (1)(b) concerns only a specific province or provinces, the National Council may not pass it unless the Bill has been approved by the relevant provincial legislature or legislatures.
- (3) No amendment may repeal or amend this sub-section or section 1 or violate any of the principles listed in section 1.
- (4) A Bill amending the Constitution which has been passed by the National Assembly and, where applicable, by the National Council, must be referred to the President for assent.

Bills within Schedule 4

74. (1) When the National Assembly passes a Bill falling within a functional area listed in Schedule 4 the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The National Council must either -
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
 - (b) If the National Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
 - (c) If the National Council passes an amended Bill the amended Bill must be referred to the National Assembly, and if the Assembly passes the amended Bill it must be submitted to the President for assent.
 - (d). If the National Council rejects the Bill, or if the National Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on -
 - (i) the Bill as passed by the Assembly;
 - (ii) the amended Bill as passed by the Council; or
 - (iii) another version of the Bill.
 - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses [unless the National Assembly again passes the Bill, but by a vote of at least two thirds of its members.]
 - (f) If the Mediation Committee agrees on the Bill as passed by the National Assembly, the Bill must be referred to the National Council, and if the Council passes the Bill, the Bill must be submitted to the President for assent.
 - (g) If the Mediation Committee agrees on the amended Bill as passed by the National Council, the Bill must be referred to the National Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.
 - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the National Assembly and the National Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.
 - (i) If a Bill referred to the National Council in terms of paragraph (f) or (h) is not passed by the Council, the Bill lapses [unless the National Assembly passes the Bill by a vote of at least two thirds of its members.]
 - [(j) If a Bill referred to the National Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, the Bill as originally passed by the Assembly may again be passed by the Assembly, but by a vote of at least two thirds of its members.]
 - (k) A Bill passed by the National Assembly in terms of paragraph (e), (i) or (j) must be submitted to the President for assent.

- (2) When the National Council passes a Bill falling within a functional area listed in Schedule 4, the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure -
- (a) The National Assembly must either -
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
 - (b) A Bill passed by the National Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.
 - (c) If the National Assembly passes an amended Bill, the amended Bill must be referred to the National Council, and if the Council passes the amended Bill it must be submitted to the President for assent.
 - (d) If the National Assembly rejects the Bill, or if the National Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, the amended Bill, must be referred to the Mediation Committee, which may agree on -
 - (i) the Bill as passed by the Council;
 - (ii) the amended Bill as passed by the Assembly; or
 - (iii) another version of the Bill.
 - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.
 - (f) If the Mediation Committee agrees on the Bill as passed by the National Council, the Bill must be referred to the National Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.
 - (g) If the Mediation Committee agrees on the amended Bill as passed by the National Assembly, the Bill must be referred to the National Council, and if it is passed by the Council, it must be submitted to the President for assent.
 - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the National Council and the National Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.
 - (i) If a Bill referred to the National Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.
- (3) A Bill providing for legislation envisaged in -
- (a) section 63(2) or 159(1) or 216 must be dealt with in terms of the procedure established by either subsection (1) or (2); or
 - (b) Chapter 13, and that affects the interests of the provincial sphere of government, must be dealt with in terms of the procedure established by subsection (1) and (2).

Cabinet

90.

- (1) The Cabinet consists of the President, a Deputy President and not more than twenty Ministers.

- (2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.
- (3) The President -
 - (a) must select the Deputy President from among the members of the National Assembly;
 - (b) may select any number of Ministers from among the members of the National Assembly; and
 - [(c) may select no more than two Ministers from outside the Assembly.]
- (4) Members of the Cabinet must act in accordance with the Constitution.
- (5) Members of the Cabinet are accountable collectively and individually to Parliament for the performance of their functions.
- (6) Members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control.
- (7) The Deputy President and Ministers are responsible for the functions of the executive assigned to them by the President.
- (8) The Deputy President must assist the President in the execution of the functions of government, and be the leader of government business in the National Assembly.

Deputy Ministers

91. The President may appoint not more than twelve Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them.

Composition and election of provincial legislatures

103. (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that -
 - (a) is prescribed by national legislation;
 - (b) is based on a common voters roll for the Province;
 - (c) provides for a minimum voting age of 18 years; [and]
 - (d) provides that some members are elected from lists of party candidates drawn up in a party's order of preference, and some members are elected directly as constituency representatives; and
 - (e) in a manner which results in the total number of members elected reflecting the proportion of the total number of votes recorded for the prospective parties.

- (2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of national legislation.

Membership

104.

- (1) Every citizen who is qualified to vote for [the National Assembly] provincial legislature of the Province concerned is eligible to be a member of a provincial legislature, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than-
 - (i) the Premier and other members of the Executive Council of a province; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
 - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a municipal council;
 - (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic; or
 - (e) anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of a provincial legislature in terms of subsection (1) (a) or (b) may be a candidate for the legislature, subject to any limits and conditions established by national legislation.
- (3) A person loses membership of a provincial legislature if that person -
- (a) ceases to be eligible; or
 - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership.
- (4) Vacancies must be filled in terms of national legislation.

Dissolution of provincial legislatures before expiry of term

107. (1) The Premier of a province may dissolve the provincial legislature if the legislature, by a resolution adopted by a majority of its members supports dissolution.
- (2) An Acting-Premier must dissolve the provincial legislature if -
- (a) there is a vacancy in the office of Premier; and

- (b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred.

Executive Councils

- 129.
- (1) The Executive Council of a province consists of the Premier [and no fewer than five and] no more than ten members appointed by the Premier from among the members of the provincial legislature.
 - (2) The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.
 - (3) Members of the Executive Council of a province must act in accordance with the Constitution.
 - (4) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the performance of their functions.
 - (5) Members of the Executive Council of a province must provide the legislature with full and regular reports concerning matters under their control.
 - (6) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier.

Conflicting Laws

Conflicts between national and provincial legislation

- 142.
- (1) If there is a conflict between national legislation and provincial legislation failing within a functional area listed in Schedule 4, subsections (2), (3) and (4) apply.
 - (2) [The national legislation prevails over the provincial legislation if the national legislation applies uniformly with regard to the country as a whole and -] A law passed by a provincial legislature shall prevail over an Act of Parliament unless the Act of Parliament applies uniformly with regard to the country as a whole, and except in as far as the Act of Parliament;
 - (a) deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually;
 - (b) [if,] with regard to a matter that, to be performed effectively requires uniformity, [in the interest of the country as a whole, requires uniformity, it] provides for uniformity across the nation by establishing -
 - (i) norms and standards;
 - (ii) frameworks; or
 - (iii) national policies;
 - (c) is necessary for -
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;

- (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - (iv) the promotion of economic activities across provincial boundaries;
 - (v) [the promotion of] guaranteeing [equal] equality of opportunity or [equal] access to a government service[s]; or
 - (vi) the protection of the environment; or
 - (vii) [is aimed at] the prevention of [preventing] unreasonable action by a province that is materially prejudicial to the economic, health or security interest of another province or the country as a whole[; or]
- [(d) (ii) impedes the implementation of national economic policy.]
- [(3) National legislation enacted before the Constitution took effect, or passed by the National Council of Provinces, must be regarded as necessary for the purposes set out in subsection (2) (c) if it deals with any of the matters referred to in that subsection.]
- [(4) The provincial legislation prevails over the national legislation if subsection (2) does not apply.]

Supreme Court of Appeal

164. (1) The Supreme Court of Appeal consists of a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament which may not amend the number more than once every five years.
- (2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament.
- (3) The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only -
- (a) appeals;
 - (b) issues connected with appeals; and
 - (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

Appointment of judicial officers

170. (1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a citizen of South Africa.
- (2) The need for the judiciary to be competent and independent and to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are being appointed.
- (3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court; and, after

consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.

- (4) The other judges of the Constitutional Court are appointed by the President as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure:
 - (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
 - (b) The President in consultation with the leaders of parties represented in the National Assembly may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.
 - (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments in consultation with the leaders of parties represented in the National Assembly, or failing agreement among them, by a vote of seventy five percent of the members of the National Assembly from the supplemented list.
- (5) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court.
- (6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.
- (7) Other judicial officers must be appointed in terms of an Act of Parliament.
- (8) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 2, that they will uphold and protect the Constitution.

Judicial Service Commission

- 174.
- (1) There is a Judicial Service Commission, consisting of -
 - (a) the Chief Justice, who presides at meetings of the Commission;
 - (b) the President of the Constitutional Court;
 - (c) one Judge President designated by the Judges President;
 - (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;
 - (e) two practising advocates designated by the advocates' profession;
 - (f) two practising attorneys designated by the attorneys' profession;
 - (g) one teacher of law designated by teachers of law at South African universities;

- (h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;
 - [i) four members of the National Council of Provinces designated together by the Council, by resolution adopted by at least two thirds of its members;]
 - (j) four persons designated by the President as head of the national executive, after consulting with the leaders of all the parties in the National Assembly; and,
 - (k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier, of the province concerned.
- (2) If a dispute arises during the designation process referred to in subsection (1) (a) or (f), the President, after consulting with the relevant profession, may designate one of the practitioners to be designated from that profession.
 - (3) Members designated by the National Council of Provinces serve until they are replaced together, or until any vacancy occurs among their number. Other members who were designated to the Commission serve until they are replaced by those who designated them.
 - (4) The Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation.
 - (5) The Judicial Service Commission may advise the national government on any matter relating to the judiciary or the administration of justice; but, when it considers any matter except the appointment of a judge, it must sit without the members appointed in terms of subsection (1) (h) [and (i)].
 - (6) The Judicial Service Commission may determine its own procedure; but, decisions of the Commission must be supported by a majority of its members.

Prosecuting Authority

175. (1) There is a single national prosecuting authority in the Republic structured in terms of national legislation, and consisting of -
- (a) a national Attorney-General, who is the head of the prosecuting authority, and is appointed by the President [as head of the national executive] on the advice of the Judicial Service Commission; and
 - (b) other Attorneys-General and prosecutors as determined by national legislation, which must ensure that [they] all members of the Prosecuting authority exercise their powers impartially without fear, favour or prejudice[/impartially].

- (2) The prosecuting authority has the power to institute prosecutions on behalf of the state, and to carry out any necessary functions incidental to instituting prosecutions.
- [(3) The prosecuting authority must exercise its functions without fear, favour or prejudice.]
- (3) The national Attorney-General -
- (a) must determine prosecution policy in consultation with the other Attorneys General which must be observed in the prosecution process;
 - (b) must [issue] publish general policy directives which must be observed in the prosecution process;
 - (c) may intervene in the prosecution process when policy directions are not complied with; and
 - (d) may review any decision not to prosecute if the general policy directives have not been complied with, and issue directions to prosecute in [specific] those cases.
- (4) The cabinet member responsible for the administration of justice must exercise final responsibility over the prosecution authority.
- (5) All other matters concerning the prosecution authority must be determined by national legislation.

Chapter 10

Public Administration

Basic values and principles governing public administration

191. (1) Public administration includes -
- (a) administration in every sphere of government; and
 - (b) the administration of institutions that are dependent on government financial support or are authorised in terms of any law to impose any tax, levy or duty but excludes institutions of tertiary education.
- (2) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development oriented.
 - (d) Services must be provided impartially, fairly, equitably and without bias.
 - (a) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (9) Transparency must be fostered by providing the public with timely, accessible and accurate information.

- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (3) National legislation must ensure the promotion of the basic values and principles listed in subsection (2).
 - (4) The appointment in the public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
 - (5) Legislation regulating the public administration may differentiate between different sectors, administrations or institutions.
 - (6) The nature and functions of different sectors, administrations or institutions of the public administration are relevant factors to be taken into account in legislation regulating the public administration.

Schedule 5 : Item 7

New Item 7 (1 A)

"(1A) The ten delegates are

- (a) three special delegates, comprising
 - (i) the Premier of the Province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council;
 - (ii) one special delegate nominated by the majority party in the Province, as and when that party requires; and
 - (iii) one special delegate nominated by the largest minority party, as and when that party requires. Where the largest minority party is entitled to have only one delegate by virtue of the proportions established by sub-item (1), it may elect to have its delegate as a permanent delegate in which case the majority party will be entitled to nominate a second special delegate; and
- (b) seven permanent delegates nominated by the political parties in the proportions necessary to meet the requirements of sub-item (1)."

Chapter 11

195.

- (1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.
- (2) The defence force is the only lawful military force in the Republic.
- (3) Other than the security services established in terms of the Constitution, armed organizations or services may only be established in terms of (national) legislation.
- (4) (The) Any security service(s) established must be structured and regulated by (national legislation) an Act of Parliament, or legislation not inconsistent with such an Act.
- (5) (The) Any security service(s) established by law must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.
- (6) No member of any security service may obey a manifestly illegal order.
- (7) Neither the security services, nor any of their members, may perform their functions in a manner that -
 - (a) prejudices a political party interest that is legitimate in terms of this Constitution; or
 - (b) furthers any (private) partisan interest of a political party.
- (8) Multi-party parliamentary committees must have oversight of all security services, in order to give effect to the principle of transparency, in a manner determined by national legislation or the rules and orders of Parliament.

POLICE

Police Service

201.

- (1) The (national) police service must be structured to function in the national, provincial and, where (necessary) appropriate, local spheres.
- (2) Police forces may, subject to this Constitution, be established by provincial, and where appropriate, municipal, law.
- (3) (National legislation) An Act of Parliament must (establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively) in respect of any police force established by law, provide for -
 - (a) the establishment and maintenance of uniform standards

of policing;

(b) uniform suspension, dismissal, disciplinary and grievance procedures;

(c) the training, conduct and basic conditions of service of all police officers;

(d) a Code of Conduct applicable to all police officers; and

(e) the powers and functions of police officers.

- (4) The objects of the police service are to prevent and investigate crime, to maintain public order, (and) to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

Political responsibility

202. (1) A member of the Cabinet must be responsible for determining national policing policy.
- (2) The responsible member of the Cabinet must determine national policing policy after consultation with the provincial governments, and after taking into account the requirements of provinces.
- (3) A provincial government may develop policing policy not inconsistent with any Act of Parliament, and after consultation with the responsible member of the Cabinet.

Control of police service

203. (1) The President, as head of the national executive, must appoint a woman or man as National Commissioner of the police service, to control and manage the police service.
- (2) The National Commissioner must exercise control over and manage the police service in accordance with the directions of the Cabinet member responsible for policing, and in accordance with any Act of Parliament.
- (3) The National Commissioner must in consultation with the provincial government appoint a woman or man as provincial commissioner for each province, in accordance with (national legislation) an Act of Parliament.
- (4) Provincial commissioners are responsible for policing -
(a) as prescribed by national and provincial legislation; and
(b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).
- (5) (agree with ANC amendment)

Chapter 7

Local Government

General Objects

146. (1) The objects of local government as a distinct sphere of government are-
- (a) to secure democratic government for local communities and to enhance democracy and accountability in general;
 - (aA) to provide basic services in a sustainable manner within its financial and physical capacity;
 - (b) to promote the social and economic development of local communities [within the framework of national and provincial development policies] and to enhance social and economic development generally;
 - (c) to provide the basic socio-economic needs of local communities;
 - (d) to promote the participation of local communities and community organisations in the affairs of local government; and
 - (e) to assist in the development and maintenance of a safe and healthy environment.
 - (f) to assist with the implementation of national and provincial development programmes.
- (2) National and provincial government must assist in the realisation of these objectives by actively developing local government and broadening and strengthening its capacity.
146. (1A) Municipalities must endeavour to achieve these objectives.

Chapter 7

Delete the whole of section 147.

[Developmental duties of municipalities

147. Municipalities must endeavour to achieve the objectives set out in section 146 and must -
- (a) align their administrations, budgeting and planning processes to the social, economic and political development of their areas and communities;
 - (b) provide basic services in a sustainable manner within, their financial and physical capacity;
 - (c) assist with the implementation of national and provincial development programmes, and
 - (d) provide mechanisms through which communities and community organisations in their areas may participate in their. processes.)

Establishment of local government structures

148. (1) Local government in the Republic is administered through municipalities exercising power within their respective municipal areas.
- (2) Municipalities must be established for the whole of the territory of the Republic.
- (3) [National legislation] An Act of Parliament must determine -
- (a) the different categories of municipality that may be established; and
 - (b) the powers and functions, [other features] of local government.
- (4) In each province, [provincial legislation] a provincial Act within the scope of national legislation must provide for -
- (a) the establishment of municipalities and submunicipal entities;
 - (b) the oversight of the administration of local government in the province;
 - (c) development of local government capacity and viability to manage its own affairs; and
 - (d) the demarcation of municipal areas.

Local self-government

149. Municipalities are entitled to regulate and manage on their own the local government affairs of their communities [in a manner consistent with national and provincial legislation].

[Municipal legislative authority

150. (1) The legislative authority of a municipality is vested in its council.
- (2) A municipality may only legislate in a manner consistent with national and provincial legislation concerning -
- (a) any matter pertaining to the objects of local government, as listed in section 146, that falls within Schedule 4;
 - (b) any other matter expressly delegated to it by national or provincial legislation; and
 - (c) concerning any matter reasonably necessary for, or incidental to, the effective exercise of its power in terms of this subsection.
- (3) Municipal legislation that is inconsistent with national or provincial legislation is invalid. If there is an inconsistency between municipal legislation and national or provincial legislation that is inoperative because of a conflict referred to in section 142, the municipal legislation remains valid as long as that other legislation remains inoperative.
- (4) National and provincial legislation must not undermine the ability of a municipality to attend to the affairs of its community.]

New Section 150.

Municipal legislative authority

150. (1) The legislative authority of a municipality is vested in its council and confers on the council the power to pass legislation for its municipal area with regard to -
- (a) any matter within the functional areas listed in Schedules 4 and 4A; and
 - (b) any matter outside these functional areas expressly delegated to it by national or provincial legislation;
 - (c) any matter reasonably necessary for, or incidental to, the effective exercise of its power in terms of this section.
150. (2) In the event of a conflict between a national or provincial Act (including a provincial constitution) and municipal legislation which falls within the functional areas listed in Schedule 4A the municipal legislation prevails unless the national or provincial Act-
- (a) deals with a matter that cannot be regulated effectively by legislation enacted by municipal councils individually;
 - (b) establishes -
 - (i) norms and standards; or
 - (ii) structural, regulatory or other frameworks necessary for a function to be performed effectively;
 - (c) is to prevent unreasonable action by a municipality which is materially prejudicial to another municipality or the province as a whole.
150. (3) (a) A municipality may only legislate in a manner consistent with national and provincial legislation concerning any matter pertaining to the objects of local government, as listed in section 146, that falls within Schedule 4 but is not listed in Schedule 4A;
- (b) If there is an inconsistency between municipal legislation and national or provincial legislation that is inoperative because of a conflict referred to in section 142, the municipal legislation remains valid as long as that other legislation remains inoperative.
150. (4) National or provincial legislation must not:
- (a) encroach on or interfere with or compromise the process, functions or structures of local government; or
 - (b) undermine the ability of a municipality to attend to the affairs of its community.

Municipal executive authority

151. (1) The executive authority of a municipality is vested in its council and confers on the council the power -
- (a) to administer legislation passed by it; and
 - (b) to administer, in its municipal area, national or provincial legislation that has been assigned to it in terms of national or provincial legislation, and any other functions assigned to it.

151. (2) Where administrative responsibilities are assigned or delegated to a municipality in terms of national or provincial legislation, the municipality must be provided with the financial resources to carry out those responsibilities.

Composition of municipal councils

152. (1) A municipal council consists of the women and men elected as members in accordance with either -
- (a) a system of proportional representation based on a common voters roll for the municipal area and prescribed by [national legislation] an Act of Parliament which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
 - (b) both a system described in paragraph (a) and a system of ward representation based on common voters rolls for the wards, and prescribed by [national legislation] an Act of Parliament.
- (2) A system of election established in terms of this section must ensure that the total number of members elected from each party reflects the proportions of the [vote] total number of votes recorded for those parties.

Elections

154. (1) Elections of municipal councils must take place at intervals of not more than five years.
- (2) A person may vote for a municipal council if that person -
- (a) is qualified to vote for the National Assembly;
 - (b) ordinarily resides in the municipal area; and
 - (c) is registered as a voter on the municipality's common voters roll.
- (3) If the electoral system for a municipality includes ward representation, [provincial legislation] a provincial Act within the framework of [national legislation] an Act of Parliament must provide for an independent body demarcate the wards.

Other matters

160. All matters concerning local government not dealt with in the Constitution may be prescribed by [national legislation] an Act of Parliament, or by a provincial [legislation] Act within the framework of [national legislation] an Act of Parliament.

Public Protector

Functions of Public Protector

178. (1) The Public Protector has the following powers, as regulated by [national legislation] an Act of Parliament -
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

- (b) to report on that conduct; and
 - (c) to take appropriate remedial action.
- (2) The Public Protector has any additional functions prescribed by [national legislation] an Act of Parliament.
 - (3) The Public Protector may not investigate court decisions.
 - (4) The Public Protector must be accessible to all persons and communities.
 - (5) Any report issued by the Public Protector must be open to the public, unless exceptional circumstances, to be determined in accordance with [national legislation] an Act of Parliament, require that a report be kept confidential.

Human Rights Commission

Functions of Human Rights Commission

- 180.
- (1) The Human Rights Commission must -
 - (a) promote respect for human rights and a culture of human rights;
 - (b) promote the development, protection and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.
 - (2) The Human Rights Commission has the powers, as regulated by [national legislation] an Act of Parliament, necessary to perform its functions, including the power -
 - (a) to investigate and to report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated;
 - (c) to carry out research; and
 - (d) to educate.
 - (3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights respecting housing, health care, food, water [,social security, education,] and the environment.
 - (4) The Human Rights Commission has the additional powers and functions prescribed by [national legislation] an Act of Parliament.

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

Functions of Commission

- 181.
- (1) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities has the following primary objects:

- (a) To promote respect for the rights of cultural, religious and linguistic communities.
 - (b) To promote, develop and attain peace, friendship, humanity and tolerance amongst cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association.
 - (c) To recommend the establishment, in accordance with [national legislation] an Act of Parliament, of cultural or other councils for particular communities in South Africa.
- (2) The Commission has the power, as regulated by [national legislation] an Act of Parliament, necessary to achieve its primary objects, including the power to monitor, to investigate, to research, to educate, to lobby, to advise and to report on issues concerning the rights of cultural, religious and linguistic communities.
 - (3) The Commission may report any matter which falls within its authority to the Human Rights Commission for investigation.
 - (4) The Commission has the additional powers and functions prescribed by [national legislation] an Act of Parliament.

Composition of Commission

- 182. (1) The number of members of the Commission and their appointment and terms of office must be prescribed by [national legislation] an Act of Parliament.
- (2) The composition of the Commission -
 - (a) must be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
 - (b) in general, reflect the gender composition of South Africa.

Commission for Gender Equality

Functions of Commission for Gender Equality

- 183. (1) The Commission for Gender Equality must promote respect for gender equality and the development, protection and attainment of gender equality.
- (2) The Commission for Gender Equality has the power, as regulated by [national legislation] an Act of Parliament, necessary to perform its functions, including the power to monitor, to investigate, to research, to educate, to lobby, to advise and to report on issues concerning gender equality.
- (3) The Commission for Gender Equality has the additional powers and functions prescribed by [national legislation] an Act of Parliament.

Functions of Auditor-General

- 184. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -

- (a) all national and provincial state departments and administrations;
 - (b) all municipalities; and
 - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.
- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of -
- (a) any institution funded from the national revenue fund, a provincial revenue fund or municipality; or
 - (b) any institution, other than a registered charity or private enterprise, that is authorised in terms of any law to receive money for a public purpose.
- (3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by [national legislation] an Act of Parliament.

Electoral Commission

Functions of Electoral Commission

186. (1) The Electoral Commission must -
- (a) manage elections of national, provincial and local legislative bodies, in accordance with [national legislation] an Act of Parliament;
 - (b) ensure that those elections are free and fair; and
 - (c) declare the results of those elections within a period that must be prescribed by [national legislation] an Act of Parliament which is as short as reasonably possible.
- (2) The Electoral Commission has the additional powers and functions prescribed by [national legislation] an Act of Parliament.

Composition of Electoral Commission

187. The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by [national legislation] an Act of Parliament.

Independent Authority to Regulate Broadcasting Broadcasting Authority

188. [National legislation] An Act of Parliament must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

General Provisions

Appointments

- 189.
- (1) The Public Protector and members of any Commission established in terms of this Chapter must be women or men who are South African citizens, each of whom is fit and proper to hold the particular office and complies with any other requirements prescribed by [national legislation] an Act of Parliament .
 - (2) The Auditor-General must be a woman or a man who is a South African citizen and fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances, and public administration must be given due regard in appointing the Auditor-General.
 - (3) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and members of -
 - (a) the Human Rights Commission;
 - (b) the Commission for Gender Equality; and
 - (c) the Electoral Commission.
 - (4) The National Assembly must recommend persons -
 - (a) nominated by way of a resolution supported by at least three quarters of the members of a committee of the National Assembly [proportionally] composed of members of all parties represented in the Assembly; and
 - (b) approved by the National Assembly by a resolution adopted by at least two thirds of its members.
 - (5) Subsection (4) does not preclude the participation of civil society in the recommendation process.
 - (6) [National legislation] an Act of Parliament must provide for the appointment of an acting Public Protector, Auditor-General or commission member when it is necessary to ensure the effective functioning of the relevant institution.

Removal from office

- 190.
- (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on -
 - (a) the grounds of gross misconduct, incapacity or incompetence;
 - (b) a finding to that effect by at least three quarters of the members of a committee of the National Assembly composed of members of all Parties represented in the Assembly; and
 - (c) the adoption by the National Assembly of a resolution, calling for that person's removal from office, and adopted by at least two thirds of the members.
 - (2) The President -

- (a) may suspend a person from office at any time during proceedings of a committee of the National Assembly for the removal of that person; and
- (b) must remove a person from office upon adoption by the National Assembly of a resolution calling for that person's removal.

Chapter 13

Finance

General Financial Matters

National Revenue Fund

209. (1) There is a National Revenue Fund into which [all money specified] all revenues as defined by an Act of Parliament and received by the national government must be paid.
- (2) Money may be withdrawn from the National Revenue Fund only -
- (a) in terms of an appropriation by an Act of Parliament; or
 - (b) as a direct charge against the National Revenue Fund, as provided for in terms of the Constitution or an Act of Parliament.
- (3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

Equitable shares and allocations of revenue

210. (1) An Act of Parliament must provide for -
- (a) the equitable division of revenue raised nationally between the national, provincial and local spheres of government;
 - (b) the determination of each province's equitable share of the provincial share of the revenue; and
 - (c) any other allocations from the national government's share of the revenue, and any conditions on which those allocations may be made.
- (2) The Act referred to in subsection (1) may be enacted only after the provincial governments and organised local government have been consulted, [any recommendations] the recommendations of the Financial and Fiscal Commission have been considered, and must take into account -
- (a) the national interest;
 - (b) any provision that must be made in respect of the national debt;
 - (c) the needs and interests of the national government, determined by objective criteria;
 - (d) the need to ensure that the provinces and municipalities are able to provide basic services and exercise the functions allocated to them;
 - (e) the fiscal capacity and efficiency of the provinces and municipalities;
 - (f) developmental and other needs of local government and provinces;
 - (g) economic disparities within and among the provinces;

- (h) obligations of the provinces and municipalities in terms of national legislation;
- (i) the desirability of stable and predictable allocations of revenue shares; and
- (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

Treasury control

212. (1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in every sphere of government, by introducing -
- (a) generally recognised accounting practice;
 - (b) uniform expenditure classifications; and
 - (c) uniform treasury norms and standards.
- (2) The national treasury, with the concurrence of the Cabinet member responsible for national financial matters, may stop the transfer of funds to an organ of state only for serious or persistent material breach of the measures established in terms of subsection (1).
- (3) A decision to stop the transfer of funds to a province taken in terms of sub-section (2)-
- (a) may be enforced immediately but will lapse retrospectively unless Parliament approves it following the process established in terms of section 74, which must be completed within 30 days of the decision by the treasury; and
 - (b) may not stop the transfer of funds for more than 120 days.
- (4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of section 74.
- (5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province -
- (a) the Auditor-General must report to Parliament; and
 - [(b) the province must be given an opportunity to state its case and answer the allegations against it.]
 - (b) the province must be given an opportunity to answer the allegations against it and to state its case before a Parliamentary committee.

Contracts for goods and services

213. When organs of state contract for goods or services, they must do so in accordance with national and provincial legislation that establishes a system which is fair, equitable, transparent, competitive, cost-effective [and promotes equality and social justice.]

Financial and Fiscal Commission Establishment and functions

216. (1) There is a Financial and Fiscal Commission for the Republic which makes recommendations anticipated in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation. Such recommendations must be made within a reasonable time, which may be specified in an Act of Parliament.
- (2) The Commission is independent and subject only to the Constitution and [the law] an Act of Parliament, and must be impartial.
- (3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors including those listed in section 210(2).

Appointment and tenure of members

217. (1) The Commission consists of the following women and men appointed by the President as head of the national executive -
- (a) a chairperson and a deputy chairperson who are full-time members;
 - (b) nine persons , each of whom is nominated by the Executive Council of a province, with each province nominating only one person;
 - (c) two persons nominated by the local government body established in terms of section 158; and
 - (d) nine other persons.
- (2) Members of the Commission must have appropriate expertise.
- (3). Members serve for a term established in terms of national legislation. During a member's term of office the President may remove the member from office on grounds of gross misconduct, incapacity or incompetence.

Central Bank Establishment

219. The South African Reserve Bank is the central bank of the Republic and is regulated by [national legislation] an Act of Parliament.

Primary Object

220. (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
- (2) The South African Reserve Bank [must perform any functions in pursuit of its primary object], in the pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice; but, there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

Powers and functions

221. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, and must be determined by [national legislation] an Act of Parliament.

Provincial and Local Financial Matters

Provincial Revenue Funds

222. (1) There is a Provincial Revenue Fund for each province into which [all money specified] all revenue as defined by an Act of Parliament and received by the provincial government must be paid.
- (25) Money may be withdrawn from the Provincial Revenue Fund only -
- (a) in terms of an appropriation by a provincial Act; or
 - (b) as a direct charge against the Provincial Revenue Fund, provided for in terms of the Constitution or a provincial Act.
- (3) Revenue allocated through a province to local government in that province, in terms of section 210(1), is a direct charge against that province's Revenue Fund.

Provincial taxes

224. (1) A provincial legislature may impose -
- (a) taxes, levies, or duties other than income tax, value-added tax, general sales tax or customs duties; and
 - (b) flat-rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax or customs duties.
- (2) The power of a provincial legislature to impose taxes, levies, duties and surcharges -
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries or the national mobility of goods, services, capital or labour; and
 - (b) must be regulated by [national legislation] an Act of Parliament which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.
- (3) A provincial legislature, notwithstanding subsection (2) (b), has exclusive competence within its province to impose taxes, levies or duties on -
- (a) casinos;
 - (b) gambling, wagering and lotteries;
 - (c) betting; and
 - (d) motor vehicle licences.

Municipal rates and taxes

225. (1) A municipality may impose rates on property, transfer duties on property and excise taxes, and, subject to [notional legislation] an Act of Parliament, may impose other taxes, levies or duties; but, within each municipality the rates, taxes, levies and duties must be based on a uniform structure for its area of jurisdiction.
- (1A) A municipality may not impose any income tax, value-added tax, general sales tax surcharge or customs duty.

- (2) The legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Chapter 14

General Provisions

International Law

International agreements

227. (1) An international agreement binds the Republic only if it has been approved by resolution in both the National Assembly and the National Council of Provinces.
- (2) Despite subsection (1), an international agreement of a technical or administrative nature entered into by the national executive binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the National Assembly and the National Council of Provinces within a reasonable time.
- (3) Any international agreement becomes law in the Republic when it is enacted into law by [national legislation] an Act of Parliament.
- (4) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

Annexure A

Amendments to Schedule 2 to the previous Constitution

Amendments

- 1 The amendment of item 1 by replacing "the Electoral Act, 1993", wherever it appears, with ["national legislation"] an Act of Parliament
2. The replacement of item 2 with the following item:
"2. The seats in the National Assembly as determined in terms of section 44 of the new Constitution shall be filled as follows:
 - (a) *One half of the 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 the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.*
 - (b) *The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted."*
3. The amendment of item 3 by replacing "400 candidates" with "a number of candidates equal to the number of seats in the National Assembly".
4. The amendment of item 5 by deleting "200" in the words preceding paragraph (a).
5. The amendment of item 6 -
 - (a) by deleting "200" in the words preceding paragraph (a); and
 - (b) by replacing "401" in paragraph (a) with "the number of seats in the National Assembly, plus one".

6. The amendment of item 7 by replacing “401” in subitem (3)(b) with "the number of seats in the Assembly, plus one".
7. The replacement of item 10 with the following item:
“10. The number of seats in each provincial legislature shall be as determined in terms of section 103 of the new Constitution.”
8. The amendment of item 11 by replacing "the Electoral Act, 1993", wherever it appears, with ["national legislation"] an Act of Parliament.
9. The amendment of item 6 -
 (a) by replacing subitem (1) with the following subitem:
"(1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election results have been declared in terms of section 186 of the new Constitution, the Commission shall, within two days, designate from each list of candidates, published in terms of [national legislation] an Act of Parliament, the representatives of each party in the legislature. “; and

Schedule 4

[Areas of Concurrence Legislative Competencies]

Provincial Functional Areas

Part A

Agriculture

Abattoirs and generally the slaughter of animals, and the disposal of the waste products of animal slaughter

Airports, other than international and national air ports

Animal control and diseases including facilities for the accommodation, care and burial of animals

Casinos, racing, gambling and wagering, excluding lotteries and sports pools Consumer protection

Cultural affairs

Education at all levels, excluding tertiary education

Environment

Health Services

Housing

Indigenous law and customary law, subject to Chapter 12

Language policy and the regulation of official languages to the extent that the provisions of section 6 expressly confer legislative competence upon the provincial legislature

[Markets]

[Pounds]

Nature conservation, excluding national parks, national botanical gardens and marine resources

Media services directly controlled or provided by the provincial government excluding any service provided by the SABC, subject to section 180

Provincial sport

Provincial recreation and amenities

Provincial public transport

Regional planning and development

Road traffic regulation

Provincial [and municipal] roads

Soil conservation

Tourism excluding international marketing of tourism

Trade

Industrial promotion

Traditional leadership subject to Chapter 12

Urban and rural development

Welfare services