



CONSTITUTIONAL ASSEMBLY

**Republic Of South Africa**

**Constitution  
of the Republic of  
South Africa Bill, 1996**

**As introduced by the Chairperson of the  
Constitutional Assembly**

# Explanatory Memorandum

This Bill has been drafted in terms of Chapter 5 of the Constitution of the Republic of South Africa, (Act 200 of 1993). The objective in drafting this Bill was to ensure that the final constitution is legitimate, credible and accepted by all South Africans.

To this extent, the process of drafting this Bill involved many South Africans in the largest public participation programme ever carried out in South Africa. After nearly two years of intensive consultations, the political parties represented in the Constitutional Assembly negotiated the formulations contained in this Bill which are an integration of ideas from ordinary citizens, civil society and political parties represented in and outside of the Constitutional Assembly.

This Bill therefore represents the collective wisdom of the South African people and has been arrived at by general agreement. Parties have, however, registered reservations and given notice of their intention to file amendments in respect of various clauses.

# and to provide for matters incidental thereto

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# PREAMBLE

We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person;

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelela iAfrika. Morena boloke sechaba sa heso. God seën Suid-Afrika. God bless South Africa. Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika.

# 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) A commitment to promote non-racialism and non-sexism.
  - (c) Supremacy of the constitution.
  - (d) Universal adult suffrage, a common voters roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

### Supremacy of the Constitution

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid.

### Citizenship

3.
  - (1) There is a common South African citizenship.
  - (2) All citizens are equally -
    - (a) entitled to the rights, privileges and benefits of citizenship; and
    - (b) subject to the duties and responsibilities of citizenship.
  - (3) National legislation must provide for the acquisition, loss and restoration of citizenship.

### National Anthem

4. The national anthem of the Republic is as determined by the President by proclamation in the national Government Gazette.

### National flag

5. The national flag is black, gold, green, white, red and blue, as sketched and described in Schedule 1.

### Languages

6.
  - (1) The official languages of the Republic are Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu.
  - (2) The Pan South African Language Board must promote the conditions for the development and use of the official languages.
  - (3) The Pan South African Language Board is also responsible for promoting respect for and the development of languages including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, Urdu, Khoi, San and sign language and other languages commonly used by communities in South Africa, and Arabic, Hebrew, Sanskrit and other languages used for religious purposes.
  - (4) National and provincial government may use particular official languages for the purposes of government taking into account usage, practicality and expense.

# Chapter 2

## Bill of Rights

### Rights

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote, and fulfil the rights in this Bill of Rights.
- (3) The rights in the Bill of Rights are subject only to the limitations that are set out in section 35, or contained or referred to elsewhere in it.

### Application

8. (1) The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary, and all other organs of state.
- (2) A right in the Bill of Rights binds all natural and juristic persons, if applicable.
- (3) 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 develop the common law to grant a remedy based on that right. In granting a remedy, the court may formulate rules that limit the right, provided that the limitation is in accordance with section 35(1).
- (4) Juristic persons are entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and of the juristic persons.

### Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, who are disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- (4) No person may unfairly discriminate on one or more grounds in terms of subsection (3). The state must adopt directly or indirectly against any one national legislation to prevent or prohibit unfair discrimination. In applying section 8(3) to the right in this subsection, courts may develop the common law only to the extent that the required national legislation does not provide a remedy based on this right.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

### **Human dignity**

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

### **Life**

11. Everyone has the right to life.

### **Freedom and security of the person**

12. (1) Everyone has the right to freedom and security of the person, which includes the right -
  - (a) not to be deprived of liberty arbitrarily or without just cause;
  - (b) not to be detained without trial;
  - (c) to be free from all forms of violence from both public and private sources;
  - (d) not to be tortured in any way; and
  - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right -
  - (a) to make decisions concerning reproduction;
  - (b) to security in and control over their body; and
  - (c) not to be subjected to medical or scientific experiments without their informed consent.

### **Slavery, servitude and forced labour**

13. No one may be subjected to slavery, servitude or forced labour.

### **Privacy**

14. Everyone has the right to privacy, which includes the right not to have -
  - (a) their person or home searched;
  - (b) their property searched;
  - (c) their possessions seized; or
  - (d) the privacy of their communications infringed.

### **Freedom of religion, belief and opinion**

15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances, may be conducted at state or state-aided institutions provided that -
  - (a) those observances follow rules made by the appropriate public authorities;
  - (b) they are conducted on an equitable basis; and
  - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising -
  - (i) marriages concluded under any tradition or a system of religious, personal or family law; and
  - (ii) systems of personal and family law under any tradition or adhered to by persons professing a particular religion.
- (b) Marriages, or systems of personal and family law, recognised by legislation referred to in paragraph (a) must be consistent with the provisions of the Constitution.

### **Freedom of expression**

16. (1) Everyone has the right to freedom of expression, which includes -
  - (a) freedom of the press and other media;



- (b) freedom to receive and impart information and ideas;
  - (c) freedom of artistic creativity; and
  - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to -
- (a) propaganda for war;
  - (b) incitement of imminent violence; or
  - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

### **Assembly, demonstration and petition**

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket, and to present petitions.

### **Freedom of association**

18. Everyone has the right to freedom of association.

### **Political rights**

19. (1) Every citizen is free to make political choices, which includes the right -
- (a) to form a political party;
  - (b) to participate in the activities of, or recruit members for, a political party; and
  - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right -
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - (b) to stand for public office and, if elected, to hold office.

### **Citizenship**

20. No citizen may be deprived of citizenship.

### **Freedom of movement and residence**

21. (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in, and to reside anywhere in the Republic.
- (4) Every citizen has the right to a passport.

### **Freedom of occupation**

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

### **Labour relations**

23. (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right -
- (a) to form and join a trade union;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Every employer has the right -
- (a) to form and join an employers' organisation;
  - (b) to participate in the activities and programmes of an employers' organisation; and
  - [(c) to lock-out.]

- (4) Every trade union and every employers' organisation has the right -
  - (a) to determine its own administration, programmes and activities;
  - (b) to organise;
  - (c) to bargain collectively; and
  - (d) to form and join a federation.
- (5) The provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements.

### **Environment**

24. Everyone has the right -
  - (a) to an environment that is not harmful to their health or well-being; and
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (i) prevent pollution and ecological degradation;
    - (ii) promote conservation; and
    - (iii) secure the ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

### **Property**

25. (1) No one may be deprived of property except in accordance with law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of a law of general application -
  - (a) for public purposes or in the public interest; and
  - (b) subject to compensation, the amount, timing and manner of which must be agreed, or decided by a court.
- (3) The amount, timing and manner of compensation must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant factors, including -
  - (a) the current use of the property;
  - (b) the history of the acquisition and use of the property;
  - (c) the market value of the property;
  - (d) the extent of state investment and subsidy in the acquisition and beneficial improvement of the property; and
  - (e) the purpose of the expropriation.
- (4) For the purposes of this section, the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory law or practice is entitled, subject to and in accordance with an Act of Parliament, either legally to secure the legal rights to that land or to comparable redress subject to and in accordance with an Act of Parliament.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory law or practice is entitled, subject to and in accordance with an Act of Parliament, either to restitution of that property, or to equitable redress subject to and in accordance with an Act of Parliament.
- (8) No provision of this section may unreasonably impede the state from taking reasonable legislative and other measures to achieve land reform [and or in order to] redress the results of past racial discrimination.

## **Housing**

26. (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

## **Health care, food, water, and social security**

27. (1) Everyone has the right to have access to -
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

## **Children**

28. (1) Every child has the right -
  - (a) to a name and a nationality from birth;
  - (b) to family care, parental care, or appropriate alternative care when removed from the family environment;
  - (c) to basic nutrition, shelter, basic health care services, and social services;
  - (d) to be protected from maltreatment, neglect, abuse, or degradation;
  - (e) to be protected from exploitative labour practices;
  - (f) not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development;
  - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights the child enjoys under sections 12 and 34, the child may be detained only for the shortest appropriate period of time, and has the right to be -
    - (i) kept separately from other detained persons over the age of 18 years; and
    - (ii) treated in a manner, and kept in conditions, that take account of the child's age; and
  - (h) to have a legal practitioner assigned to the child by the state and at state expense in civil proceedings affecting the child, if substantial injustice would otherwise result; and
  - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interest is of paramount importance in every matter concerning the child.
- (3) In this section, "child" means a person under the age of 18 years.

## **Education**

29. (1) Everyone has the right -
  - (a) to a basic education, including adult basic education, in a state or state-aided institution;
  - (b) to further education, which the state must take reasonable and progressive

- legislative and other measures to make generally available and accessible;  
and
  - (c) to choose instruction in any language where instruction in that language can be reasonably provided at state or state-aided institutions.
- (2) Everyone has the right to establish and maintain, at their own expense, private educational institutions that -
- (a) do not discriminate on the basis of race;
  - (b) are registered with the state; and
  - (c) maintain standards that are not inferior to standards at comparable state-aided educational institutions.

### **Language and culture**

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

### **Access to information**

31. (1) Everyone has the right of access to -
- (a) any information held by the state; and
  - (b) any information that is held by another person that is required for the exercise or protection of any rights.
- (2) The state must give effect to the rights in subsection (1) by way of national legislation. This legislation may provide for reasonable measures to alleviate the administrative and financial burden on the state.

### **Just administrative action**

32. (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons for the administrative action.
- (3) The state must give effect to the rights in (1) and (2) by way of national legislation.
- (4) The legislation referred to in (3) must -
- (a) provide for the review of the administrative action by a court of law or, where appropriate, an independent and impartial tribunal;
  - (b) impose a duty on the state and the organs of state to give effect to the rights in sub-sections (1) and (2);
  - (c) be justifiable in an open and democratic society based on human dignity, freedom and equality; and
  - (d) promote an efficient administration.

### **Access to courts**

33. Everyone has the right to have any dispute that can be resolved by law decided in a fair, public hearing in a court or, where appropriate, another independent and impartial forum.

### **Arrested, detained and accused persons**

34. (1) Everyone who is arrested for allegedly committing an offence has the right-
- (a) to remain silent;
  - (b) to be informed promptly -
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (c) not to be compelled to make any confession or admission that could be used

- in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest; but, if that period expires outside ordinary court hours, to be brought before a court on the first court day after the end of that period;
  - (e) at the first court appearance after being arrested, to be released unless charged and the court orders further detention; and
  - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right-
- (a) to be informed promptly of the reason for being detained;
  - (b) to choose and to consult with a legal practitioner, and to be informed of this right promptly;
  - (c) to have a legal practitioner assigned to the detained person by the state and at state expense if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least the provision of adequate accommodation, nutrition, reading material, exercise and medical treatment at state expense; and
  - (f) to communicate with, and be visited by, that person's
    - (i) spouse or partner;
    - (ii) next of kin;
    - (iii) chosen religious counsellor; and
    - (iv) chosen medical practitioner.
- (3) Every accused has a right to a fair trial, which includes the right -
- (a) to be informed of the charge with sufficient details to answer it;
  - (b) to have adequate time and facilities to prepare a defence;
  - (c) to a public trial in an ordinary court;
  - (d) to have their trial begin and conclude without unreasonable delay;
  - (e) to be present when being tried;
  - (f) to choose and be represented by a legal practitioner and to be informed of this right;
  - (g) to have a legal practitioner assigned to the accused by the state and at state expense if substantial injustice would otherwise result, and to be informed of this right;
  - (h) to be presumed innocent, and to remain silent, and not to testify during the proceedings;
  - (i) to adduce and challenge evidence;
  - (j) not to be compelled to give self-incriminating evidence;
  - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that

information must be given in a language that the person understands.

- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### **Limitation of rights**

35. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, having regard to all relevant factors including-
  - (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

### **States of emergency**

36. (1) A state of emergency may be declared only in terms of an Act of Parliament and only when -
  - (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency; and
  - (b) the declaration is necessary to restore peace or order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only -
  - (a) prospectively from the date of the declaration; and
  - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The National Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted by a majority of the members of the National Assembly. Any subsequent extension must be by a resolution adopted by at least 60 per cent of the members of the Assembly. A resolution in terms of this subsection must be taken after a public parliamentary debate.
- (3) Any High Court may enquire into the validity of -
  - (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; or
  - (c) any legislation enacted, or other action taken, under a declaration of a state of emergency.
- (4) Any legislation enacted in consequence of a declared state of emergency may derogate from the Bill of Rights only to the extent that -
  - (a) the derogation is strictly required by the emergency; and
  - (b) the legislation -
    - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
    - (ii) conforms to subsection (5); and
    - (iii) is published in the national Government Gazette immediately after being enacted.
- (5) No Act that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise -

- (a) indemnifying the state, or any person, for any unlawful act;
- (b) any derogation from this section; or
- (c) any derogation from a section mentioned in column 1 and 2 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of that table.

**Table of Non-Derogable Rights**

1 Section Number	2 Section Title	3 Extent to which the right is protected
11	Equality	With respect to race and sex only
12	Human Dignity	Entirely
13	Life	Entirely
14	Freedom and Security of the person	With respect to subsection (1)(d), (1)(e) and (2)(c) only
15	Slavery, servitude and forced labour	With respect to slavery and servitude only
30	Children	With respect to subsection (1)(d), (1)(e), (1)(g)(i) and (1)(g)(ii) only
36	Arrested, detained and accused persons	With respect to the following subsections only: (1)(a), (b) and (c) (2)(d) (3)(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (o) (4)

- (6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed -
  - (a) an adult family member or friend of the detainee must be contacted as soon as reasonably possible, and told that the person has been detained;
  - (b) a notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measures under which that person has been detained;
  - (c) the detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner;
  - (d) the detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative;
  - (e) a court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order;
  - (f) a detainee who is not released in terms of paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention any time more than 10 days after the previous review, and in either case, the court must release the detainee unless it is necessary to continue the detention to restore peace and order;
  - (g) the detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention; and
  - (h) the state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

- (8) Sub-sections (6) and (7) do not apply to persons who are not citizens of South Africa and who are detained in consequence of international armed conflicts. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention those persons.

### **Enforcement of rights**

37. Anyone listed in this section has the right to apply to a competent court, alleging that a right declared in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may apply for relief are -
- (a) anyone acting in their own interests;
  - (b) anyone acting on behalf of another person who cannot act in their own name;
  - (c) anyone acting as a member of, or in the interest of, a group or a class of persons;
  - (d) anyone acting in the public interest; and
  - (e) an association acting in the interests of its members.

### **Interpretation of Bill of Rights**

38. (1) When interpreting the Bill of Rights, every court -
- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law; and
  - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court must promote the spirit, purport, and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law, or legislation, to the extent that they are consistent with the Bill.



# Chapter 3

## Principles of Co-operative Government

### Basic Structure

- 39 (1) Governance of the Republic is constituted as distinctive but interdependent spheres: national, provincial and local.
- (2) A spirit of co-operation must be observed and practised among all spheres of governance, in the interest of -
- (a) preserving peace, national unity and the indivisibility of the Republic;
  - (b) securing the well-being of the people of the Republic; and
  - (c) providing effective, transparent, accountable and coherent government for the Republic as a whole.
- (3) Government within each sphere must conduct itself in a spirit of mutual respect and trust, reflecting their mutual obligation to -
- (a) foster friendly relations;
  - (b) support and assist each other;
  - (c) consult on matters of common interest;
  - (d) co-ordinate actions with each other in terms of agreed procedures; and
  - (e) cultivate mutual trust and co-operation.

### Intergovernmental Co-operation

40. (1) Government must observe and adhere to the spirit of co-operative governance. In particular, government within each sphere -
- (a) must be loyal to the Constitution, the Republic, and its people;
  - (b) must respect the constitutional status, institutions, powers and functions of government in the other spheres;
  - (c) may assume only the powers and functions conferred on it in terms of the Constitution; and
  - (d) may not exercise any powers or functions in a manner that encroaches on the geographical, functional or institutional integrity of government in another sphere.
- (2) National legislation may establish structures and institutions to promote and facilitate inter-governmental relations.
- (3) National legislation must provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (4) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a competent court to resolve the dispute.
- (5) If a competent court determines that the requirements of subsection (4) have not been satisfied, it may refer a dispute back to the organs of state involved.

# Chapter 4

## Parliament

### Composition of Parliament

41. (1) Parliament consists of -
- (a) the National Assembly; and
  - (b) the National Council of Provinces.
- (2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
- (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.
- (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

### Legislative authority of Republic

42. The legislative authority of the Republic -
- (a) in the national sphere of government is vested in Parliament, as set out in section 43;
  - (b) in the provincial sphere of government is vested in the provincial legislature of a province, as set out in section 103; and
  - (c) in the local sphere of government is vested in the municipal councils, as set out in section 151.

### National legislative authority

43. (1) The national legislative authority as vested in Parliament -
- (a) confers on the National Assembly the power -
    - (i) to amend the Constitution;
    - (ii) to pass legislation with regard to any matter, including a matter within the functional areas listed in Schedule 4 but excluding a matter within the exclusive legislative powers of the provinces; and
    - (iii) to assign any of its legislative powers to any legislature in another sphere of government; and
  - (b) confers on the National Council of Provinces the power -
    - (i) to participate in amending the Constitution, in accordance with section 72;
    - (ii) to pass legislation with regard to any matter within a functional area listed in Schedule 4 and any other legislation determined by the Constitution, in accordance with section 74; and
    - (iii) to consider legislation passed by the National Assembly and falling outside the functional areas listed in Schedule 4, in accordance with section 73.
- (2) Legislation which is reasonably necessary for, or incidental to, the effective exercise of the power of the National Council of Provinces to legislate with regard to a matter within a functional area listed in Schedule 4, falls within that functional area.
- (3) When exercising its legislative authority Parliament is bound only by the Constitution, and must act in accordance with and within the limits of the

Constitution.

## **The National Assembly**

### **Composition and election**

44. (1) The National Assembly consists of between 350 and 400 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;
  - (c) provides for a minimum voting age of 18 years; and
  - (d) results, in general, in proportional representation.
- (2) National legislation must determine the number of members of the National Assembly in terms of subsection (1).

### **Membership**

45. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, 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 President, Deputy President, Ministers and Deputy Ministers; and
    - (ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;
  - (b) permanent delegates to the National Council of Provinces, or members of a provincial legislature or 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 took 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 the National Assembly in terms of subsection (1) (a) or (b) may be a candidate for the Assembly, subject to any limits and conditions established by national legislation.
- (3) A person loses membership of the National Assembly if that person -
- (a) ceases to be eligible; or
  - (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership.
- (4) Vacancies in the National Assembly must be filled in terms of national legislation.

### **Oaths or affirmation by members**

46. Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Duration of National Assembly**

47. (1) The National Assembly is elected for a term of five years.
- (2) If the National Assembly is dissolved in terms of section 48, or when its term expires, the President, by proclamation, must call and set dates for an election,

which must be held within 90 days of the date the Assembly was dissolved, or its term expired.

- (3) If the results of an election of the National Assembly are not declared within the period established in terms of section 187 or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) The National Assembly remains competent to function from the time it is dissolved, or its term expires, until the day before the first day of polling for the next Assembly.

### **Dissolution of National Assembly before expiry of its term**

48. (1) The President may dissolve the National Assembly if the Assembly adopts a resolution supporting its 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.

### **Speaker and Deputy Speaker**

50. (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.
- (2) The President of the Constitutional Court must preside over the election of the Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.
- (5) The National Assembly in terms of its rules and orders may elect from among its members other presiding officers to assist the Speaker and Deputy Speaker.

### **Decisions**

51. (1) Unless the Constitution provides otherwise -
  - (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
  - (b) one third of the members must be present before a vote may be taken on any other question before the Assembly; and
  - (c) all questions before the Assembly are decided by a majority of the votes cast.
- (2) The presiding member of the National Assembly has no deliberative vote, but -
  - (a) must cast a deciding vote when there is an equal number of votes on both sides of a question; and
  - (b) may cast a deliberative vote when a question must be decided by a vote of at

least two thirds of the members.

### **Rights of certain Cabinet members in National Assembly**

52. The President and any member of the Cabinet who is not a member of the National Assembly may attend, and may speak in, the Assembly, but may not vote.

### **Powers of National Assembly**

53. (1) In exercising its legislative power, the National Assembly may -
- (a) consider, pass, amend or reject any legislation before the Assembly; and
  - (b) initiate or prepare legislation, except money Bills.
- (2) The National Assembly must determine and provide for mechanisms to-
- (a) ensure that all executive organs of state in the national sphere of government are accountable to it; and
  - (b) maintain proper oversight of -
    - (i) the exercise of national executive authority, including the implementation of legislation; and
    - (ii) any organ of state, other than the courts or a statutory body.

### **Evidence or information before National Assembly**

54. (1) The National Assembly and any of its committees may -
- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
  - (b) require any person or institution to report to it;
  - (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
  - (d) receive petitions, representations or submissions from any interested persons.

### **Internal arrangements, proceedings and procedures of National Assembly**

55. (1) The National Assembly may -
- (a) determine, control and dispose of its internal arrangements, proceedings and procedures; and
  - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of the National Assembly must provide for -
- (a) the establishment, constitution, composition, powers, functions, procedures and duration of its committees; and
  - (b) the participation of all minority political parties represented in the Assembly in its proceedings in a manner consistent with democracy.

### **Privilege**

56. (1) Cabinet members and members of the National Assembly -
- (a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and
  - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
    - (i) anything that they have said in, produced before, or submitted to the Assembly or any of its committees; or
    - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to the Assembly or any of its committees.
- (2) Other privileges and immunities of the National Assembly, Cabinet members and

members of the Assembly may be prescribed by national legislation.

- (3) Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund, as may be regulated by an Act of Parliament.

### **Public access to and involvement in National Assembly**

57. The National Assembly must -

- (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public; but, reasonable measures may be taken to regulate public access, including access of the media, to the Assembly and its committees; and to provide for the search of any person and, where appropriate, the refusal of entry or the removal of any person.

### **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 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 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 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.

#### **Allocation of delegates**

59. (1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3.
- (2) Within 30 days after the result of an election of a provincial legislature is declared, a legislature must -
  - (a) determine, in an equitable manner prescribed by national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
  - (b) appoint the permanent delegates in accordance with the nominations of the parties.
- (3) The provincial legislature must designate as a special delegate a member of the legislature nominated by a party entitled to a special delegate, as and when the party requires.

#### **Permanent delegates**

60. (1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.
- (2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.
- (3) Permanent delegates are appointed for a term that expires immediately before the

- first sitting of the provincial legislature after its next election.
- (4) A person ceases to be a permanent delegate if that person -
    - (a) ceases to be eligible to be a member of the provincial legislature;
    - (b) has lost the confidence of the provincial legislature and is recalled by the party which nominated that person;
    - (c) ceases to be a member of the party that nominated that person and is recalled by that party; or
    - (d) is absent from the National Council of Provinces without permission in circumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate.
  - (5) Vacancies among the permanent delegates must be filled in terms of national legislation.
  - (6) Before permanent delegates begin to perform their functions in the National Council, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **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.

### **Chairperson and Deputy Chairpersons**

62. (1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.
- (2) The Chairperson and one of the Deputy Chairpersons are elected for five years unless their term as a delegate expires earlier.
- (3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.
- (4) The President of the Constitutional Court must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.
- (5) The procedure set out in Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.
- (6) The National Council may remove the Chairperson or a Deputy Chairperson from office.
- (7) The National Council may elect from among the permanent delegates other presiding officers to assist the Chairperson and the Deputy Chairpersons, in terms of its rules and orders.

### **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 must provide for a uniform procedure in terms of which provinces confer authority on their delegations to cast votes on their behalf.

### **Participation by members of national executive**

64. (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
- (2) The National Council may require a Cabinet member, a Deputy Minister or an official in the national or provincial executive to attend a meeting of the Council or a committee of the Council.

### **Participation by local government representatives**

65. Not more than ten representatives of local government, designated by the local government body established in terms of section 159 to represent different categories of municipalities, may participate when necessary in the proceedings of the National Council of Provinces, but may not vote.

### **Powers of National Council**

66. In exercising its legislative power, the National Council of Provinces may -
- (a) consider, pass, amend, propose amendments to, or reject any legislation before the Council; and
- (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 74(3)(a), excluding money Bills.

### **Evidence or information before National Council**

67. The National Council of Provinces and any of its committees may -
- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
- (b) compel, in terms of national legislation or the rules and orders, any person to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (c) receive petitions, representations or submissions from any interested persons.

### **Internal arrangements, proceedings and procedures of National Council**

68. (1) The National Council of Provinces may -
- (a) determine, control and dispose of its internal arrangements, proceedings and procedures; and
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of the National Council must provide for -
- (a) the establishment, constitution, composition, powers, functions, procedures and duration of its committees; and
- (b) the participation of all the provinces in its proceedings in a manner consistent with democracy.

### **Privilege**

69. (1) Delegates to the National Council of Provinces, and the persons referred to in sections 64(1) and 65 -
- (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
- (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
- (i) anything that they have said in, produced before, or submitted to the Council or any of its committees; or
- (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to the Council or any of its committees.



- (2) Other privileges and immunities of the National Council, delegates to the Council and persons referred to in sections 64(1) and 65, may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to members of the National Council are a direct charge against the National Revenue Fund, as may be regulated by an Act of Parliament.

### **Public access to and involvement in National Council**

70. (1) The National Council of Provinces must -
- (a) facilitate public involvement in the legislative and other processes of the Council and its committees; and
  - (b) conduct its business in an open manner, and hold its sittings and those of its committees, in public; but, reasonable measures may be taken to regulate public access, including access of the media, to the Council and its committees, and to provide for the search of any person, and, where appropriate, the refusal of entry or the removal of any person.

### **National Legislative Process**

#### **All Bills**

71. (1) Any Bill may be introduced in the National Assembly.
- (2) Only -
- (a) a Cabinet member or a Deputy Minister, or a member, or committee, of the Assembly, may introduce a Bill in the Assembly; and
  - (b) the Cabinet member responsible for national finance matters, or another Cabinet member designated by the President, may introduce a money Bill in the Assembly.
- (3) A Bill falling within a functional area listed in Schedule 4 or referred to in section 74(3)(a), excluding a money Bill falling within that Schedule, may be introduced in the National Council of Provinces.
- (4) Only a member, or a committee, of the National Council may introduce a Bill in the Council.
- (5) A Bill passed by the National Assembly that must be considered by the National Council, or a Bill passed by the National Council that must be considered by the National Assembly, must be referred to the Council or the Assembly, respectively.

#### **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; 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) 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 outside Schedule 4**

73. (1) When the National Assembly passes a Bill falling outside the functional areas

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 the Bill subject to amendments proposed by it; or
    - (iii) reject the Bill.
  - (b) If the National Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.
  - (c) If the National Council rejects the Bill or passes it subject to amendments, the National Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may -
    - (i) pass the Bill again, either with or without amendments; or
    - (ii) decide not to proceed with the Bill.
  - (d) A Bill passed by the National Assembly in terms of paragraph (c) must be submitted to the President for assent.
- (2) When the National Council votes on a question in terms of this section, section 63 does not apply; instead -
- (a) each delegate in a provincial delegation has one vote;
  - (b) one third of the delegates must be present before a vote may be taken on the question; and
  - (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

#### **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) 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).

### **Money Bills**

75. (1) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill; but a Bill that imposes a user charge or a fine or other monetary penalty is not necessarily a money Bill.
- (2) Only a money Bill may provide for the appropriation of money or the imposition of tax; and a money Bill may not deal with any other matter.
- (3) An Act of Parliament must provide for a process by which Parliament may amend a money Bill.
- (4) A money Bill must be referred to the National Council of Provinces and the Council must consider it in terms of the process established in section 73.

### **Mediation Committee**

76. (1) The Mediation Committee consists of -
- (a) nine members of the National Assembly elected by the Assembly in accordance with a procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly; and
- (b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation.
- (2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of a question, is supported by -
- (a) at least five of the representatives of the National Assembly; and
- (b) at least five of the representatives of the National Council.

### **Joint rules and orders**

77. The National Assembly and the National Council of Provinces may make joint rules and orders, including joint rules and orders to -
- (a) determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
- (b) establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 72 and 73, and to regulate the proceedings of those committees;
- (c) regulate the proceedings of the Mediation Committee;
- (d) determine the manner in which the Council participates in the reconsideration of a Bill which the President has referred back to the Assembly in terms of section 78; and
- (e) provide for joint sittings of the Assembly and the National Council.

### **Assent to Bills**

78. (1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.
- (2) If the President refers a Bill back to the National Assembly, the following procedure applies:
- (a) The Assembly must either allow the Bill to lapse, or reconsider the Bill in the light of the President's reservations.
- (b) If the Assembly passes the Bill fully accommodating the President's reservations, the President must assent to and sign the Bill.
- (c) If the Assembly confirms the Bill or passes it without fully accommodating the

President's reservations, the President must either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality.

- (d) If the Constitutional Court decides that the Bill is constitutional the President must assent to and sign it. If the court decides the Bill is unconstitutional, the Bill lapses.
- (3) The National Council of Provinces participates in the reconsideration of a Bill which the President has referred back to the National Assembly only if -
  - (a) the President's reservations about the constitutionality of the Bill relate to a procedural matter which involves the Council; or
  - (b) the Assembly amends the Bill to accommodate any or all the President's reservations and the amendment detrimentally affects the interests of the provinces.

### **Application by members of National Assembly to Constitutional Court**

- 79. (1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of a Bill, or if already promulgated, of an Act, passed by the National Assembly is unconstitutional.
- (2) An application -
  - (a) must be supported by at least one third of the members of the Assembly; and
  - (b) must be made after the President has assented and signed the Bill, and within 30 days of that date.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if -
  - (a) the interests of justice require this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, the Constitutional Court must order the applicants to pay costs unless the application had a reasonable prospect of success.

### **Promulgation**

- 80. A Bill assented to and signed by the President must be promulgated and becomes an Act of Parliament upon its promulgation.

### **Safekeeping of Acts of Parliament**

- 81. The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after promulgation, must be entrusted to the Constitutional Court for safekeeping.

# Chapter 5

## The President and the National Executive

### The President

82. The President -
- (a) is the Head of State and head of the national executive;
  - (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
  - (c) promotes the unity of the nation and that which will advance the Republic.

### Powers and functions of President

83. (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for-
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to Parliament for reconsideration of the Bill's constitutionality;
  - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - (d) summoning the National Assembly or the National Council of Provinces to an extraordinary sitting to conduct urgent business;
  - (e) dissolving the National Assembly and calling an election after a vote of no-confidence in the Cabinet has been passed by the Assembly;
  - (f) appointing commissions of enquiry;
  - (g) accrediting foreign diplomatic representatives;
  - (h) appointing ambassadors; and
  - (i) conferring honours.

### Executive authority of the Republic

84. (1) The executive power of the Republic is vested in the President.
- (2) The President exercises the executive power, together with the other members of the Cabinet, by -
- (a) implementing national legislation;
  - (b) developing and implementing national policy;
  - (c) coordinating the functions of government departments; and
  - (d) preparing and initiating legislation.

### Election of President

85. (1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be President.
- (2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Schedule 3 applies to the election of the President.
- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional Court, but not more than 30 days after the vacancy occurs.

### Assumption of office by President

86. When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Term of office of President**

87. (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.
- (2) No person may hold office as President for more than two terms; but, when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

### **Removal of President**

88. (1) The National Assembly, by a resolution adopted by at least two thirds of its members, may remove the President from office only on the grounds of -
- (a) a serious violation of the Constitution or the law;
  - (b) serious misconduct; or
  - (c) inability to perform the functions of office.
- (2) Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.

### **Acting President**

89. (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President -
- (a) the Deputy President;
  - (b) a Minister designated by the President;
  - (c) a Minister designated by the other members of the Cabinet;
  - (d) a member of the National Assembly elected by its members.
- (2) An Acting-President has the responsibilities, powers and functions of the President.

### **Cabinet**

90. (1) The Cabinet consists of the President, a Deputy President and 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

### **Deputy Ministers**

91. The President may appoint Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them.

### **Continuation of Cabinet after elections**

92. When an election of the National Assembly is held, the Cabinet, the Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

### **Oath of office**

93. Before the Deputy President, Ministers and Deputy Ministers begin to perform their office, they must swear or affirm their faithfulness to the Republic and obedience to the Constitution, by solemn declaration in accordance with Schedule 2.

### **Conduct of Cabinet members and Deputy Ministers**

94. (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not -
- (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

### **Transfer of functions**

95. The President by proclamation may transfer to a member of the Cabinet-
- (a) the administration of any legislation entrusted to another member; or
  - (b) any function entrusted by legislation to another member.

### **Temporary assignment of functions**

96. The President may assign to a Cabinet member any functions of another member who is absent from office or is unable to perform those functions.

### **Assignment of executive functions**

97. (1) An executive organ of state, by agreement with another executive organ of state, may
- (a) assign any of its functions in terms of an Act of Parliament to that other organ of state; or
  - (b) authorize that other organ of state to perform any of its functions.
- (2) An executive organ of state may perform any function of another executive organ of state that has been assigned to it, or that it has been authorised to perform, in terms of subsection (1).

### **National supervision of provincial administration**

98. (1) When a province is responsible for the administration of legislation, or an executive function in terms of the Constitution, and it cannot or does not fulfil its obligations in terms of that law or the Constitution, the national executive may intervene by taking any appropriate steps, including-
- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the administration of that law or function in that



- province when it is necessary to -
- (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
  - (ii) maintain economic unity;
  - (iii) maintain national security; or
  - (iv) prevent that province from taking unreasonable action that is prejudicial to the interest of another province or to the country as a whole.
- (2) When a province is responsible for an executive function in terms of legislation, the national executive may issue a directive or assume responsibility as provided in subsection (1), if -
- (a) it is necessary to do so for any of the reasons listed in subsection (1)(b); or
  - (b) the province cannot or does not fulfil its obligations in terms of that law.
- (3) Any intervention by the national executive in terms of subsection (1)(b) must be approved by the National Council of Provinces no more than 14 days after the intervention begins.

### **Executive decisions**

99. (1) A written decision by the President must be countersigned by another Cabinet member if -
- (a) the decision is made in terms of legislation; and
  - (b) that legislation falls within a functional area assigned to that other Cabinet member.
- (2) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (3) Legislation must specify the manner in which, and the extent to which, instruments mentioned in subsection (2) must be -
- (a) tabled in Parliament; and
  - (b) approved by Parliament.

### **Motions of no-confidence**

100. (1) If the National Assembly, by a vote of the majority of its members, passes a motion of no-confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
- (2) If the National Assembly, by a vote of the majority of its members, passes a motion of no-confidence in the President, the President and the other members of the Cabinet must resign.

# Chapter 6

## Provinces

### Provinces

101. (1) The Republic has the following provinces:
- (a) Eastern Cape
  - (b) Free State
  - (c) Gauteng
  - (d) KwaZulu-Natal
  - (e) Mpumalanga
  - (f) Northern Cape
  - (g) Northern Province
  - (h) North West
  - (i) Western Cape.
- (2) The boundaries of the provinces are those existing when the Constitution took effect.

### Provincial Legislatures

#### Legislative authority of provinces

102. (1) The legislative authority of a province is vested in its provincial legislature, and confers on a provincial legislature the power -
- (a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 138 and 139;
  - (b) to pass legislation in and for its province with regard to -
    - (i) any matter within a functional area listed in Schedule 4; and
    - (ii) any matter outside these functional areas expressly delegated to the province by national legislation; and
  - (c) to assign any of its legislative powers to any legislature in another sphere of government.
- (2) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, by that constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.
- (3) The passing of a provincial constitution, and of any amendment to it, is an exclusive provincial legislative power.
- (4) Legislation passed by a provincial legislature and that is reasonably necessary for, or incidental to, the effective exercise of its power to legislate with regard to a matter within a functional area listed in Schedule 4, falls within that functional area.

#### 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;
  - (c) provides for a minimum voting age of 18 years; and
  - (d) results, in general, in proportional representation.
- (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 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.

#### **Oath or affirmation by members**

105. Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm their faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### **Duration of provincial legislatures**

106. (1) A provincial legislature is elected for a term of five years.
- (2) If a provincial legislature is dissolved in terms of section 107, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved, or its term expired.
- (3) If the results of an election of a provincial legislature are not declared within the period referred to in section 186, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature.

#### **Dissolution of provincial legislatures before expiry of term**

107. (1) The Premier of a province may dissolve the provincial legislature if the legislature

- adopts a resolution supporting its 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.

### **Sittings and recess periods**

108. (1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.
- (2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct urgent business.
- (3) A provincial legislature may determine where it ordinarily will sit.

### **Speakers and Deputy Speakers**

109. (1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.
- (2) A judge designated by the President of the Constitutional Court must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of Speakers and Deputy Speakers.
- (4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.
- (5) A provincial legislature in terms of its rules and orders, may elect from among its members other presiding officers to assist the Speaker and Deputy Speaker.

### **Decisions**

110. (1) Unless the Constitution provides otherwise -
  - (a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill;
  - (b) one third of the members must be present before a vote may be taken on any other question before the legislature; and
  - (c) all questions before a provincial legislature are decided by a majority of the votes cast.
- (2) The presiding member of a provincial legislature has no deliberative vote, but -
  - (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
  - (b) may cast a deliberative vote when a question must be decided by a vote of at least two thirds of the members.

### **Permanent delegates' rights in provincial legislatures**

111. A province's permanent delegates to the National Council of Provinces may attend, and may speak in, their provincial legislature and its committees, but may not vote. The legislature may request a permanent delegate to attend or speak in the legislature.

### **Powers of provincial legislatures**

112. (1) In exercising its legislative power a provincial legislature may -
  - (a) consider, pass, amend or reject any Bill before the legislature; and

- (b) initiate or prepare legislation, except money Bills.
- (2) A provincial legislature must determine and provide for mechanisms to -
  - (a) ensure that all provincial executive organs of state in the province are accountable to it; and
  - (b) maintain proper oversight of -
    - (i) the exercise of provincial executive authority in the province, including the administration of legislation; and
    - (ii) any provincial organ of state, other than a statutory body.

### **Evidence or information before provincial legislatures**

113. (1) A provincial legislature and any of its committees may -
- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
  - (b) require any person or institution to report to it;
  - (c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
  - (d) receive petitions, representations or submissions from any interested persons.

### **Internal arrangements, proceedings and procedures of provincial legislatures**

114. (1) A provincial legislature may -
- (a) determine, control and dispose of its internal arrangements, proceedings and procedures; and
  - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of a provincial legislature must provide for -
- (a) the establishment, constitution, composition, powers, functions, procedures and duration of its committees; and
  - (b) the participation of all minority parties represented in the legislature in its proceedings in a manner consistent with democracy.

### **Privilege**

115. (1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces -
- (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and
  - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
    - (i) anything that they have said in, produced before, or submitted to the legislature or any of its committees; or
    - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to the legislature or any of its committees.
- (2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to members of a provincial legislature are a direct charge against the Provincial Revenue Fund, as may be regulated by a provincial Act.

### **Public access to and involvement in provincial legislatures**

116. A provincial legislature must -
- (a) facilitate public involvement in the legislative and other processes of the legislature

- and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public; but, reasonable measures may be taken to regulate public access, including access of the media, to the legislature and its committees, and to provide for the search of any person, and, where appropriate, the refusal of entry or the removal of any person.

### **Introduction of Bills**

117. Only -

- (a) members of the Executive Council of a province or a committee or member of a provincial legislature may introduce a Bill in the legislature; and
- (b) the member of the Executive Council who is responsible for finance matters in the province, or another member designated by the Premier, may introduce a money Bill in the legislature.

### **Money Bills**

118. (1) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill, but a Bill that imposes a user charge or a fine or other monetary penalty is not necessarily a money Bill.
- (2) Only a money Bill may provide for the appropriation of money or the imposition of tax; and a money Bill may not deal with any other matter.
  - (3) An Act of a province must provide for a process by which the province's legislature may amend a money Bill.

### **Assent to Bills**

119. (1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature or, if the Premier has reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.
- (2) If the Premier refers a Bill back to the provincial legislature, the following procedure applies:
    - (a) The legislature must either allow the Bill to lapse, or reconsider the Bill in the light of the Premier's reservations.
    - (b) If the legislature passes the Bill, fully accommodating the Premier's reservations, the Premier must assent to and sign the Bill.
    - (c) If the legislature confirms the Bill or passes it without fully accommodating the Premier's reservations, the Premier must either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality.
    - (d) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it. If the court decides that the Bill is unconstitutional, the Bill lapses.

### **Application by members to Constitutional Court**

120. (1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a Bill, or if already promulgated, of an Act, passed by the legislature is unconstitutional.
- (2) An application -
    - (a) must be supported by at least one third of the members of the legislature; and
    - (b) must be made after the Premier has assented to and signed the Bill, and within 30 days of that date.
  - (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application, if -

- (a) the interest of justice requires this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful the Constitutional Court must order the applicants to pay costs unless the application had a reasonable prospect of success.

### **Publication of Bills**

121. A Bill assented to and signed by the Premier of a province must be published in the national Government Gazette and becomes an Act of the province upon its publication.

### **Safekeeping of Provincial Acts**

122. The signed copy of a provincial Act is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping .

### **Provincial Executives**

#### **Executive authority of provinces**

123. (1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier exercises the executive power, together with the other members of the Executive Council, by -
- (a) administering all matters within the functional areas listed in Schedule 4 unless the Constitution or an Act of Parliament provides otherwise;
  - (b) administering provincial legislation in the province;
  - (c) administering national legislation in the province the administration of which has been assigned to it in terms of an Act of Parliament or an agreement envisaged in section 97; and
  - (d) performing any other function assigned to it in terms of the Constitution or an Act of Parliament.
- (3) The executive authority of a province exists only to the extent that the province has the administrative capacity to assume effective responsibility.
- (4) Any dispute concerning the administrative capacity of a Province in regard to any function must be referred to the National Council of Provinces, or an executive inter-governmental structure to be provided for in national legislation, for resolution within 30 days.
- (5) The administration of provincial legislation in a province is an exclusive provincial executive power; but, this subsection does not limit section 98.
- (6) The provincial executive must act in accordance with, and within the limits of -
- (a) the Constitution; and
  - (b) the provincial constitution, if a constitution has been passed for the province.

### **Functions of Premiers**

124. (1) The Premier of a province has the functions entrusted to that office by the Constitution and any legislation.
- (2) The Premier of a province is responsible for-
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to the legislature for reconsideration of the Bill's constitutionality;
  - (c) a referral of a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - (d) summoning the legislature to an extraordinary sitting to conduct urgent business;
  - (e) dissolving the legislature and calling an election after a vote of no confidence in the Executive Council has been passed by the legislature.

### **Election of Premiers**

125. (1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province.
- (2) A judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in Schedule 3 applies to the election of the Premier.
- (3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the President of the Constitutional Court, but not later than 30 days after the vacancy occurs.

### **Assumption of office by Premiers**

126. A Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Term of office of Premiers**

127. (1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms; but, when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.

### **Acting Premiers**

128. (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier -
- (a) a member of the Executive Council designated by the Premier;
  - (b) a member of the Executive Council designated by the other members of the Executive Council;
  - (c) a member of the provincial legislature elected by its members.
- (2) An Acting-Premier has the responsibilities, powers and functions of the Premier.

### **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.

### **Continuation of Executive Councils after elections**

130. When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office.



### **Oath or solemn affirmation**

131. Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm their faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2.

### **Conduct of members of Executive Councils**

132. (1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Executive Council of a province may not -
- (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

### **Transfer of powers and functions**

133. The Premier by proclamation may transfer to a member of the Executive Council -
- (a) the administration of any legislation entrusted to another member; or
  - (b) any power or function entrusted by legislation to another member.

### **Temporary assignment of powers and functions**

134. The Premier of a province may assign to a member of the Executive Council any powers or functions of another member who is absent from office or is unable to perform those powers or functions.

### **Provincial supervision of local government**

135. When a municipality is responsible for the administration of legislation, or an executive function in terms of legislation, and it cannot or does not fulfil its obligations in terms of that legislation, the relevant provincial executive may intervene by taking any appropriate steps, including-
- (a) issuing a directive to the municipality, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the administration of that legislation or function in that municipality.

### **Executive decisions**

136. (1) A written decision by a premier in the exercise of a power in terms of legislation falling within a function assigned to another member of an executive council must be countersigned by that other member.
- (2) Proclamations, regulations and other instruments of subordinate legislation of a province must be accessible to the public.
- (3) Legislation must specify the manner in which, and the extent to which, instruments mentioned in subsection (1) must be -
- (a) tabled in the provincial legislature; and
  - (b) approved by the provincial legislature.

### **Motions of no-confidence**

137. (1) If a provincial legislature, by resolution adopted by a majority of its members, passes a motion of no-confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.

- (2) If a provincial legislature, by resolution adopted by a majority of its members, passes a motion of no-confidence in the Premier, the Premier and the other members of the Executive Council must resign.

## **Provincial Constitutions**

### **Adoption of provincial constitutions**

138. A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill.

### **Contents of provincial constitutions**

139. (1) A provincial constitution, or constitutional amendment, must be consistent with this Constitution, but may provide for -
- (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
  - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) and (b) of subsection (1) -
- (a) must comply with -
    - (i) the principles set out in section 1; and
    - (ii) the principles of co-operative government set out in Chapter 3; and
  - (b) may not confer on the province any power that exceeds the powers conferred on the province by the other provisions of the Constitution.

### **Certification of provincial constitutions**

140. (1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution to the Constitutional Court for certification.
- (2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified -
- (a) that the text has been passed in accordance with section 138; and
  - (b) that the whole text complies with section 139.

### **Signing, promulgation and safekeeping of provincial constitutions**

141. (1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.
- (2) The text assented to and signed by the Premier must be published in the national Government Gazette and becomes law upon its publication.
- (3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after promulgation, must be entrusted to the Constitutional Court for safekeeping.

## **Conflicting Laws**

### **Conflicts between national and provincial legislation**

142. (1) If there is a conflict between national legislation and provincial legislation falling 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) 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, in the interest of the country as a whole, requires uniformity, it provide 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 equal opportunity or equal access to government services; or
    - (vi) the protection of the environment; or
  - (d) is aimed at preventing unreasonable action by a province that -
    - (i) is prejudicial to the economic, health or security interest of another province or the country as a whole; or
    - (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.

### **Conflicts between national legislation and provincial constitutions**

143. If there is a conflict between national legislation and a provision of a provincial constitution with regard to -
- (a) a matter where this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution; or
  - (b) a matter within the functional areas listed in Schedule 4, section 142 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.

### **Conflicts that cannot be resolved**

144. If a dispute concerning a conflict between national legislation and provincial legislation which falls within Schedule 4, or between national legislation and a provincial constitution, cannot be resolved by a court in terms of sections 142 and 143, respectively, the national legislation prevails over the provincial legislation or provincial constitution.

### **Status of legislation that does not prevail**

145. A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.

# 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;
  - (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.
- (2) National and provincial government must assist in the realisation of these objectives by actively developing local government and broadening and strengthening its capacity.

### 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 must determine -
- (a) the different categories of municipality that may be established; and
  - (b) the powers, functions, other features of local government.
- (4) In each province, provincial legislation within the scope of national legislation must provide for -
- (a) the establishment of municipalities;
  - (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.

### **Municipal executive authority**

151. 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.

### **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 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.
- (2) A system of election established in terms of this section must ensure that the number of members elected from each party reflects the proportions of the vote recorded for those parties.

### **Membership**

153. (1) Every citizen who is qualified to vote for a municipal council is eligible to be a member of that council, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration in terms of that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
  - (b) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 45(1)(c), (d) or (e) to be a member of the Assembly;
  - (c) a member of the National Assembly, a permanent delegate to the National Council of Provinces or a member of a provincial legislature; or

- (d) a member of another municipal council; but, this disqualification does not apply to a person representing one council in another municipal council of a different category.
- (2) A person who, in terms of subsection (1)(a), (c) or (d), is not eligible to be a member of a municipal council may be a candidate for the Council, subject to limits and conditions established by national legislation.

### **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 within the framework of national legislation must provide for an independent body to demarcate the wards.

### **Internal autonomy**

155. A municipal council may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers, functions and procedures of its committees.

### **Privilege**

156. Provincial legislation within the framework of national legislation may provide for privileges and immunities of municipal councils.

### **Promulgation of municipal legislation**

157. (1) Municipal legislation may be enforced only after it has been published in the official gazette of the relevant province.
- (2) A provincial government must publish municipal legislation upon request by a municipality.

### **Organised local government**

158. (1) An Act of Parliament enacted in terms of section 74 must -
- (a) provide for municipalities to organise themselves into national and provincial representative bodies; and
  - (b) determine the powers and functions of that body, including the power to appoint people to consult or interact with national or provincial government on behalf of local government, or to represent local government in -
    - (i) the National Council of Provinces; and
    - (ii) any structures of executive inter-governmental relations referred to in section 40(2).

### **Consultation with local government**

159. National and provincial Bills which materially affect the status, institutions, powers and functions of local government may not be introduced in the National Assembly or a provincial legislature unless organised local government has been given a reasonable opportunity to make representations with regard to these Bills.

### **Other matters**

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

# Chapter 8

## Courts and Administration of Justice

### Judicial authority

161. (1) The judicial authority of the Republic is vested in the courts.
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (5) An order or decision issued by a court binds all persons and organs of state to which it applies.

### Judicial system

162. The courts are -
- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognized by an Act of Parliament, including any court of a status similar to the High Courts or the Magistrates' Courts.

### Constitutional Court

163. (1) The Constitutional Court consists of a President, a Deputy President and nine other judges.
- (2) A matter before the Constitutional Court must be decided by at least eight judges.
- (3) The Constitutional Court -
- (a) is the highest court in all constitutional matters;
- (b) may decide only constitutional matters and issues directly connected with decisions on constitutional matters; and
- (c) makes the final decision whether a matter is a constitutional matter or whether an issue is directly connected with a decision on a constitutional matter.
- (4) Only the Constitutional Court may -
- (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in chapter 4 or 6; or
- (c) decide that Parliament or the President has failed to comply with a constitutional duty.
- (5) National legislation and the rules of the Constitutional Court must allow a person, when it is in the interest of justice and with leave of the Constitutional Court -
- (a) to bring a matter directly to the Constitutional Court; or
- (b) to appeal directly to the Constitutional Court from any other court.
- (6) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

### 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.
- (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.

### **High Courts**

165. A High Court may decide -
- (a) any constitutional matter except a matter that only the Constitutional Court may decide; and
  - (b) any other matter not assigned to another court by an Act of Parliament.

### **Magistrates' Courts and other courts**

166. Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament; but, may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

### **Court procedures**

167. All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation.

### **Powers of courts in constitutional matters**

168. (1) When deciding a constitutional matter within its power, a court -
- (a) must declare that any law or conduct that is inconsistent with the constitution is invalid to the extent of its inconsistency; and
  - (b) may make any order that is just and equitable, including -
    - (i) an order limiting the retrospective effect of the declaration of invalidity; and
    - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.
- (2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a Provincial Act or any conduct of the President, but any order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.
- (b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.
  - (c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court.
  - (d) Any person or organ of state with a sufficient interest may appeal, or apply directly, to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

### **Inherent power**

169. The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process taking into account the interests of

justice, and to ensure that justice prevails in a manner consistent with law.

### **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 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 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 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.

### **Acting judges**

171. (1) The President may appoint an acting judge to the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting in consultation with the President of the Constitutional Court and the Chief Justice.
- (2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consultation with the senior judge of the court on which the acting judge will serve.

### **Terms of office and remuneration**

172. (1) Constitutional Court judges are appointed for non-renewable term of 12 years, but must retire by the age of 70.
- (2) Other judges hold office until they are discharged from active service in terms of an Act of Parliament.
- (3) The salaries, allowances and benefits of judges may not be reduced.

## **Removal**

173. (1) A judge may be removed from office only if -
- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent, or is guilty of gross misconduct; and
  - (b) the National Assembly calls for that judge to be removed, by a resolution adopted by at least two thirds of its members.
- (2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.
- (3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of subsection (1).

## **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) (e) 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; and
  - (b) other Attorneys-General and prosecutors as determined by national legislation, which must ensure that they exercise their powers 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.
  - (4) All other matters concerning the prosecution authority must be determined by national legislation.
  - (5) The national Attorney-General -
    - (a) must determine prosecution policy which must be observed in the prosecution process;
    - (b) must issue 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, and issue directions to prosecute in specific cases.
  - (6) The cabinet member responsible for the administration of justice must exercise final responsibility over the prosecution authority.]

#### **Other matters concerning administration of justice**

176. National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including -
- (a) training programmes for judicial officers;
  - (b) procedures for dealing with complaints about judicial officers; and
  - (c) the participation of people other than judicial officers in decisions.

# Chapter 9

## State Institutions Supporting Constitutional Democracy

### Establishment and governing principles

177. (1) The following state institutions strengthen constitutional democracy in the Republic:
- (a) The Public Protector.
  - (b) The Human Rights Commission.
  - (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
  - (d) The Commission for Gender Equality.
  - (e) The Auditor-General.
  - (f) The Electoral Commission.
- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of state may interfere with the functioning of these institutions.
- (5) These institutions are accountable to the National Assembly, and must report on their activities and functions to the National Assembly at least once a year.

### Public Protector

#### Functions of Public Protector

178. (1) The Public Protector has the following powers, as regulated by national legislation -
- (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.
- (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, require that a report be kept confidential.

### Tenure

179. The Public Protector is appointed for a non-renewable period of seven years.

### 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, 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.

## **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, of cultural or other councils for particular communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, 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.

### **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.
- (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, 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.

## **Auditor-General**

### **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.

### **Tenure**

185. The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

## **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;
  - (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 which is as short as reasonably possible.
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

### **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.

## **Independent Authority to Regulate Broadcasting**

### **Broadcasting Authority**

188. National legislation 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.
- (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 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 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 misconduct, incapacity or incompetence;
  - (b) a finding to that effect by a committee of the National 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 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.
- (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.
  - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
  - (f) Public administration must be accountable.
  - (g) 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.

### Public Service Commission

192. (1) There is a single Public Service Commission for South Africa to promote the basic values and principles of public administration in the public service.
- (2) The Commission is independent and must be impartial and regulated by national legislation.
- (3) Each of the provinces may nominate a representative to be appointed to the Commission.
- (4) Provincial representatives in the Commission may exercise the powers and perform the functions of the Commission in their provinces, as prescribed by national legislation.
- (5) The Commission must account to the National Assembly.

### Public Service

193. (1) Within the public administration there is a public service for South Africa, which

must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.

- (2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.
- (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.

# Chapter 11

## Security Services

### Governing principles

194. The following principles govern national security in the Republic:
- (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life.
  - (b) National security must be pursued in compliance with the law, including international law.
  - (c) National security is subject to the authority of Parliament and the national executive.

### Establishment, structuring and conduct of security services

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 organisations or services may be established only in terms of national legislation.
  - (4) The security services must be structured and regulated by national legislation.
  - (5) The security services 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 interest of a political party.
  - (8) Multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

### Defence

#### Defence force

196. (1) The defence force must be structured and managed as a disciplined military force.
- (2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people, in accordance with the principles of international law regulating the use of force.

#### Political responsibility

197. (1) A member of the Cabinet must be responsible for defence.
- (2) When the defence force is deployed in co-operation with the police service, or in defence of the Republic, the President must inform Parliament, at a reasonable time and in appropriate detail, of -
    - (a) the reasons for the use of the defence force;
    - (b) any place where the force is being used;
    - (c) the number of people involved; and
    - (d) the period for which the force is expected to be used.

### **Command of defence force**

198. (1) The President as head of the national executive is Commander-in Chief of the defence force, and must appoint one or more senior military officers to command the defence force.
- (2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence.

### **State of National Defence**

199. The President may declare a state of national defence. A declaration of a state of national defence lapses unless it is approved by Parliament within 14 days.

### **Defence civilian secretariat**

200. A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence, and to perform any functions entrusted to it by that Cabinet member, or by that legislation.

### **Police**

#### **Police service**

201. (1) The national police service must be structured to function in the national, provincial and, where necessary, local spheres.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively.
- (3) 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.

#### **Political responsibility**

202. A member of the Cabinet must be responsible for policing.

#### **Control of police service**

203. (1) The President, as head of the national executive, must appoint a woman or a 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.
- (3) The National Commissioner must appoint a woman or a man as provincial commissioner for each province, in accordance with national legislation.
- (4) Provincial commissioners are responsible for policing-
- (a) as prescribed by national 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) Each provincial government is responsible for monitoring and oversight of the conduct and efficiency of the police service, and for cultivating good relations between the police and the rest of the community in its province.

#### **Police civilian secretariat**

204. A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing, and to perform any functions entrusted to it by that Cabinet member, or by the legislation.

### **Intelligence**

### **Establishment and control of intelligence services**

205. (1) Any intelligence service, other than the intelligence divisions of the defence force and police service, may be established only by the President as head of the national executive, and only in terms of national legislation.
- (2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

### **Powers, functions and monitoring**

206. National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence divisions of the defence force and police service, and must provide for -
- (a) co-ordination of all intelligence services; and
  - (b) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by at least two thirds of the members of the National Assembly.

# Chapter 12

## Traditional Leaders

### Recognition

207. (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to fundamental rights.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, and any amendments to, or repeal of, that legislation or those customs.
- (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

### Councils of traditional leaders

208. National or provincial legislation may provide for the establishment of councils of traditional leaders to deal with matters of common interest.

# Chapter 13

## Finance

### General Financial Matters

#### National Revenue Fund

209. (1) There is a National Revenue Fund into which all money specified 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 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.

#### National, provincial and municipal budgets

211. (1) Budgets and budgetary processes must promote transparency, accountability, and the effective financial management of the economy, debt and the public sector.
- (2) National legislation must prescribe -
- (a) the form of national, provincial and municipal budgets;
  - (b) when national and provincial budgets must be tabled; and
  - (c) that budgets in every sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national

legislation.

- (3) Budgets in every sphere of government must contain -
  - (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

### **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 -
- (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.

### **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.

### **Government guarantees**

214. (1) The national government, a province or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.
- (3) Each year, every government must publish a report on the guarantees it has granted.

### **Remuneration of persons holding public office**

215. (1) National legislation must establish a framework for determining-
- (a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders; and



- (b) the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of municipal councils.
- (2) National legislation must establish an independent commission to make recommendations concerning the salaries, allowances and benefits as referred to in subsection (1).
- (3) Parliament may adopt the legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).
- (4) The national executive, a provincial executive, a municipality or any other relevant authority may implement the national legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).
- (5) National legislation must establish a framework for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General, and members of any commission provided for in the Constitution.

### **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.
- (2) The Commission is independent and subject only to the Constitution and the law, 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 misconduct, incapacity or incompetence.

#### **Reports**

218. The Commission must report regularly both to Parliament and to provincial legislatures.

#### **Central Bank Establishment**

219. The South African Reserve Bank is the central bank of the Republic and is regulated by national legislation.

#### **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 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.

### **Provincial and Local Financial Matters**

#### **Provincial Revenue Funds**

222. (1) There is a Provincial Revenue Fund for each province into which all money specified by an Act of Parliament and received by the provincial government must be paid.
- (2) 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.

#### **National sources of provincial and local government funding**

223. (1) Local government and each province
- (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and exercise the functions allocated to it; and
  - (b) may receive other allocations from national revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.
- (3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 212.
- (4) A province must provide for itself any resources that it requires, in terms of a provision in its provincial constitution, that are additional to its requirements anticipated by this Constitution.

#### **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 which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

### **Municipal rates and taxes**

225. (1) A municipality may impose rates on property and excise taxes, and, subject to national legislation, may impose other taxes, levies or duties; but, 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.

### **Provincial and municipal loans**

226. (1) A province or a municipality may raise loans for capital or current expenditure in accordance with reasonable conditions determined by national legislation; but, loans for current expenditure -
- (a) may be raised only when necessary for bridging purposes during a fiscal year; and
  - (b) must be repaid within twelve months.
- (2) National 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.
- (4) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

#### Customary international law

228. Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

#### Application of international law

229. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

#### Transition and commencement

##### Diligent performance of obligations

230. All constitutional obligations must be performed diligently and without delay.

##### Definitions

231. In the Constitution, "organ of state" means any functionary or institution exercising a power or performing a function in terms of the Constitution, a provincial constitution, or any legislation, and includes any state department or administration in the national, provincial or local government sphere.

##### Transitional arrangements

232. Schedule 5 applies to the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition.

##### Repeal of laws

233. The laws mentioned in Schedule 6 are repealed, subject to item 20 of Schedule 5.

##### Short title and commencement

234. This Act is called the Constitution of the Republic of South Africa, 1996, and comes into force on a date set by the President by proclamation in the national Government Gazette.

# Schedule 1

## National Flag

- (1) The national flag is rectangular; it is one and a half times longer than it is wide.
- (2) It is black, gold, green, white, chilli red and blue.
- (3) It has a green Y-shaped band that is one fifth as wide as the flag. The centre lines of the band start in the top and bottom corners next to the flag post, converge in the centre of the flag, and continue horizontally to the middle of the free edge.
- (4) The green band is edged, above and below in white, and towards the flag post end, in gold. Each edging is one fifteenth as wide as the flag.
- (5) The triangle next to the flag post is black.
- (6) The upper horizontal band is chilli red and the lower horizontal band is blue. These bands are each one third as wide as the flag.

# **Schedule 2**

## **Oaths of Office and Solemn Affirmations**

### **Oath of office or solemn affirmation of President**

1. The President, before the President of the Constitutional Court, must swear/affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as President of the Republic of South Africa, I A.B. swear / solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always -

- promote that which will advance, and oppose all that may harm, the Republic;
- protect and promote the fundamental rights of all South Africans;
- 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;
- do justice to all; and
- devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

### **Oath of office or solemn affirmation of Deputy President**

2. The Deputy President, before the President of the Constitutional Court, must swear/affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as Deputy President of the Republic of South Africa, I A.B. swear / solemnly affirm that I will be faithful to the Republic of South Africa and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always -

- promote that which will advance, and oppose all that may harm, the Republic;
- be a true and faithful counsellor;
- 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;
- do justice to all; and
- devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

### **Oath of office or solemn affirmation of Ministers and Deputy Ministers**

3. Each Minister and Deputy Minister, before the President of the Constitutional Court or another judge designated by the President of the Constitutional Court, must swear / affirm as follows:

I, A.B. swear / solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister / Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; 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 the National Assembly, Permanent Delegates to the National Council of Provinces and members of provincial legislatures**

4. (1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear or affirm as follows:  
I, A.B. swear / solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I solemnly promise to perform my functions as a member of the National Assembly/ permanent delegate to the National Council of Provinces/member of the legislature of the province of CD to the best of my ability.
- (2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of subitem (1) before the presiding officer of the Assembly, Council or legislature, as the case may be.

#### **Oath of office or solemn affirmation of Premiers and members of provincial Executive Councils**

5. The Premier of a province, and each member of the Executive Council of a province, before the President of the Constitutional Court or another judge designated by the President of the Constitutional Court, must swear / affirm as follows:  
I, A.B. swear / solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Premier / member of the Executive Council of the province of CD with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; 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 Judicial Officers**

6. (1) Each judge or acting judge, before the Chief Justice of the Supreme Court of Appeal or another judge designated by the Chief Justice, must swear or affirm as follows:  
I, A.B. swear / solemnly affirm that, as a Judge of the Constitutional Court/ Supreme Court of Appeal / High Court of EF/ GH Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution; and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.  
(In the case of an oath: So help me God.)
- (2) A person appointed to the office of Chief Justice of the Supreme Court of Appeal who is not already a judge at the time of that appointment must swear or affirm before the President of the Constitutional Court.
- (3) Judicial officers, and acting judicial officers, other than judges, must swear / affirm in terms of national legislation.

# Schedule 3

## Election Procedures

### Part A - Election Procedures for Constitutional Office Bearers

#### Application

1. The procedure set out in this Schedule applies whenever -
  - (a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly;
  - (b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or
  - (c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

#### Nominations

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

#### Formal requirements

3.
  - (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.
  - (2) The form on which a nomination is made must be signed -
    - (a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected;
    - (b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected; or
    - (c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected.
  - (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

#### Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

#### Single candidate

5. If only one candidate is nominated, the person presiding must declare that candidate elected.

#### Election procedure

6. If more than one candidate is nominated -
  - (a) a vote must be taken at the meeting by secret ballot;
  - (b) each member present, or if it is a meeting of the National Council of Provinces, each province represented, at the meeting may cast one vote; and
  - (c) the person presiding must declare elected the candidate who receives a majority of the votes.

#### Elimination procedure

7.
  - (1) If no candidate receives a majority of the votes, the candidate who receives the



lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

- (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

### **Further meetings**

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
- (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

### **Rules**

9. (1) The President of the Constitutional Court must make rules prescribing -
  - (a) the procedure for meetings to which this Schedule applies;
  - (b) the duties of any person presiding at a meeting, and any person assisting the person presiding;
  - (c) the form on which nominations must be submitted; and
  - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the President of the Constitutional Court determines.

### **Part B - Formula to Determine Party Participation in Provincial Delegations to the National Council of Provinces**

1. The delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.
2. If a calculation in terms of item 1 yields a surplus not absorbed by the delegates allocated to a party in terms of that item, the surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.

# Schedule 4

## Areas of Concurrence Legislative Competencies

### 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 airports

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

### Part B

Police to the extent that the provisions of Chapter 11 expressly confer legislative competence upon the provincial legislature

Refuse removal, refuse dumps and solid waste disposal

Ambulances and fire fighting services

Town planning

Cemeteries, funeral parlours and crematoriums

Provincial public enterprises in respect of the functional areas in this Schedule

Veterinary services

Population development function

Provision and administration of gas and electricity supply systems  
Pontoons, ferries, jetties, piers and small boat harbours  
Disaster management  
Liquor licensing  
Provincial archives  
Provincial museums  
Provincial libraries and library services  
Water and sanitation services, limited to potable water supply systems and domestic waste-water and sewerage disposal systems  
Stormwater management systems in built up areas  
Public Works only in respect of the needs of provincial government departments and municipal councils in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law  
Child care facilities  
Administration of indigenous forests  
Licensing and control of undertakings that purvey food to the public  
Fencing and fences

**Part C**

Any matter for which a provision of the Constitution specifically requires or envisages the enactment of provincial legislation.

# Schedule 5

## Transitional Arrangements

### Definitions

1. In this Schedule, unless inconsistent with the context -
  - "homeland" means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory;
  - "new Constitution" means the Constitution of the Republic of South Africa, 1996;
  - "old order legislation" means legislation enacted before the previous Constitution took effect;
  - "previous Constitution" means the Constitution of the Republic of South Africa, 1993.

### Continuation of existing law

2. (1) All law which was in force immediately before the new Constitution took effect, continues in force subject to -
  - (a) any repeal or amendment by an authority acting within its power; or
  - (b) invalidation by a competent court on the ground of inconsistency with the new Constitution.
- (2) Old order legislation which continues in force in terms of subitem (1) -
  - (a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
  - (b) continues to be administered by the authorities which administered them immediately before the new Constitution took effect.

### Interpretation of existing legislation

3. (1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation which existed when the new Constitution took effect -
  - (a) to the Republic of South Africa or a homeland, must be construed as a reference to the Republic of South Africa under the new Constitution;
  - (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
  - (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Executive Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to item 9;
  - (d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces;
  - (e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to item 12; or
  - (f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution.
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation -
  - (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or a homeland, must be construed as a reference to -

- (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national government; or
- (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial government; or
- (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or a homeland, must be construed as a reference to -
  - (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national government; or
  - (ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial government.

### **National Assembly**

4. (1) Anyone who was a member or office-bearer of the National Assembly immediately before the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.
- (2) The National Assembly as constituted in terms of subitem (1) must be regarded to have been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) The National Assembly consists of 400 members for the duration of its current term, subject to section 47(4) of the new Constitution.
- (4) The rules and orders of the National Assembly in force immediately before the new Constitution took effect, continue in force subject to any amendment or repeal under the new Constitution.

### **Unfinished business before Parliament**

5. (1) Any unfinished business before the National Assembly immediately before the new Constitution takes effect must be proceeded with in terms of the new Constitution.
- (2) Any unfinished business before the Senate immediately before the new Constitution takes effect is regarded as having been approved by the Senate.

### **Elections of National Assembly**

6. (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 48 of the new Constitution.
- (2) Until a new National Assembly is constituted in terms of the first election held after the new Constitution took effect -
  - (a) section 44 of the new Constitution must be regarded to read as follows:

### ***"Composition and election***

45. (1) *The National Assembly consists of between 350 and 400 members as determined by national legislation subject to item 6 of Schedule 5, who are women and men elected in accordance with an electoral system that -*
  - (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) *results, in general, in proportional representation.*

- (2) *Despite the repeal of the Constitution of South Africa, 1993, Schedule 2 to that Constitution, as amended by Annexure A to Schedule 5 to this Constitution, applies -*
- (a) *to the first election of the National Assembly under this Constitution; and*
  - (b) *to the supplementation and review of party lists for the filling of vacancies in the National Assembly until that election."; and*
- (b) section 48 of the new Constitution must be regarded to read as follows:

*"Dissolution of National Assembly before expiry of its term*

48. *The Acting-President must dissolve the National Assembly if -*

- (a) *the President has resigned after a vote of no-confidence in terms of section 100; and*
- (b) *the Assembly fails to elect a new President within 30 days of the vote of no-confidence."*

### **National Council of Provinces**

7. (1) For the period until immediately before the first sitting of a provincial legislature held after its first election under the new Constitution, the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution.
- (2) The Premier of a province acting in consultation with the leaders of the parties represented in the provincial legislature must appoint the province's first permanent delegates to the National Council -
- (a) from among the persons who were senators immediately before the new Constitution took effect and are willing to serve as permanent delegates; and
  - (b) taking into account the proportionality requirement of subitem (1).
- (3) If the permanent delegates' component of a delegation cannot be filled in terms of subitem (2), either because of an insufficient number of available former senators or the proportionality required, the Premier, acting as set out in subitem (2), may appoint any eligible persons outside the ranks of former senators as permanent delegates, but only to the extent necessary to supplement the insufficient number or to comply with the proportionality requirement.
- (4) The rules and orders of the Senate in force immediately before the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal under the new Constitution.

### **Former senators**

8. (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces may choose either -
- (a) to become a member of the provincial legislature from which that person was nominated as a senator in terms of section 48 of the previous Constitution; or
  - (b) to retire on conditions determined by national legislation.
- (2) A former senator who becomes a member of a provincial legislature in terms of subitem (1)(a) may not vote on any question before the legislature.
- (3) The salary, allowances or benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

### **National executive**

9. (1) Anyone who was the President, an Executive Deputy President, a Minister or a

Deputy Minister under the previous Constitution immediately before the new Constitution took effect, continues in and holds that office in terms of the new Constitution but subject to subitem (2).

- (2) Until 30 April 1999, sections 83, 88, 89, 90, 91 and 92 of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.

### **Provincial legislatures**

10. (1) Anyone who was a member or office-bearer of a province's legislature immediately before the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.
- (2) A provincial legislature as constituted in terms of subitem (1) must be regarded to have been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) For the duration of its current term and subject to section 107(4), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of item 8.
- (4) The rules and orders of a provincial legislature in force immediately before the new Constitution took effect, continue in force subject to any amendment or repeal under the new Constitution or any provincial constitution that may be enacted.

### **Elections of provincial legislatures**

11. Until a new provincial legislature of a province is constituted in terms of the first election held after the new Constitution took effect, section 103 of the new Constitution must be regarded to read as follows in respect of that province:

#### ***"Composition and election***

103. (1) *A provincial legislature consists of women and men elected in accordance with an electoral system that -*
  - (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) results, in general, in proportional representation.*
- (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, subject to item 10(3) of Schedule 5.*
- (3) *Despite the repeal of the Constitution of South Africa, 1993, Schedule 2 to that Constitution, as amended by Annexure A to Schedule 5 to this Constitution, applies -*
  - (a) to the first election of the National Assembly under this Constitution; and*
  - (b) to the supplementation and review of party lists for the filling of vacancies in the National Assembly until that election."*

### **Provincial executives**

12. (1) Anyone who was the Premier or a member of the Executive Council of a province immediately before the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subitem (2).
- (2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever

occurs first, sections 129 and 132 of the new Constitution must be regarded to read as set out in Annexure C to this Schedule.

### **Provincial constitutions**

13. A provincial constitution passed before the new Constitution took effect must comply with sections 138 and 139 of the new Constitution.

### **Assignment of old order legislation to provinces**

14. (1) Old order legislation with regard to a matter within a functional area listed in Schedule 4 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Premier of the province.
- (2) If it is necessary for an assignment of legislation under subitem (1) to be effectively carried out, the President, by proclamation, may -
- (a) amend or adapt the legislation to regulate its interpretation or regulation;
  - (b) where the assignment does not apply to any piece of legislation as a whole, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those of its provisions to which the assignment applies or to the extent that the assignment applies to them;
  - (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial executive or any department of state, administration, force or other institution.
- (3) When legislation is assigned under subitem (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.
- (4) Any assignment of legislation under section 235(8) of the previous Constitution including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is deemed to have been done under this item.

### **Courts**

15. (1) Every court of law, including courts of traditional leaders, existing immediately before the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation by a competent authority; and
  - (b) consistency with the new Constitution.
- (2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.
- (b) Anyone holding office as the President, the Deputy President or a judge of the Constitutional Court immediately before the new Constitution took effect, becomes the President, the Deputy President or a judge of the Constitutional Court under the new Constitution, and holds office subject to the new Constitution for the unexpired portion of the term for which they were appointed; but, the four youngest judges may continue in office for an additional period of five years after the expiry of their terms.
- (3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.
- (b) Anyone holding office as the Chief Justice, the Deputy Chief Justice or a



- judge of the Appellate Division immediately before the new Constitution took effect, becomes the Chief Justice, the Deputy Chief Justice or a judge of the Supreme Court of Appeal under the new Constitution.
- (4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in subitem (6).
  - (b) Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) immediately before the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subitem (6).
- (5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to -
- (a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution;
  - (b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and
  - (c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.
- (6) (a) As soon as is practical after the new Constitution takes effect all courts, including their structure, composition, functioning and jurisdiction and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.
- (b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must initiate the rationalisation envisaged in paragraph (a).

### **Cases pending before courts**

16. All proceedings which immediately before the new Constitution took effect were pending before a court, must be disposed of as if the new Constitution had not been enacted, unless the interest of justice requires otherwise.

### **Other constitutional institutions**

17. (1) In this section "constitutional institution" means -
- (a) the Public Protector;
  - (b) the Human Rights Commission;
  - (c) the Commission on Gender Equality;
  - (d) the Auditor-General;
  - (e) the South African Reserve Bank;
  - (f) the Financial and Fiscal Commission; or
  - (g) the Judicial Service Commission.
- (2) Any constitutional institution established by or under the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank, the Public Protector or the Auditor-General continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation by an authority acting within its power; and
  - (b) consistency with the new Constitution and this Schedule.

### **Enactment of legislation required by new Constitution**

18. (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable time.
- (2) Section 195(3) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged therein has been enacted.

### **Bill of Rights**

19. (1) National legislation envisaged in sections 9(4), 31(2) and 32(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.
- (2) Until the legislation envisaged in section 9(4) of the new Constitution is enacted, courts must develop the common law, as required by section 8(3) of the new Constitution, to grant appropriate remedies based on the right contained in section 9(4).
- (3) Until the legislation envisaged in section 31(2) and 32(3) of the new Constitution is enacted -
  - (a) section 31(1) must be regarded to read as follows:  
*"(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights.";* and
  - (b) sections 32(1) and (2) must be regarded to read as follows:  
*"Every person has the right to -*
    - (a) *lawful administrative action where any of their rights or interests is affected or threatened;*
    - (b) *procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;*
    - (c) *to be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and*
    - (d) *administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened."*

### **Rationalisation of public administration**

20. (1) Section 237 of the previous Constitution, including all other provisions of the previous Constitution referred to in that section to the extent that they relate to the rationalisation of the public administration -
  - (a) continue in force until 30 April 1999 as if the previous Constitution had not been repealed; and
  - (b) must be applied with due regard to Chapters 10 and 11 of the new Constitution.
- (2) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3), and any such proclamation continues in force subject to any amendment or repeal by Parliament or invalidation by a competent court on the grounds of inconsistency with the new Constitution.

### **Additional disqualification for legislatures**

21. (1) Anyone who when the new Constitution took effect was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.
- (2) The disqualification of a person in terms of subitem (1) -

- (a) lapses if the conviction is set aside on appeal, or reduced on appeal to a sentence that does not disqualify that person; or
- (b) ends five years after the sentence has been completed.

### **Safekeeping of Acts of Parliament and Provincial Acts**

22. Sections 81 and 122 of the new Constitution do not affect the safekeeping of Acts of Parliament or Provincial Acts passed before the new 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".
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".
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, the representatives of each party in the legislature.";* and
  - (b) by deleting "said certification or" in subitem (2).
10. The amendment of item 18 by replacing paragraph (b) with the following paragraph:  
*"(b) a representative is appointed as a permanent delegate to the National Council of Provinces;"*
11. The amendment of item 19 by replacing "published in terms of section 23 of the Electoral Act, 1993" with "referred to in item 16(1)".
12. The deletion of item 23.

13. The deletion of item 24.
14. The amendment of item 25 -
  - (a) by replacing the definition of "Commission" with the following definition:  
*"Commission' means the Electoral Commission referred to in section 186 of the new Constitution;"*; and
  - (b) by inserting the following definition after the definition of "national list":  
*"new Constitution' means the Constitution of the Republic of South Africa, 1996;"*.
15. The deletion of item 26.

## **Annexure B**

### **Government of National Unity: National Sphere**

1. Section 83 of the new Constitution is deemed to contain the following additional subsection:  
*"(3) The President must 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 of functions to the Executive Deputy Presidents;
  - (d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives;
  - (e) before appointing commissions of enquiry;
  - (f) before calling a referendum;
  - (g) before signing any international agreements; and
  - (h) before pardoning or relieving offenders."*
2. Section 88 of the new Constitution is deemed to contain the following additional subsection:  
*"(3) Subsections (1) and (2) apply also to an Executive Deputy President."*
3. Paragraph (a) of section 89(1) of the new Constitution is deemed to read as follows:  
*"(a) an Executive Deputy President designated by the President;"*.
4. Section 90 of the new Constitution is deemed to read as follows:

### **"Cabinet**

90. (1) *The Cabinet consists of the President, the Executive Deputy Presidents and -
  - (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
  - (b) not more than one Minister who is not a member of the National Assembly and appointed in terms of subsection (13), 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.*
- (2) *Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.*
- (3) *If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.*
- (4) *On being designated, an Executive Deputy President may elect to remain or to cease to be a member of the Assembly.*

- (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President.
- (6) An Executive Deputy President holds office -
  - (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of subsections (2) and (3); or
  - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.
- (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
- (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is 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.
- (9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula:
  - (a) A quota of seats per portfolio must 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.
  - (b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.
  - (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
  - (d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.
  - (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must -
  - (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
  - (b) appoint in respect of each such portfolio a member of the National Assembly 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 the Constitution or in the interest of good government, vary any determination under paragraph (a) subject to subsection (9);
  - (d) terminate any appointment under paragraph (b) -
    - (i) if the President 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 the Constitution or in the interest of good government; or

- (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on -
- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the President's decision prevails;
  - (b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and
  - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.
- (12) If any determination of portfolio allocations is varied under subsection (10)(c), the affected Ministers must vacate their portfolios but is eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President -
- (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must -
    - (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 that portfolio a person who is not a member of the National Assembly, 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, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government."
5. Section 91 of the new Constitution is deemed to read as follows:

**"Appointment of Deputy Ministers**

91. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.
- (3) The provisions of section 90 (10) to (12) apply with the necessary changes in respect of Deputy Ministers, and in such application a reference in that

section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.

- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister -
    - (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
    - (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
  - (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of 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."
6. Section 94 of the new Constitution is deemed to contain the following additional subsections:
- "(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.
  - (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
  - (5) If a Minister fails to administer the 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 that policy.
  - (6) If the Minister concerned fails to comply with a requirement of the President under subsection (5), the President may remove the Minister from office -
    - (a) if it is a Minister referred to in section 90(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 that Minister's party; or
    - (b) if it is a Minister referred to in section 90(1)(b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."

## **Annexure C**

### **Government of National Unity: Provincial Sphere**

1. Section 129 of the new Constitution is deemed to read as follows:

#### **"Executive Councils**

129. (1) The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.
- (2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties.

- (3) *Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 90 (9), and in applying that formula a reference in that section to -*
    - (a) *the Cabinet, must be read as a reference to an Executive Council;*
    - (b) *a Minister, must be read as a reference to a member of an Executive Council; and*
    - (c) *the National Assembly, must be read as a reference to the provincial legislature.*
  - (4) *The Premier of a province after consultation with the leaders of the participating parties must -*
    - (a) *determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);*
    - (b) *appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;*
    - (c) *if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (3);*
    - (d) *terminate any appointment under paragraph (b) -*
      - (i) *if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member; or*
      - (ii) *if it becomes necessary for the purposes of the Constitution or in the interest of good government; or*
    - (e) *fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council.*
  - (5) *Subsection (4) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on -*
    - (a) *the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the Premier's decision prevails;*
    - (b) *the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails, and*
    - (c) *the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the Premier's party, the Premier's decision prevails.*
  - (6) *If any determination of portfolio allocations is varied under subsection (4)(c), the affected members must vacate their portfolios but is eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.*
  - (7) *Meetings of an Executive Council must be presided over by the Premier of the province.*
  - (8) *An Executive Council must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government."*
2. Section 132 of the new Constitution is deemed to contain the following additional subsections:
- "(3) Members of Executive Councils are accountable individually to the Premier*



*and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies.*

- (4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council.*
- (5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy.*
- (6) If the member concerned fails to comply with a requirement of the Premier under subsection (5), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party. "*

# Schedule 6

## Laws Repealed

Number & year of law	Title
Act 200 of 1993	Constitution of the Republic of South Africa, 1993
Act 2 of 1994	Constitution of the Republic of South Africa Amendment Act, 1994
Act 3 of 1994	Constitution of the Republic of South Africa Second Amendment Act, 1994
Act 13 of 1994	Constitution of the Republic of South Africa Third Amendment Act, 1994
Act 14 of 1994	Constitution of the Republic of South Africa Fourth Amendment Act, 1994
Act 24 of 1994	Constitution of the Republic of South Africa Fifth Amendment Act, 1994
Act 29 of 1994	Constitution of the Republic of South Africa Sixth Amendment Act, 1994
Act 20 of 1995	Constitution of the Republic of South Africa Amendment Act, 1995
Act 44 of 1995	Constitution of the Republic of South Africa Second Amendment Act, 1995
Act 7 of 1996	Constitution of the Republic of South Africa Amendment Act, 1996
Act 26 of 1996	Constitution of the Republic of South Africa Third Amendment Act, 1996

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