





## WORKING DRAFT - 7 October 1995

**Status:** Consolidation of drafts as existing at  
19 September 1995

### CHAPTER 1

#### CONSTITUTIONAL DEMOCRACY

##### Republic of South Africa

1. The Republic of South Africa is one, sovereign state **founded** on respect for human rights, a commitment to achieving equality, a common South African citizenship, universal franchise, regular elections and other principles of **constitutional democracy** as enshrined in this Constitution.

*The RSA is one sovereign state and a constitutional democracy.oo*

*CP1,5,6+  
8*

##### Supremacy of the Constitution

2. This Constitution is the supreme law of the Republic. **It binds** the Republic, its institutions, its citizens and all persons within its boundaries and **any law**, act or conduct inconsistent with it is invalid.

CHAPTER 3

FUNDAMENTAL HUMAN RIGHTS

9 - 35.

## **CHAPTER 4**

### **PARLIAMENT**

#### **Legislative authority of the Republic**

**36.** The legislative authority of the Republic vests in Parliament, which consists of the National Assembly ... and has the power to make laws ...

#### **THE NATIONAL ASSEMBLY**

#### **Composition and election of the National Assembly**

**37.** (1) The National Assembly consists of ... members elected in terms of an electoral system that is prescribed by national law, is based on a common voters roll and, in general, results in proportional representation.

#### **Qualifications of members of National Assembly**

**[41.]38.** (1) Every citizen is eligible to be a member of the National Assembly unless disqualified in terms of subsection (2).

(2) The following may not be members of the National Assembly:

- (a) Anyone disqualified from voting in elections of the National Assembly.

- (b) Anyone holding office of profit under the Republic, except the Deputy President, Ministers and Deputy Ministers and any other office-bearers whose functions have been declared by national law to be compatible with the functions of a member of Parliament.
- (c) Members of [the Senate], a provincial legislature or a local government.
- (d) Unrehabilitated insolvents.
- (e) Anyone declared to be of unsound mind by a court of the Republic.
- (f) Anyone who was serving a sentence of more than 12 months imprisonment without option of a fine at the commencement of the Constitution.
- (g) Anyone who, after the commencement of the Constitution, has been 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.

(3) The disqualification of a person in terms of subsection (2)(f) and (g) ends five years after their sentence has been completed.

(4) Anyone who sits or votes in the National Assembly, knowing that they are not a member, will be fined in terms of the rules and orders of the Assembly.

### **Sittings and recess periods**

[45.]39. (1) The first sitting of the National Assembly after an election must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 10 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.

(2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct urgent business.

(3) The seat of the National Assembly is ... Sittings at other places are permitted only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the National Assembly.

### **Duration of National Assembly**

[39].40. (1) The National Assembly is elected for a term of five years from the date of its election.

(2) The National Assembly may be dissolved before the end of its term if it passes a vote of no-confidence in the Cabinet.

(3) The National Assembly remains competent to function from the time its term expires or it is dissolved until the day before polling for the next National Assembly.

(4) When the National Assembly is dissolved, or its term expires, the President, by proclamation, must call and set dates for an election, which must be within 90 days of the date the National Assembly was dissolved, or of the expiry of its term.

#### **Speaker and Deputy Speaker**

40. (1) At its first sitting after a general election, and 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 ... applies to the election of the Speaker and the Deputy Speaker.

(4) The Speaker and the Deputy Speaker have the powers and functions assigned to them by this Constitution and other law, including the rules and orders of the National Assembly.



(5) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution.

[(6) The Speaker or Deputy Speaker ceases to hold office upon resigning from office or ceasing to be a member of the National Assembly.]

### **Vacancies**

**42.** (1) A vacancy exists in the National Assembly when -

- (a) a member ceases to be eligible;
- (b) a member resigns or dies; or
- (c) a member is absent from Parliament without permission in circumstances for which the rules and orders of the National Assembly prescribe loss of membership.

(2) Vacancies in the National Assembly must be filled in terms of national law.

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

**44.** (1) Before members of the National Assembly may begin to perform their functions in the Assembly, they must swear or affirm by solemn declaration their faithfulness to the Republic, in accordance with schedule ...

## **Decisions**

46. (1) A majority of the members of the National Assembly must be present before a vote may be taken on a Bill and one-third of the members must be present before a vote may be taken on any other matter, unless the Constitution provides otherwise.

(2) All questions before the National Assembly must be decided by a majority of the votes cast, except where the Constitution provides otherwise.

(3) The presiding member of the National Assembly has no deliberative vote, but must cast a deciding vote whenever there is an equal number of votes on both sides of a question.

## **State President's rights in National Assembly**

47. The President may attend, and may speak in the National Assembly, but may not vote.

## **Internal autonomy**

48. The National Assembly may determine its internal arrangements, rules and orders.

## **Remuneration**

49. The remuneration, allowances and benefits of members of the National Assembly must be as provided for by national law.

**Parliamentary privilege**

49. (1) Members of the National Assembly have freedom of speech and debate in the National Assembly and in its committees, subject to its rules and orders. [This freedom may not be limited by or questioned in the courts.]

(2) Members of the National Assembly are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -

(a) anything they have said in, produced before, or submitted to the National Assembly or any of its committees; or

(b) anything revealed as a result of anything that they have said, produced or submitted.

(3) Other privileges and immunities of members of the National Assembly may be prescribed by national law.

**Ordinary Bills**

50. ....

**Money Bills**

51. ...

**Bills affecting provincial matters**

52. ...

**Assent to Bills**

53. (1) The President, without delay, must assent to and sign every Bill passed by Parliament.

(2) If the President is concerned that a Bill is not consistent with the Constitution or that Parliament passed the Bill other than in accordance with the Constitution, the following procedure applies:

- (a) The President must refer the Bill back to Parliament for reconsideration with a written statement of the reasons for the reservation, and Parliament may either allow the Bill to lapse or consider the President's reservations.
- (b) If Parliament considers the President's reservations, addresses them, and passes the Bill with the necessary changes, the President must sign the Bill.
- (c) If Parliament considers the President's reservations but disagrees with them, the Speaker must refer the Bill back to the President and the President may either sign the Bill or refer it to the Constitutional Court for a ruling on its constitutionality.

- (d) If the Constitutional Court decides that the Bill is constitutional, the President must sign the Bill.
  - (e) If the Constitutional Court decides that the Bill is not constitutional, Parliament may either reconsider the Bill, or allow it to lapse.
- (3) A Bill signed by the President becomes an Act of Parliament upon its promulgation.

#### **Safe keeping of and public access to Acts of Parliament**

**54.** The signed copy of every Act of Parliament must be entrusted for safe-keeping to the Appellate Division/Constitutional Court immediately after promulgation, and is conclusive evidence of the provisions of that Act.

## CHAPTER 12

### THE NATIONAL EXECUTIVE

#### **Executive authority of the Republic**

1. The executive authority of the Republic vests in the national executive consisting of the President and other members of the Cabinet, who must exercise their powers and perform their functions in accordance with this Constitution.

#### **The President**

2. (1) The President is the symbol of the unity of the nation and promotes that which will advance the Republic and opposes all that which may harm the Republic.

(2) The President is the Head of State, Head of the National Executive and Commander-in-Chief of the defence force, and must uphold, defend and respect the Constitution as the supreme law of the Republic, and is responsible for the observance of the Constitution by the national executive.

(3) The international sovereignty of the Republic vests in the President.

### **Powers and functions of the President**

3. (1) The President has the powers and functions entrusted to that office by this Constitution and any legislation.

(2) The President must act in consultation with the other members of the Cabinet when exercising the powers and performing the functions entrusted to the President, except where the Constitution provides or implies otherwise and in exercising the powers and performing the functions in the following list -<sup>1</sup>

- (a) to appoint and dismiss the Deputy President(s)/Prime Minister, Ministers and Deputy Ministers;<sup>2</sup>
- (b) to convene Cabinet meetings,
- (c) to assent to and sign Bills passed by Parliament
- (d) to refer a Bill passed by Parliament back to Parliament for reconsideration;

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<sup>1</sup> In section 233(3) of the Interim Constitution the term "in consultation with" is defined to mean that the concurrence of the other functionary is required.

The NP is not in favour of the President acting alone, but prefers an arrangement whereby these powers are exercised in accordance with provisions similar to section 82(2) of the Interim Constitution, i.e. that there should be an obligation on the President to consult the Executive Deputy President(s).

<sup>2</sup> Appointment to these offices is contentious and is dealt with under other sections of the draft. It may be necessary to consider whether the power of appointment should be repeated elsewhere.

- (e) to refer a Bill passed by Parliament to the Constitutional Court for a ruling on its constitutionality;<sup>3</sup>
- (f) to summon the National Assembly to an extraordinary sitting for the conduct of urgent business;<sup>4</sup> and
- (g) to dissolve the National Assembly after a motion of no confidence in the Cabinet has been passed by the National Assembly.
- (h) to accredit foreign diplomatic representatives;<sup>5</sup> and

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<sup>3</sup> See also section 21 of the Draft on Parliament. The following formulation of s 21 was proposed by the Technical Advisors.

If the President has reservations about the constitutionality of a Bill, or whether it has duly been passed by Parliament in accordance with the Constitution, the President may refer the Bill back to Parliament with a clear indication of any defects. If the Bill is passed again, giving effect to the President's reservations, the President shall sign the Bill. If Parliament does not agree with the State President reservations, the President shall refer the Bill to the Constitutional Court for a ruling on the constitutionality of the Bill, or whether it has been duly passed in accordance with the Constitution. If the Constitutional Court finds the Bill to be consistent with the Constitution, the President shall sign the Bill. If the Constitutional Court finds the Bill to be inconsistent with the Constitution, it shall be referred back to Parliament for further consideration, failing which, it shall lapse.

<sup>4</sup> The issue of summoning the two Houses to a joint sitting to be dealt with upon clarification of the role of the Senate.

<sup>5</sup> The NP and the DP prefer a system of prior Parliamentary approval of diplomatic representatives. The paragraph as reformulated by the Panel of Experts, the Technical Advisors and the Law Advisors, relates only to the accreditation of foreign diplomats. The procedure for the appointment of South African envoys still has to be discussed in the CC Subcommittee.



(i) to confer honours.<sup>6</sup>

(5) Decisions of the President in consultation with the Cabinet must be in writing, signed by the President and countersigned by a Minister.<sup>7</sup>

### **Election of the President**

4. (1) The National Assembly<sup>8</sup> must elect the President from

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<sup>6</sup> As a result of the redrafting of this whole section by the Panel of Experts, the Technical Advisors and the Law Advisors, the following aspects should be noted:

1 The power to conclude international agreements has been removed from the section. The attention of the CC Subcommittee is drawn to the fact that a report on the conduct of foreign affairs has been submitted to the CC. It is suggested that the powers of the Executive in international affairs should be considered jointly with the provisions relating to parliamentary ratification of international agreements, the question of executive agreements, international agreements by provincial governments, and transitional provisions. See for instance sec. 231 of the Interim Constitution. (The CC Subcommittee agreed that a decision would be held in abeyance until the reports from TC 1 and 5 had been tabled in this regard).

2 It is proposed that the power to appoint commissions of enquiry be incorporated in the Commissions Act, 8 of 1947, where it logically belongs.

3 It is further proposed that the power of pardon be incorporated in a suitable Act of Parliament (such as the Criminal Procedure Act or the Correctional Services Act).

<sup>7</sup> The Technical Advisors were requested to draw up an opinion on the implications of removing a reference to seal.

<sup>8</sup> The role of the Senate in the election of the President will be revisited when finality is reached on the question of a second House.

among its members<sup>9</sup> at its first sitting<sup>10</sup> after a national election, and whenever necessary to fill a vacancy.

(2) The President of the Constitutional Court must either preside over the election of the President, or designate another judge to do so. The procedure set out in Schedule ... applies to the election of the President.<sup>11</sup>

### **Assumption of office by the President**

5. Upon being elected President, a person ceases to be a member of the National Assembly, and assumes the office of President that day by swearing or affirming faithfulness to the Republic and obedience to the Constitution, by solemn declaration in accordance with Schedule ....<sup>12</sup>

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<sup>9</sup> The DP prefers a directly elected President. Matter was not resolved in the CC.

<sup>10</sup> The first sitting of Parliament will in terms of the Draft on Parliament be convened by the President of the Constitutional Court within 10 days after the declaration of the result of a general election.

<sup>11</sup> The procedure referred to appears in Schedule 5 of the Interim Constitution. Alternatively, the procedure should be prescribed by a national law.

<sup>12</sup> The Panel of Experts and Technical Advisers advise that the assumption of office on the same day of election as President should be revisited. First, the President-elect will have to present during the election procedure in order to assume office immediately on election. Should he or she not be there for some legitimate reason, what happens then? Second, by separating the two dates - election and assumption of office - by, say, 10 days allows for the organization of the appropriate pomp and ceremony which the administering of the

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

6. (1) A President's term of office begins when the President assumes office and ends upon a vacancy occurring or when the person next elected assumes office.<sup>13</sup>

(2) No person may hold office as President for more than two terms of office; 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 will not be regarded as a term of office.

### **Vacancies**

7. (1) A vacancy occurs in the office of President when -

- (a) the President dies, or resigns from office by notice in writing to the Speaker;
- (b) the National Assembly passes a vote of no confidence in the President alone; or

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oath and assumption of office require.

<sup>13</sup> The life of Parliament generally determines the length of tenure. As the life of Parliament has a fixed term of 5 years, the term of office of the President is limited to 5 years. The term of office may be shorter than 5 years where Parliament is dissolved before the end of a full term or where the President resigns or is removed from office. In order to ensure continuity the President's term normally expires only when his or her successor assumes office.

The IFP prefers a seven year term for the President.

- (c) the National Assembly, by resolution, removes the President from office.

(2) 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 later than 30 days after the vacancy occurs.

### **Acting President<sup>14</sup>**

9. (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of the office of President, or during a vacancy in the office of President, an office-bearer in the order below acts as the President -

- (a) the Deputy President;
- (b) a Minister designated by the President;
- (c) a Minister designated by the other members of the Cabinet;

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<sup>14</sup> The formulation may have to be adjusted depending on how the issue of more than one Deputy President and a possible Prime Minister is resolved.

To be taken further in CC Subcommittee. The DP proposed that par. (d) be replaced by a provision conferring power on the NA to elect an Acting President. The CC Subcommittee agreed that the issue would be held in abeyance until s 9, dealing with the Deputy President / Prime Minister, had been finalised.

- (d) the Speaker; or
- (e) a member of the National Assembly elected by Assembly.<sup>15</sup>

(2) An acting President has all the responsibilities, powers and functions of the President.<sup>16</sup>

#### **Deputy President(s)/Prime Minister<sup>17</sup>**

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<sup>15</sup> The ANC reserved its position on this paragraph.

<sup>16</sup> The Panel of Experts, the Technical Advisors and the Law Advisors draw attention to the fact that this subsection is understood to mean that an Acting President will be subject to all the constitutional controls pertaining to the President, including removal and a vote of no confidence.

<sup>17</sup> The question whether there should be a Deputy President or a Prime Minister or more than one Deputy President is in contention.

The ANC proposes a Deputy President elected by the NA from among its members. The President may assign duties and functions to the Deputy. The NP proposes more than one Deputy, one of whom should come from the second largest party in the NA. See s 84(1) interim Constitution for a formulation. The President must assign substantial executive powers to them and they must be consulted on important policy decisions and ministerial appointments, as provided in the interim Constitution. The IFP prefers a ceremonial head of state and a prime minister who appoints the cabinet. The DP proposes a Deputy President to assist the President in the execution of duties as Head of State. In addition there should be a prime minister, appointed by the President, to assist in the execution of the functions of government; the PM is leader of the Government in Parliament and coordinates the work of the Cabinet and in the absence of the President presides over the Cabinet. The FF proposes a Deputy President and/or a PM to assist the President in the execution of the functions of head of state and head of the executive. The PAC proposes a Deputy President.

10.<sup>18</sup>...

**Removal of President or Deputy President**

11. (1) The National Assembly, by resolution of at least two-thirds of its members, may remove the President or Deputy President from office only on the grounds of -

- (a) a serious violation of the Constitution or the laws of the Republic,
- (b) serious misconduct; or
- (c) inability to exercise and perform the powers and functions of office.<sup>19</sup>

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<sup>18</sup> This formulation is based on the proposal of the DP for the appointment of the Deputy President. There is no agreement on this issue. The NP proposes an appointment of two Deputy Presidents. For such proposal the following formulation can be considered:

9. (1) The President shall appoint two Deputy Presidents from the National Assembly who shall each be nominated respectively by the largest and the second largest parties in the National Assembly.

(2) The President shall assign substantial powers to the Deputy Presidents and shall consult them on all important policy decisions.

<sup>19</sup> See Report to CC Subcommittee on Impeachment and Motions of No-Confidence by the Technical Advisors. In the Report it is proposed that should impeachment be retained, the following subsection should be inserted:

"(2) A person who has been removed from the office of President in terms of subsection (1) may not be elected to any public office, and

(2) A person who has been removed from the office of President in terms of subsection (1) may not receive any benefits from that office, and may not be elected to any public office; but, a person removed from office as a result of inability may receive any benefits due from that office.

## **Cabinet**

12. (1) The Cabinet consists of the President, the Deputy President<sup>20</sup> and the Ministers.<sup>21</sup>

(2) The President must preside at Cabinet meetings. If the President is absent, the Deputy President must preside, and if both the President and Deputy President are absent, another Minister designated by the President must preside.

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the National Assembly may direct that such a person shall not be entitled to any benefits or pension from that office".

The effect of this subsection would be to draw a clear distinction between the consequences of removal from office through impeachment and a vote of no confidence.

<sup>20</sup> The NP prefers two Deputy Presidents.

<sup>21</sup> Some of the parties propose provision also for a Prime Minister. It is a contentious issue whether the number of Ministers should be prescribed by the Constitution and whether the Cabinet should proportionally include members of minority parties. It was agreed that the composition of the Cabinet should be explored in bilateral discussions.

## Appointment and dismissal of Ministers and Deputy Ministers

12. ....<sup>22</sup>

### Oath or solemn affirmation

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

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<sup>22</sup> There are two approaches; one basically in line with sections 88(2) to (6) and 94 of the Interim Constitution, the other more or less as follows:

- "(1) The President shall appoint the Ministers of the Cabinet from amongst the members of the National Assembly\* to administer the various portfolios for which the national government is responsible.
- (2) The President may appoint Deputy Ministers from amongst the members of the National Assembly\* to assist in the administration of portfolios for which the national government is responsible.
- (3) A Minister and a Deputy Minister hold office for as long as it pleases the President, but shall vacate office if he or she resigns from office or ceases to be a member of the National Assembly.\*"

\* Appointment of Ministers and Deputy Ministers from the Senate will depend on the role and function of the Senate. Furthermore, the NP favours the appointment of a limited number of Ministers from outside Parliament. The IFP proposed that Ministers should be appointed by the Prime Minister subject to ratification by Parliament.

The CC Subcommittee agreed that the issue should be addressed in bilateral discussions.



### **Accountability of Ministers and Cabinet<sup>23</sup>**

14. (1) The Deputy President and Ministers are individually accountable both to the President and the National Assembly, and all members of the Cabinet are collectively accountable to the National Assembly for the performance of the national government and its policies.

(2) In the performance of their functions Ministers are bound by the policies of the Cabinet.

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

15. (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) engage in activities inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or

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<sup>23</sup> The DP is of the view that the Deputy President/Prime Minister should have a special responsibility to formally represent the Cabinet in Parliament.

Matter to be discussed at CC Subcommittee level.

- (c) use their position or any information entrusted to them to enrich themselves or any other person.

### **Remuneration of members of Cabinet**

16. Parliament determines the salaries, allowances and benefits of the members of the Cabinet.

### **Temporary assignment of a Minister's powers and functions to another Minister**

17. The President may assign to a Minister any powers or functions of another Minister who is absent from office or is unable to exercise those powers or perform those functions.

### **Transfer of Minister's powers and functions to another Minister<sup>24</sup>**

18. The President by proclamation may transfer to a Minister -
- (a) the administration of a law entrusted to another Minister; or
  - (b) any power or function entrusted by a law to another

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<sup>24</sup>

The Panel of Experts and Technical Advisers note that as this provision authorizes the permanent transfer of functions and powers, it may be necessary in the interest of legal certainty to include a requirement that any such transfer should be published in the Government Gazette.

Minister.

**Votes of no-confidence<sup>25</sup>**

19. (1) If the National Assembly passes a vote of no confidence in the Cabinet, the President must either resign, or dissolve the National Assembly and call an election.

(2) If the National Assembly passes a vote of no confidence in the President alone, the President must resign.

(3) If the National Assembly passes a vote of no confidence in the Cabinet, excluding the President, the President must either resign or reconstitute the Cabinet.

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<sup>25</sup> Dissolution of the NA and votes of no confidence to be taken further by CC Subcommittee. A Report from the Technical Advisors dealing with both impeachment and motions of no confidence was submitted to the CC Subcommittee. A possible alternative approach suggested is the following two provisions:

A. Constructive vote of no-confidence:

If the National Assembly passes a vote of no confidence in the President, the President shall resign. Where, after the adoption of such a motion of no-confidence, the National Assembly is not able to elect a President within 21 days, the National Assembly shall be dissolved and a new election held.

B. Self-dissolution:

The National Assembly may by resolution adopted by two-thirds of all its members dissolve itself.

It was agreed that the matter would be discussed at the next meeting of the CC Subcommittee.

**SCHEDULE ...**

**Oath or affirmation of the President**

In the presence of those assembled here and in full realisation of the high calling I assume as President in the service of the Republic of South Africa I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa, and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other Law of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people.

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

**Oath or affirmation of Ministers and Deputy Ministers**

I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and undertake before those assembled here to hold my office as Minister/Deputy Minister with honour and dignity; to respect and uphold the Constitution and all other Law of the Republic of South Africa; to be a true and faithful counsellor; not to divulge directly or indirectly any matters which are entrusted

to me under secrecy; and to perform the duties of my office conscientiously and to the best of my ability.

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

**CHAPTER 8**

**PROVINCIAL LEGISLATURES**

**Provincial legislatures and their authority**

**75.** The legislative authority of each province vests in its provincial legislature ...

**Composition of provincial legislatures**

**76.** (1) Each provincial legislature consists of a number of members elected in terms of an electoral system that is prescribed by national legislation, is based on a common voters roll, and results in proportional representation.

(2) The number of members in each provincial legislature must be determined in terms of a national legislation and must be no fewer than ... and no more than ...

**Qualification for membership of provincial legislatures**

**79.** (1) Every citizen is eligible to be a member of a provincial legislature unless disqualified in terms of subsection (2).

(2) The following may not be members of a provincial legislature:

- (a) Anyone disqualified from voting in elections of the National Assembly.
- (b) Anyone holding office of profit under the Republic, except the Premier and other members of the executive council of a province, and any other office-bearers whose functions have been declared by national legislation to be compatible with the functions of a member of a provincial legislature.
- (c) Members of [the Senate], the National Assembly [or a local government.]
- (d) Unrehabilitated insolvents.
- (e) Anyone declared to be of unsound mind by a court of the Republic.
- (f) Anyone who was serving a sentence of more than 12 months imprisonment without the option of a fine at the commencement of the Constitution.
- (g) Anyone who, after the commencement of the Constitution, has been convicted 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 convicted until an appeal



against the conviction or sentence has been determined, or until the time for an appeal has expired.

(3) The disqualification of a person in terms of paragraphs (f) and (g) of subsection (2) applies during their sentence and for five years after the sentence has been completed.

[(4) Anyone who sits or votes in a provincial legislature while knowing that they are not a member will be fined in terms of the rules and orders of that legislature.]

#### **Sittings and recess periods**

82. (1) The first sitting of a provincial legislature after an election must take place at a time, and on a date, determined by the Chief Justice, but not more than 10 days after the election result has been declared. Each 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) Each provincial legislature may determine where it ordinarily will sit [and may make exceptions at any time.]

**Duration and dissolution of provincial legislatures**

77. (1) Each provincial legislature is elected for a term of five years from the date of its election.

(2) A provincial legislature may be dissolved before the end of its term if that legislature passes a vote of no-confidence in the Executive Council of that province.

(3) A provincial legislature remains competent to function, from the time its term expires or it is dissolved until the day before polling for the next provincial legislature.

(4) When a provincial legislature is dissolved, or its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be within 90 days of the date that the legislature was dissolved, or of the expiry of its term.

**Speaker and Deputy Speaker of provincial legislature**

78. (1) At the first sitting after its election, and 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 Chief Justice must preside over the election of the Speaker, and the Speaker must preside over the election of the Deputy Speaker.

(3) The procedure set out in Schedule ... applies to the election of the Speaker and the Deputy Speaker.

(4) The Speaker and the Deputy Speaker have the powers and functions assigned to them by the Constitution, provincial legislation, and the rules and orders of their provincial legislature.

(5) A provincial legislature may remove its Speaker or its Deputy Speaker from office by resolution.

[(6) The Speaker or the Deputy Speaker ceases to hold office upon resigning from office, or ceasing to be a member of the provincial legislature.]

#### **Vacancies**

**80.** (1) A vacancy exists in a provincial legislature when -

(a) a member ceases to be eligible;

(b) a member resigns or dies;

[(c) if a member is absent from the provincial legislature without permission in circumstances for which the rules and orders of the provincial legislature prescribe loss of membership.]

(2) Vacancies in the provincial legislatures must be filled in terms of national legislation.

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

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

### **Decisions**

83. (1) A majority of the members of a provincial legislature must be present before a vote may be taken on a Bill and one-third of the members must be present before a vote may be taken on any other matter, except where the Constitution provides otherwise.

(2) All questions before a provincial legislature must be decided by a majority of the votes cast, except where the Constitution provides otherwise.

(3) The presiding member of a provincial legislature has no deliberative vote, but must cast a deciding vote if there is an equal number of votes on both sides of a question.

### **Internal autonomy**

84. A provincial legislature may make its internal arrangements, rules and orders.

**Remuneration of members**

**85.** The salaries, allowances and benefits of members of provincial legislatures must be as provided for by national legislation.

**Privileges and immunities of members of provincial legislatures**

**86.** (1) Members of a provincial legislature have freedom of speech and debate in the provincial legislature and in its committees, subject to its rules and orders. [This freedom may not be limited by or questioned in the courts.]

(2) Members of provincial legislatures are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -

- (a) anything they have said in, produced before, or submitted to their provincial legislature or any of its committees; or
- (b) anything revealed as a result of anything that they have said, produced or submitted.

(3) Other privileges, immunities and powers of members of the provincial legislatures may be prescribed by [national or provincial] legislation.

**Assent to Bills**

87. (1) The Premier of a province, without delay, must assent to and sign every Bill passed by the provincial legislature.

(2) A Bill signed by the Premier of a province becomes a law of that province upon its promulgation.

**Safe keeping of provincial laws**

88. The signed copy of every Act of a provincial legislature must be entrusted for safekeeping to the Appellate Division/Constitutional Court immediately after promulgation, and is conclusive evidence of the provisions of that law.

Provincial Constitutions

**Adoption**

88. (1) A provincial legislature may adopt a constitution by resolution of at least two-thirds of its members.

(2) A provincial constitution must be consistent with the Constitution, but it may establish different legislative and executive structures and procedures for the province.

(3) A provincial constitution has no force or effect unless the Constitutional Court has certified that all of its provisions are consistent with the Constitution.

(4) A certification by the Constitutional Court in terms of subsection (3) is final, and no court of law has jurisdiction to enquire into the validity of that constitution.

**CHAPTER 7**

**PROVINCIAL EXECUTIVES**

**Executive power of the provinces**

**89.** (1) The executive power of a province shall vest in the provincial government consisting of the Premier and the Executive Council of a province, who shall exercise and perform their powers and functions subject to and in accordance with this Constitution.

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

**Election of Premiers**

**90.** (1) A provincial legislature shall at its first sitting after an election, and thereafter as and when it becomes necessary to fill a vacancy during the term for which it was elected, elect a member of the provincial legislature as the Premier.

(2) A judge designated by the Chief Justice shall preside over the election of a Premier. The procedure set out in Schedule ... shall apply to the election of a Premier.



(3) A sitting of a provincial legislature to fill a vacancy in the office of a Premier shall take place within 30 days after the vacancy occurred, at a time and on a date determined by a judge designated by the Chief Justice.

### **Assumption of office**

91. A premier-elect shall assume office within .... days of his or her election and shall, before assuming office, make and sign an oath or a solemn affirmation in the terms set out in Schedule ... before a judge designated by the Chief Justice.

### **Term and vacation of office and filling of casual vacancies**

92. (1) A Premier shall be elected for a term of office commencing when he or she assumes office and ending when the person elected as a Premier after the next election of a provincial legislature assumes office.

(2) No person may hold office as a Premier for more than two full terms.

(3) A Premier shall vacate office during his or her term upon -

- (a) resigning from office by notice in writing to the Speaker; or

(b) adoption by a provincial legislature of a resolution in terms of this Constitution removing him or her from office.

(4) A vacancy in the office of a Premier shall be filled as soon as a meeting of a provincial legislature can be convened for the election of a new Premier.

### **Powers and functions**

**93.** (1) A Premier has the powers and functions entrusted to him or her by the Constitution and any other law.

(2) All powers and functions shall be discharged by a premier in consultation with the other members of the Executive Council, except where the Constitution provides or implies otherwise.

(3) The following powers and functions are vested in a Premier alone with due regard to any specific provisions of the Constitution relating to them, and in the discharge of such powers and functions a premier is not obliged to act in consultation with the other members of the Provincial Executive:

(a) to summon a provincial legislature to an extraordinary sitting for the conduct of urgent business;

- (b) to dissolve a provincial legislature after a motion of no confidence in the Executive Council has been passed by the provincial legislature;
- (c) to assent to and sign Bills passed by a provincial legislature;
- (d) to refer a Bill passed by a provincial legislature back to the legislature for reconsideration or to the Constitutional Court for a ruling on its constitutionality;
- (e) to appoint and dismiss members of the Executive Council;
- (j) to convene Cabinet meetings; and
- (k) to appoint commissions of enquiry.

(4) An Executive Council may delegate its consultation function in terms of this subsection, with reference to any particular power or function of the Premier, to any member or members of the Executive Council.

#### **Acting Premiers**

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

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

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

### **Executive Councils**

95. (1) The Executive Council of a province shall consist of a Premier and not less than 5 and not more than 10 members appointed by a Premier.

(2) A Premier shall appoint the members of the Executive Council from amongst the members of the provincial legislature to administer the various portfolios for which the provincial government is responsible.

(3) A member of the Executive Council shall hold office for as long as it pleases the Premier, but shall vacate office if he or she resigns from office or ceases to be a member of the provincial legislature.

(3) A person appointed as a member of the Executive Council shall before assuming office make and sign an oath or solemn affirmation in the terms set out in Schedule ... before a judge designated by the Chief Justice.

### **Accountability of members of Executive Councils**

96. (1) Members of a Executive Council are individually accountable both to a Premier and a provincial legislature for the administration of the portfolios entrusted to them, and all members of the Executive Council are collectively accountable to the provincial legislature for the performance of the functions of the provincial government and its policies.

(2) All members of an Executive Councils shall administer their portfolios in accordance with the policies of that Executive Council.

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

97. Members of an Executive Council shall at all times act in accordance with a code of ethical conduct which shall be prescribed by law. It shall be particularly forbidden for members -

- (a) to take up any other paid work;
- (b) to engage in activities inconsistent with that of their office or to expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; and
- (c) to enrich themselves or any other person by using their position or any information entrusted to them.

**Temporary assignment of powers and functions to Executive Council members**

98. Whenever a member of an Executive Council is absent or unable to exercise and perform any of the powers and functions entrusted to him or her, or whenever the office of a member is vacant, a Premier may appoint any other member to exercise or perform any or all of the first-mentioned member's powers and functions.

**Transfer of powers and functions from one member to another member of an Executive Council**

99. A Premier may assign the administration of a law entrusted to a particular member of an Executive Council, or the discharge of any power or function entrusted by a law to a particular member, to any other member.

**Votes of no confidence**

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

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

(3) If a provincial legislature passes a vote of no confidence in the Executive Council, excluding the Premier, the Premier shall either resign or reconstitute the Executive Council.

## CHAPTER 8

### NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCIES

#### **Legislative authority of the Republic**

101. The legislative authority of the Republic vests in Parliament, which shall be competent to make laws in terms of this Constitution on any matter including matters falling within the functional areas specified in Schedule ...

#### **Legislative authority of provinces**

102. (1) The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in and for its province in terms of this Constitution.

(2) A provincial legislature shall have the competence to legislate on any matter which falls within a functional area specified in Schedule (X).

#### **Framework legislation**

103. (1) Framework legislation comprises Acts of Parliament in terms of which principles or standards are laid down to ensure uniformity across the nation and shall apply equally in all provinces and shall empower provincial legislatures to make laws for the achievement of the objectives set out in the framework legislation.



(2) Parliament is competent to establish framework legislation only regarding the matters specified in Schedule Y.

(3) Framework legislation shall be binding upon all legislatures and shall be implemented in a province in accordance with the laws of the provincial legislature.

(4) Should a provincial legislature fail to implement framework legislation within a reasonable period of time, Parliament shall be competent to implement such legislation until the provincial legislature complies with its duty in this regard.

#### **Necessary ancillary powers**

**104.** The legislative competence referred to in sections 101, 102 and 103 shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

#### **Conflict of laws**

**105.** (1) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule X, the Act of Parliament shall prevail over the provincial law where the elements of the Act that are in conflict with the provincial law are necessary for -

- (a) the establishment of generally applicable standards regarding -
  - (i) services rendered by the state;
  - (ii) the maintenance of economic unity; or
  - (iii) the determination of national economic policies;or
- (b) the maintenance of the security of the Republic; or
- (c) the prevention of prejudice to the Republic or any province thereof caused by the activities of another province.

(2) A Bill designed to become an Act of Parliament intended in subsection (1) shall be introduced in the Senate and shall require the approval of both the Senate and the National Assembly.

(3) The Constitutional Court shall, upon application by at least one fifth of the members of the Senate, and prior to the promulgation of a Bill intended in subsection (2), expeditiously determine whether the Bill conforms with the objective criteria prescribed in subsection (1).

(4) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 1, which cannot be resolved

by a competent court on a construction of this Constitution, precedence shall be given to the Act of Parliament.

### **Integrity of provinces**

**106.** An Act of Parliament shall not empower an organ of state to encroach upon the geographical, functional or institutional integrity of a province.

CHAPTER 9

LOCAL GOVERNMENT

Sections 107 - 117.

CHAPTER 10

INDIGENOUS LEADERS

Sections 118 - 120.

## CHAPTER 6

### THE COURTS AND THE ADMINISTRATION OF JUSTICE

#### Judicial authority

1. (1) The judicial authority of the Republic vests in the courts ~~of law~~. They are independent, impartial and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice.
- (2) A decision of any court within its jurisdiction binds all persons and organs of state to which the decision applies.
- (3) No person and no organ of state may interfere with the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts in order to ensure the independence, impartiality, dignity and effectiveness of the courts.

#### Judicial system

2. The courts of law of the Republic are:
  - (a) The Constitutional Court, which is the highest court in constitutional matters, consisting of a President, a Deputy President and nine other judges.

- (b) The Supreme Court of Appeal, which is the highest court of appeal in all matters other than constitutional matters, consisting of the Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined in terms of an Act of Parliament.
- (c) Any courts of appeal established in terms of an Act of Parliament, which hear appeals from the High Court or other ~~superior~~ courts of similar status.
- (d) The provincial and local divisions of the High Court and other ~~superior~~ courts of similar status.
- (e) Magistrates' Courts and other ~~lower~~ courts of similar status.
- (f) Any other courts established by law.

### **Jurisdiction in constitutional matters**

3. The Constitution determines the jurisdiction of all courts in constitutional matters.

### **Jurisdiction of the Constitutional Court**

4. (1) The Constitutional Court has jurisdiction in all constitutional matters, including the final decision whether a matter is within its jurisdiction, and has jurisdiction to make its own rules.

(2) Only the Constitutional Court has jurisdiction -

- (a) over disputes in constitutional matters that only involve national or provincial organs of state; or
- (b) to consider the constitutionality of any parliamentary or provincial Bill.

(3) In the interest of justice, the Constitutional Court may grant leave to any person to bring a matter directly to that court.

(4) In any matter before it, the Constitutional Court -

- (a) must declare invalid any law, act or conduct that is inconsistent with the Constitution;
- (b) may make any order that is just and equitable, including an order as to costs, and an order that a declaration of invalidity is to have retrospective operation, and the extent of that order.
- (c) may suspend a declaration of invalidity, on any conditions and for any specified period, to allow the competent authority to correct the defect.

(5) A decision of the Constitutional Court binds all other courts, persons and organs of state.



**Constitutional jurisdiction of other courts**

4. (1) The Supreme Court of Appeal, other courts of appeal, and the provincial and local divisions of the High Court and other superior courts have jurisdiction in all constitutional matters except those matters over which only the Constitutional Court has jurisdiction.

(2) All other courts, including Magistrates' Courts, have jurisdiction in constitutional matters, excluding -

- (a) those matters over which only the Constitutional Court has jurisdiction; and
- (b) jurisdiction to enquire into or rule on the validity of an Act of Parliament, a law of a provincial legislature, or any other law determined by an Act of Parliament;

(3)(a) A court, in exercising its jurisdiction in constitutional matters, may make any order set out in section 4(5).

(b) Any finding by a court that an Act of Parliament, [a law of a provincial legislature] or an act of the President is unconstitutional has no force or effect unless confirmed by the Constitutional Court; but, a court may grant a temporary interdict or other temporary relief.

**Other jurisdiction of courts**

5.[4] (1) Courts have the jurisdiction in matters other than constitutional matters that is conferred on them in terms of an Act of Parliament.

(2) The Supreme Court of Appeal and the provincial and local divisions of the High Court have the inherent jurisdiction that vested in the Appellate Division and the provincial and local divisions of the Supreme Court, respectively, before the commencement of the Constitution.

**Appointment of judicial officers**

6.[5] (1) Any citizen who qualifies and is a fit and proper person is eligible to be appointed as a judicial officer.

(2) [Qualifications should be listed here.]

(3) The President, in consultation with the Cabinet and after consulting the Judicial Service Commission, must appoint the Chief Justice and the President of the Constitutional Court *and their deputies*

(4) The President, on the advice of the Judicial Service Commission, must appoint the Deputy Chief Justice, ~~[the Deputy President of the Constitutional Court]~~ and all other judges, except of the Constitutional Court. *The President, on the advice of the JSC, must appoint all the other judges, except the judges of the Constitutional Court.*

(5) When there is a vacancy in the Constitutional Court the following procedure applies:

5 *The* Appointment Procedure for *Constitutional Court judges* - 56 - *Constitutional Court.*

- (a) The President, in consultation with the Cabinet and after consulting the President of the Constitutional Court, must appoint a judge to fill the vacancy, from a list of nominees prepared by the Judicial Service Commission.
  - (b) The Judicial Service Commission must prepare the list with no more than three names in excess of the number of vacant positions, and submit the list to the President with written reasons for its recommendations.
  - (c) The President may make appointments from the list after considering the reasons given, or advise the Judicial Service Commission, with written reasons, if any of the nominees are unacceptable and any vacancy remains to be filled.
  - (d) The Judicial Service Commission must [supplement the list with further nominees] and the President must appoint people from the supplemented list to fill the remaining vacancy.
- (6) ~~{At all times}~~ at least four members of the Constitutional Court must be persons who, at the time they were appointed to the Constitutional Court, were judges of the Supreme Court of Appeal, a division of the High Court or any court hearing appeals from the High Court.

(7) The Minister responsible for the administration of justice must appoint acting judges on the advice of the senior judge of the court in which the acting judge will serve.

(8) Other judicial officers must be appointed in terms of an Act of Parliament.

(9) Before judicial officers may begin to perform their functions, they must swear or affirm to uphold and protect the Constitution of the Republic, by solemn declaration in accordance with Schedule ...

(10) Members of the Constitutional Court hold office for non-renewable terms of up to nine years. An acting member of the Constitutional Court may serve for no more than six months.

#### **Removal of judges from office**

6. (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 and ..., at a joint sitting, adopts a resolution calling for that judge to be removed, which is supported by at least two-thirds of the members of both houses combined.

(2) The President may suspend a judge from office who is the subject of proceedings in terms of subsection (1), on the advice of the Judicial Services Commission, and must dismiss a judge from office upon the adoption of a resolution calling for that judge to be removed from office.

#### **Remuneration of judicial officers**

7. The salary, allowances and benefits of judges are as prescribed by national law and may not be reduced.

#### **Other matters to be dealt with in national law**

8. Any matter concerning [the functioning of] any court, that is not dealt with in the Constitution, may be regulated only by national law.

#### **Judicial Service Commission**

9. (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 Minister responsible for the administration of justice, or that Minister's nominee;
- (e) two practising advocates designated by the advocates' profession;
- (f) two practising attorneys designated by the attorneys' profession;
- (g) one professor of law designated by all the deans of the law faculties at South African universities;
- (h) four senators designated together by the Senate by resolution adopted by at least two-thirds of its members;
- (i) four persons, two of whom are practising attorneys or advocates, designated by the President in consultation with the Cabinet; and
- (j) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier of the province concerned.

(2) In addition to its other functions, the Judicial Service Commission may advise the national and provincial governments on any matters relating to the judiciary and the administration of justice, but when

it does so, it must sit without the four senators referred to in subsection (1)(h).

(3) The Commission may determine its own procedure.

[(4) Decisions of the Commission must be supported by an ordinary majority of all its members.]

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

## CHAPTER 12

### SECURITY SERVICES

The provisions of this chapter must be interpreted and understood in the spirit of the following principles of national security:

- (a) National security must reflect the resolve of all 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 strict compliance with the Constitution, the law and all applicable international conventions and norms.
- (c) National security must be subject to the authority of Parliament and the Executive.

#### **Composition and structuring of security services**

119. (1) The security services of the Republic consist of a single defence force, a 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. Other than the security services established in terms of the



Constitution, armed organisations or services may be established only in terms of with national legislation.

(3) The security services must be structured and regulated by national legislation.

(4) The security services must act, and must train and require their members to act, in accordance with the Constitution and the law, including customary international law and treaties binding on the Republic.

(5) No member of any security force may obey a manifestly illegal order.

(6) The security services must exercise their powers and perform their functions in the national interest; neither the security services nor any of their members may perform any duty or function in a manner that furthers or prejudices the interests of any political party.

[(7) The security services must be broadly representative of the South African people.]

[(8) Mechanisms and procedures for regulating labour relations to accommodate the specific needs of the security services may be established.]

DEFENCE

**Defence force**

120. (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, [guided by] the principles of international law regulating the use of force.

**Political responsibility and accountability**

121. (1) A member of the Cabinet must be responsible for defence.

(2) A (joint) multi-party committee of Parliament must oversee all defence matters.

**Command of defence force**

122. (1) The President must appoint, and may dismiss, a Chief of the defence force, who commands the defence force.

(2) The Chief of the defence force must exercise command in accordance with the directions of the cabinet member responsible for defence and, during a state of national defence, of the President.

**Defence civilian secretariat**

123. A civilian secretariat for defence must be established to function under the direction [and control] of the cabinet member responsible for defence, and to administer any matters in connection with defence that are entrusted to it by that cabinet member, or by national legislation.

**POLICE**

**Police service**

125. (1) The national police service must be structured to function at national and provincial levels, as set out in national legislation.

(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 Republic, its inhabitants and their property.

**Political responsibility and accountability**

126. (1) A member of the Cabinet must be responsible for policing.

(2) A (joint) multi-party committee of Parliament must oversee all police matters.

**Control of police service**

127. (1) The President must appoint, and may dismiss, a National Commissioner of the police service, who controls and manages the police service.

(2) The National Commissioner must exercise control and management in accordance with the directions of the cabinet member responsible for policing.

(3) The National Commissioner must appoint, and may dismiss, provincial commissioners for each province, in accordance with national legislation.

(4) The National Commissioner may direct the provincial commissioners, who are each responsible for policing in their province, as prescribed by national legislation.

(5) Each provincial government is responsible for monitoring and overseeing the conduct and efficiency of the police service and cultivating good relations between police and the rest of the community, [and may establish mechanisms to carry out these responsibilities.]

**Police civilian secretariat**

128. A civilian secretariat for the police service must be established to function under the direction [and control] of the cabinet member responsible for policing, and to exercise any powers and functions in

connection with policing that are entrusted to it by that cabinet member, or by national legislation.

## INTELLIGENCE

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

**128.** (1) The President may establish an intelligence service or services.

(2) The President must appoint the head of every 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 and functions and oversight**

**129.** National legislation must establish and regulate the objects, powers and functions of the intelligence services established in terms of section 128(1) and must provide for -

- (a) a parliamentary committee to oversee the budgets of those services;
- (b) civilian monitoring of the activities of those services by an inspector [or inspectors] appointed by the President

with the approval of the National Assembly by a resolution adopted by at least two-thirds of its members; and

- (c) co-ordination of all intelligence services in the Republic.

**CHAPTER 13**

**FINANCE**

*General financial matters*

**National Revenue Fund**

130. (1) There is a National Revenue Fund, into which all revenue, as determined by national legislation, raised or received by the national government must be paid.

(2) Parliament may make appropriations from the National Revenue Fund only in accordance with national legislation.

(3) No money may be withdrawn from the National Revenue Fund except under appropriation made by national legislation; but, revenue to which a province is entitled [in terms of this Constitution] is a direct charge against the National Revenue Fund to be credited to the Provincial Revenue Fund concerned.

**Annual budget**

131. ...

**Procurement administration**

132. (1) The procurement of goods and services by organs of state at any level must be regulated by [national and provincial] legislation, which must provide for independent and impartial tender boards to be appointed to deal with procurement.

(2) The tendering system must be fair, public and competitive.

(3) No person and no organ of state may interfere with a tender board.

(4) All decisions of a tender board must be recorded and open to public inspection, and a tender board must provide reasons for a decision if requested to do so by an interested party.

**Guarantees by national government**

133. The national government may guarantee a provincial or local government loan, only if -

(a) the guarantee complies with the norms and conditions for such a guarantee as set out in national legislation; and

(b) the Financial and Fiscal Commission has made a recommendation concerning compliance of the guarantee with such norms and conditions.



## **Accountability of Public Enterprises**

134. Any enterprise may be required to report to or give evidence before Parliament, in a manner determined by national legislation, if public money is invested in it, its sources of revenue are regulated by legislation, or it is able to raise revenue in terms of any legislation.

## **Financial and Fiscal Commission**

### **Establishment**

135. There is a Financial and Fiscal Commission for the Republic, which is independent and subject only to this Constitution and the law, and which must be impartial.

### **Functions**

136. (1) The Commission may give advice and make recommendations to Parliament, provincial legislatures and any other authorities determined by national legislation regarding the financial and fiscal requirements of the national, provincial and local governments, including -

- (a) financial and fiscal policies;
- (b) criteria for the allocation of financial and fiscal resources;

- (c) equitable allocations to national, provincial and local governments from revenue collected at national level;
- (d) the form of any taxes, levies, imposts, and surcharges that a provincial government intends to levy;
- (e) the raising of loans by a provincial or local government and the norms and conditions that apply to those loans; and
- (f) any other matter assigned to the Commission by the Constitution or national legislation.

(2) In performing its functions, the Commission must consider all relevant information including the national interest, economic disparities between the provinces, and their population and development needs, administrative responsibilities and other legitimate interests.

#### **Appointments, qualifications, tenure and dismissal of members**

**137.** ...

#### **Reports**

**138.** (1) The Commission must report regularly to both Parliament and provincial legislatures as prescribed by national legislation.

CENTRAL BANK

**Establishment**

139. There is a South African Reserve Bank, which is the central bank of the Republic, and is regulated by national legislation.

**Primary objective**

140. (1) The primary object of the South African Reserve Bank is to protect the value of the currency [of the Republic] in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank, in the pursuit of its primary object, must exercise its powers and perform its functions independently and without fear, favour or prejudice, subject only to national legislation; but, there must be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

**Powers and functions**

141. 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.

CHAPTER 14

PUBLIC ADMINISTRATION

**Basic values and principles governing public administration**

142. (1) Public administration at all levels of government, including the administration of institutions that are dependent on government funds or other sources of public money, must be governed by the democratic values and principles enshrined in the Constitution, and the following principles apply:

- (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 timely, accessible and accurate information.

- (h) Good human-resource management and 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.

(2) The appointment in the public service of a number of persons on policy considerations as regulated by law is not precluded.

[(3) Laws regulating the public administration may differentiate between different sectors, administrations or institutions in the public administration.]

#### **Public Administration Commission**

143. (1) There is a single Public Administration Commission for the Republic, which is independent and must be impartial and regulated by national legislation. Each of the provinces may nominate a representative to be appointed to the Commission.

(2) The object of the Public Administration Commission is to promote the basic values and principles of public administration.

(3) Provincial representatives in the Public Administration Commission may exercise the powers and perform the functions of the Commission within the provinces, as prescribed by national law.

(4) The Public Administration Commission is accountable to Parliament.

### **Public Service**

144. (1) There is a public service for the Republic, which must function, and be structured, in terms of a national law, 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 law. Employees are entitled to a fair pension as regulated by law.

CHAPTER 15

INDEPENDENT INSTITUTIONS

INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

**Establishment**

156. (1) The following institutions are hereby established to strengthen constitutional democracy in the Republic -

- (a) the Public Protector;
- (b) the Human Rights Commission;
- (c) the Commission for Gender Equality;
- (d) the Auditor General; and
- (e) the Electoral Commission.

(2) The institutions established in subsection (1) 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 in order to ensure the independence, impartiality, dignity and effectiveness of the institutions.

(4) No person and no organ of state may interfere with any of these institutions.

(5) The institutions established in subsection (1) are accountable to Parliament, and must report on their activities to Parliament at least once a year.

### PUBLIC PROTECTOR

#### **Functions of Public Protector**

145. (1) The Public Protector has the following powers, as regulated by national legislation -

- (a) to investigate any conduct in State affairs or the public administration at any level 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 the any additional powers and functions prescribed by national legislation.

[(3) The Public Protector may not investigate the performance of judicial functions by the courts of the Republic.]



(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 [security of the Republic, interests of justice] require that a report be kept confidential.

#### **Qualifications and tenure of office**

##### **146.**

(1) The Public Protector must be a South African citizen who is a fit and proper person to hold that office and who complies with any other requirements prescribed by national legislation.

(2) The Public Protector is appointed for a period of seven years.

#### **Provincial public protectors**

##### **147. ...**

### **HUMAN RIGHTS COMMISSION**

#### **Functions of Human Rights Commission**

**147. (1)** The Human Rights Commission must promote -

(a) respect for human rights;

- (b) the development, protection and attainment of human rights; and
- (c) the development of a culture of human rights in the Republic.

(2) The Human Rights Commission has the power, as regulated by national legislation, necessary to fulfil its purposes, including the power to monitor, to investigate and report on the observance of human rights, to take steps to secure appropriate redress where human rights have been breached, to perform research and to educate.

(3) The Human Rights Commission has the any additional powers and functions prescribed by national legislation.

**COMMISSION FOR GENDER EQUALITY**

**Function of Commission for Gender Equality**

**150.** (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 fulfil its purposes, including the power to monitor, to research, to educate, to advise and to report on issues relating to gender equality.

(3) The Commission for Gender Equality has the any additional powers and functions prescribed by national legislation.

**AUDITOR GENERAL**

**Functions of Auditor General**

154. (1) The Auditor General must audit and report on -

- (a) the accounts and financial statements of all national and provincial state departments and administrations;
- (b) the accounts and financial statements of all local governments; and
- (c) any other accounts and financial statements that are required by [national and provincial] legislation to be audited by the Auditor General.

(2) The Auditor General may also audit and report on the accounts and financial statements of any institution funded from public money, as may be regulated by legislation.

(3) The Auditor General must submit audit reports to every authority that has a direct interest in the relevant audit and to any authority prescribed by [national and provincial] legislation. All reports must be made public.

**Auditor General qualifications and tenure of office**

155. (1) The Auditor General must be appointed in accordance with section 157 and may be dismissed in accordance with section 158.

(2) The Auditor General must be a South African citizen who is a fit and proper person to hold that office, and must not hold office in any political party or organisation. Specialised knowledge of, or experience in, auditing, state finances, and public administration must be given due regard in appointing the Auditor General.

(3) The Auditor General must be appointed for a non-renewable term of not less than 5 years and not more than 10 years.

**ELECTORAL COMMISSION**

**Functions of Electoral Commission**

152. (1) The Electoral Commission is responsible for managing free and fair elections at national, provincial and local levels of government.

**Composition of the Commission**

153. The Electoral Commission must be composed of a minimum of three persons appointed for a fixed term of office, as prescribed by national legislation.

GENERAL PROVISIONS

**Appointments**

157. (1) Any appointment required to be made in accordance with this section, must be made by the President acting on the recommendation of Parliament.

(2) Parliament must recommend a person -

(a) nominated by a committee of Parliament ...;

and

(b) approved by Parliament by a resolution adopted by at least ...% of the members present and voting.

**Removal from office**

158. (1) Any person whose removal from office is required to conform to this section, may be removed from office only -

(a) on the grounds of misbehaviour, incapacity and incompetence;

(b) upon a finding to that effect by a committee of Parliament... and participating in the committee; and

(c) the adoption by Parliament of a resolution, calling for that person's removal from office, and supported by at least ... of the members present and voting.

(2) The President may suspend a person from office when Parliament is considering removing that person from office, and must dismiss a person from office immediately upon adoption of a resolution calling for that person's removal from office.

### **Amendment of the Constitution**

8. Parliament may amend the Constitution by a Bill passed by at least two-thirds of the members of the National Assembly.



