

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

29 November 1993


Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT AND THE
AFRICAN NATIONAL CONGRESS FOR THE ATTENTION OF THE
TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES**

1. Attached is a submission by the South African Government and the ANC entitled *CHAPTER 14: General and Transitional Provisions: 26 November 1993*.
2. Kindly transmit the document for immediate attention to the Technical Committee on Constitutional Issues.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

26 November 1993

In bilateral discussions between the South African Government and the African National Congress this attached draft Chapter on general and transitional provisions was formulated for submission to the Technical Committee on Constitutional Issues. Clause 205 contains very tentative ideas on how the situation could be dealt with if the Independent Electoral Commission is unable to certify that the election was free and fair. This is a preliminary draft and both parties may propose modifications.

CHAPTER 14

General and Transitional Provisions

Repeal of laws

190. (1) The laws mentioned in Schedule 7 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Notwithstanding the repeal of sections 13 and 101(2) of the previous Constitution, any pension which but for such repeal would have been payable shall continue to be payable as if such repeal had not been affected.

Continuation of existing laws and conventions

191. (1) Subject to the provisions of this Constitution, all laws which immediately before the commencement of this Constitution were in force in any part of the national territory shall continue in force subject to any repeals or amendments by a competent authority.

(2) The presidential prerogatives which existed immediately before the commencement of this constitution shall continue to exist, except to the extent that they are inconsistent with the provisions of this Constitution.

Continuation of international rights and obligations

192. All rights and obligations under international conventions, treaties or agreements which were vested in or binding on the Republic immediately before the commencement of this Constitution, shall continue to be vested or binding on the Republic, subject to any alterations as may be agreed to by the national government.

Status of International Law

192A (1) Parliament shall subject to the provisions of this Constitution have the powers and functions to agree to the ratification of or accession to international agreements negotiated and signed in terms of section 76(1)(i).

(2) International agreements approved by Parliament in terms of subsection (1) shall, where Parliament expressly provides and unless inconsistent with the provisions of this Constitution be binding and shall form part of the law of the Republic.

(3) Rules of customary international law binding on the Republic, unless inconsistent with the provisions of this Constitution or an Act of Parliament, shall form part of the law of the Republic.

Construction of certain references

193. Unless the context otherwise indicates, a reference in a law referred to in section 191 to -

- (a) State President ...
- (b) Republic ...
- (c) Parliament ...
- (d) Official language ...
- (e) Ombudsman ...
- (f) Auditor-General ...
- (g) (etc)

Transitional arrangements: Legislative Authorities

194. (1) A person who immediately before the commencement of this Constitution was a member of Parliament or of any other legislative assembly which exercised legislative powers in respect of any part of the national territory, shall upon such commencement cease to be such a member, but shall for the purpose of any law relating to the payment of pension benefits to such members not be disqualified solely by reason of this section.

(2) A person who immediately before the commencement of this Constitution was employed by Parliament shall after such commencement continue in such employment subject to and in accordance with the applicable laws regulating such employment.

(3) The provisions of section 196(4), (5) and (6) shall apply *mutatis mutandis* in respect of a person referred to in subsection (2).

(4) A person who immediately before the commencement of this Constitution was employed by a legislative assembly referred to in subsection (1) other than Parliament, shall be deemed to be employed by the administration of that part of the national territory in which such legislative assembly exercised legislative powers, subject to and in accordance with the applicable laws regulating such employment, and sections 196 and 197 shall apply *mutatis mutandis* in respect of such person.

(5) Any matter before Parliament or any such other legislative assembly which immediately before the commencement of this Constitution has not yet been disposed of by Parliament or such legislative assembly, as the case may be, shall lapse upon such commencement.

(6) The rules and orders of Parliament in force immediately before the commencement of this Constitution, shall, to the extent that they can *mutatis mutandis* be applied in respect of the affairs of Parliament under this Constitution, continue in force until amended or replaced in terms of this Constitution.

Transitional arrangements: Executive authorities

195. (1) A person who immediately before the commencement of this Constitution was -

- (a) the State President or a Minister or a Deputy Minister of the Republic within the meaning of the previous Constitution;
- (b) the Administrator or a member of the Executive Council of a province; or
- (c) the President, Chief Minister or other chief executive or a Minister, Deputy Minister or other political functionary in the government of any part of the national territory in terms of a constitution or other constitutional arrangement in force in such part of the said territory,

shall continue in office until the President under this Constitution has been elected and has assumed office.

(2) Any vacancy which may occur in an office referred to in subsection (1)(a), (b) or (c) shall, if necessary, be filled by a person designated by the persons continuing in office in terms of subsection (1)(a), acting in consultation with the Transitional Executive Council.

(3) Executive authority vested in a person or persons referred to in subsection (1)(a), (b) or (c) in terms of a constitution or constitutional arrangement in force immediately before the commencement of this Constitution, shall during the period in which the said person or persons remain in office in terms of subsection (1), be exercised in accordance with such constitution or constitutional arrangement as if it had not been repealed or superseded by this Constitution, and any such person or persons shall continue to be competent to administer any department of state, administration, force or other institution which was entrusted to, and to exercise and perform any power or function which was vested in him or her or them immediately before the said commencement save that

(i) the provisions of the TEC Act shall continue to apply and no such power or function shall be exercised or performed if the TEC disapproves thereof.

(ii) once the election results have been certified by the IEC in terms of section 18 of the IEC Act 1993, the State president shall exercise his powers and functions in consultation with the leader of the party which has received the largest number of votes.

(4) The TEC may, by simple-majority vote, following the commencement of this Constitution but before the election of the President in terms of section ... require the State President to take such steps in terms of any law as are necessary to maintain law and order, including the declaration of a state of emergency ... or an unrest area in terms of the Public Safety Act No ...

(5) Upon the assumption of office by the President in terms of this Constitution-

(a) the executive authority of the Republic as contemplated in section 70 shall vest in the President acting in accordance with that section; and

(b) the executive authority of a province as contemplated in section 113 shall, subject to subsections (8) and (9) vest in the Premier of that province acting in accordance with that section,

or if the Premier of a province has not yet assumed office, in the President acting in accordance with section 70 until the Premier assumes office.

(6) The power to exercise executive authority in terms of laws which immediately prior to the commencement of this Constitution were in force in any part of the national territory and which in terms of section 191 continue in force after such commencement, shall be allocated in accordance with the following rules:

- (a) All laws with regard to matters which -
 - (i) do not fall within the functional areas specified in Schedule 9; or
 - (ii) do fall within such functional areas but which are matters in respect of which Parliament has overriding legislative competence in terms of section 118 (which shall be deemed to include all policing matters until assigned in terms of sub-section (8)),

shall be administered by a competent authority within the jurisdiction of the national government: **Provided that any policing function which but for this paragraph would have been exercised by a member of the provincial executive in terms of section 191(1) (Chapter 13) shall be exercised after consultation with the said member of the provincial executive.**

(b) All laws with regard to matters which fall within the functional areas specified in Schedule 9 and which are matters in respect of which a provincial legislature has overriding legislative competence in terms of section 118, shall-

- (i) if any such law was immediately before the commencement of this Constitution administered by or under the authority of a functionary referred to in subsection (1)(a) or (b), be administered by a competent authority within the jurisdiction of the national government until the administration of any such law is with regard to any particular province assigned under subsection (8) to an appropriate authority within the jurisdiction of the government of such province; or
- (ii) if any such law was immediately before the said commencement administered by or under the authority of a functionary referred to in subsection (1)(c), subject to subsections (8) and (9), be administered by a competent authority within the jurisdiction of the government of the

province in which that law applies, to the extent that it so applies; Provided that this sub-section shall not apply to policing matters, which shall be dealt with as contemplated in sub-section (b)(i).

- (c) In this subsection "competent authority" shall mean -
- (i) in relation to a law of which the administration is allocated to the national government, an authority designated by the President; and
 - (ii) in relation to a law of which the administration is allocated to the government of a province, subject to subsections (8) and (9) an authority designated by the Premier of the Province.

(7) (a) The President may, after consultation with the Premier of any province, by proclamation in the *Gazette*, take such measures, including legislative measures, as the President considers necessary for the better achievement of this section.

(b) A copy of a proclamation under paragraph (a) shall be submitted to Parliament within 14 days after the publication thereof.

(c) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.

(8) (a) The President may, and shall if requested to do so by the Premier of a province, in so far as he or she is so requested, and if the province has the administrative capacity to exercise the powers and functions concerned, by proclamation in the *Gazette* assign, within the framework of section 118, the administration of any law referred to in subsection (6)(b), to an appropriate authority within the jurisdiction of the government of a province, either generally or to the extent specified in the proclamation.

(b) When the President so assigns the administration of a law, or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may -

- (i) amend or adapt such law in order to regulate its application or interpretation;
- (ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or to the extent that the assignment relates to them; and
- (iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to sections 196 and 197) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(c) In regard to any policing power the President may only make that assignation effective upon the rationalization of the police service as contemplated in this section: **Provided that such assignation to a province may be made where such rationalisation has been completed in such a province.**

(d) Any reference in a law to the authority administering such law shall upon the assignment of such law in terms of paragraph (a) be deemed to be a reference *mutatis mutandis* to the appropriate authority of the province concerned.

- (9) (a) If for any reason a provincial government is unable to assume responsibility within 14 days of its appointment, for the administration of a law referred to in subsection (5)(b), the President shall by proclamation in the *Gazette* assign the administration of such law to a special administrator or other appropriate authority within the jurisdiction of the national government, either generally or to the extent specified in the proclamation, until that provincial government is able to assume such responsibility.

(b) Subsections (6)(b) and (c) shall *mutatis mutandis* apply in respect of an assignment under paragraph (a) of this subsection.

Transitional arrangements: Public administration

196. (1) A public service, department of state, administration, military force as defined in section 1(2)(a) of Chapter 13 or other institution (excluding any local authority) which immediately before the commencement of this Constitution performed governmental functions under the control of an authority referred to in section 195(1)(a), (b) or (c), shall continue to function as such in accordance with the laws applicable to it until it is, as the case may be, abolished, incorporated or integrated into any appropriate institution or is rationalised as contemplated in this Constitution, consolidated with any other institution or otherwise rationalized as contemplated in section 197, as the case may be; Provided that a military force referred to in this sub-section shall not be employed on service referred to in section 4[1][a], [b] or [e] otherwise than by the President and shall only be used on such service by the military executive command in accordance with the provisions of section [2] of Chapter 13.

(2) A person who immediately before the commencement of this Constitution was employed by an institution referred to in subsection (1) shall continue in such employment and office subject to and in accordance with this Constitution and any other applicable laws regulating such employment and office.

(3) Subject to the provisions of sub-sections (1) and (2), all powers, employments, orders, instructions or delegations which were in force in respect of an institution which immediately before the commencement of this Constitution performed governmental functions as contemplated in sub-section (1) shall, after the said commencement, remain of force for the purpose of the continued functioning within the contemplation of sub-section (1) of any such institution, until cancelled or otherwise no longer in force in law.

(4) Subject to this Constitution and the provisions of subsection (5), the terms and conditions of service of any person employed in a public service immediately before the commencement of this Constitution shall continue to apply to him or her until amended by or under any law including a law enacted in order to establish uniformity of conditions of service in accordance with those generally prevailing at the commencement of this Constitution.

(5) Subject to any law relating to unfitness or incapacity to carry out duties efficiently, the pensionable salary or pensionable salary scale of a person referred to in subsection (2) shall not be reduced below that applicable to such person immediately before the commencement of this Constitution.

(6) Notwithstanding the provisions of this section the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred or may occur between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2), or class of such persons, may, at the instance of a Minister or a member of a provincial executive, within one year of the commencement of this Constitution, be reviewed by a commission appointed by the President and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the commission may reverse or alter the contract, appointment, promotion or award.

Rationalization of public administration

197. (1) All institutions referred to in section 196(1), excluding any military forces referred to in section 1(2) of Chapter 13, shall as soon as is possible after the commencement of this Constitution be rationalized with a view to establishing within the public service contemplated in section 183(1)-

(a) an effective administration at the national level of government to deal with matters within the jurisdiction of the national government referred to in section 195(4)(a);

and

(b) an effective administration for each province to deal with matters within the jurisdiction of each provincial government referred to in section 195(4)(b).

(2)(a) The responsibility for the rationalization of -

(i) institutions referred to in section 196(1), excluding military forces shall primarily but not exclusively rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments and the Commission on Provincial Government referred to in section 127, and with due regard to the advice of the Public Service Commission referred to in section 180: provided that in the case of the Police Service, the national government shall exercise such responsibility in co-

operation with the co-ordinating council referred to in section 192(1) and the board of commissioners referred to in section 192(2);

(ii) military forces shall rest with the national government.

(b) Subject to the provisions of section 195(6) and (7), the responsibility for the internal rationalization of an administration referred to in subsection (1)(b) shall primarily rest with the relevant provincial government, with due regard to the advice of the Public Service Commission and any relevant provincial service commission, save for police which shall be dealt with in accordance with sub-section (2)(a)(i).

(3) (a) The President may, subject to subsection (2)(a), by proclamation in the *Gazette* take such steps as he or she considers necessary in order to achieve the aim mentioned in subsection (1).

(b) Without derogating from the generality of paragraph (a) the steps referred to in that paragraph may include-

(i) the amendment, repeal or replacement of any law regulating the establishment, functions and other matters relating to an institution referred to in section 196(1), or of any law referred to in section 196(2), or of any law which deals with any of the foregoing matters in a consequential way: Provided that if a law referred to in section 196(2) is repealed, provision shall be made for the application of any general law regulating the employment of persons, or any class of persons, in the employment of the state to the persons, or class of persons, affected by such repeal; and

(ii) measures relating to the transfer or secondment of personnel or the allocation of property, rights and obligations, including administrative records, in order to establish the administrations and rationalise the South African Police Service and the National Defence Force referred to in subsections (1) and (2).

(c) A copy of a proclamation under paragraph (a) shall be submitted to Parliament within 14 days after the publication thereof.

(d) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so

disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.

- (4) (a) The labour appeal court established by section 17(A) of the Labour Relations Act, 1956 (Act no 28 of 1956), sitting as a special tribunal in accordance with an act of Parliament, shall be competent to determine any claim or dispute of right in terms of a law regulating as at 1 November 1993 employment in an institution referred to in section 196(1) and arising out of the implementation of this section and section 196.
- (b) The Act of Parliament contemplated in paragraph (a) shall prescribe expeditious procedures for the adjudication of claims and disputes contemplated in this section, including the granting of interim and final relief.
- (c) Notwithstanding the provisions of any law the procedures contemplated in paragraph (b) shall be the only procedures to be followed in such court.
- (d) A decision of the court on any such claim or dispute shall be final and binding.
- (e) The provisions of this subsection and any Act contemplated in paragraph (a) shall lapse one year from the commencement of this Constitution, save that any matter properly before the court referred to in paragraph (a) on that date shall be heard and determined as if the provisions of this sub-section had not lapsed.

Transitional arrangements: Public service commissions

198.(1) A public service commission established for a public service referred to in section 196(1) shall, subject to subsections (3) and (4), after the commencement of this Constitution continue to function as such in accordance with the laws applicable to it.

(2)(a) A person who immediately before the commencement of this Constitution was the chairperson or member of a public service commission referred to in subsection (1) shall, subject to subsections (3) and (4) and section 197, after such commencement, continue in office in accordance with the laws regulating his or her appointment.

(b) Section 196(3) and (4) shall apply *mutatis mutandis* in respect of a person referred to in paragraph (a) of this section.

(3). The Commission for Administration established by the Commission for Administration Act, 1984 (Act no 65 of 1984), shall cease to exist upon the appointment of the members the Public Service Commission referred to in section 180: Provided that a person who immediately before such appointment holds office as chairperson or member of the Commission for Administration shall be entitled to be appointed as a member of the Public Service Commission.

(4). A public service commission other than the Commission for Administration referred to in subsection (3), which continued to perform its functions in any part of the national territory, shall *mutatis mutandis* be subject to rationalisation under section 197 and shall cease to exist to the extent that it is superseded by the establishment of a provincial service commission contemplated in section 184 or otherwise rationalised and abolished under section 197.

(5) If -

(a) the chairperson or a member referred to in the proviso to subsection (3) elects not to be appointed to the Public Service Commission; or

(b) the chairperson or a member of a public service commission referred to in subsection (4), is not upon the abolition of such public service commission appointed to any provincial service commission,

the period of office for which such a chairperson or members has been appointed shall for the purpose of any applicable law regulating retirement benefits, be deemed to have been completed.

Transitional arrangements: Assets and liabilities

199.(1) All assets, including administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 195(1)(a), (b) or (c), or in a government, administration or force under the control of such an authority, shall be allocated in accordance with the following rules:

(a) Where any asset is applied or intended to be applied for or in connection with a matter which -

(i) does not fall within a functional area specified in Schedule 9; or

(ii) does fall within such a functional area but is a matter in respect of which Parliament has overriding legislative competence in terms of section 118, which shall be deemed to include any police asset

such asset shall vest in the **South African Police Service**.

(b) Where any asset is applied or intended to be applied for or in connection with a matter which falls within a functional area specified in Schedule 9 and is a matter in respect of which a provincial legislature has overriding legislative competence, such asset shall, subject to paragraph (c), vest in appropriate provincial government.

(c) Where any asset referred to in paragraph (b) is applied or intended to be applied for or in connection with the administration of a particular law or the performance of a particular function in a particular area, such asset shall vest in the government to which the administration of that law is assigned, or is assigned in that particular area, in terms of section 195(5), (6) or (7) or to which the performance of that function is entrusted, or entrusted in that particular area, in terms of section 197.

(d) Where any assets cannot in terms of the foregoing rules be classified with reference to a particular matter, law or function, or where there is disagreement between two or more governments, the advice of the Commission on Provincial Government referred to in section 127 shall be obtained, and any dispute shall be resolved with due regard to such advice.

(e) Parliament shall be competent to enact laws to provide for the application of this section and to prescribe guidelines for the resolution of disputes arising from such application.

- (f) (i) All policing assets shall vest in the **South African Police Service**.
- (ii) Each provincial commissioner shall be responsible for the management of policing assets and funds allocated to him or her to perform his or her functions as set out in section 191 (Chapter 13).
- (iii) Each provincial commissioner of the Police Service shall annually account for the management of the assets and expenditure of funds for which he or she is responsible as set out in section 191 to the provincial legislature and the national commissioner.

(2)(a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of subsection (1), make such entries or endorsements in or on any relevant registrar, title deed or other documents to register such immovable property in the name of such government.

(b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).

(3)(a) Subject to paragraph (b), all debts and liabilities -

(i) directly linked to an asset vesting in terms of subsection (1) in a provincial government, shall be assumed by such provincial government; and

(ii) other than those referred to in subparagraph (i) shall be assumed by the national government;

Provided that the servicing of all debts and liabilities not provided for in this Constitution shall be undertaken by the national government until allocated to the relevant level of government.

(b) Parliament shall be competent to enact a law regulating the re-allocation of debts and liabilities to the national and respective governments, but no such

law shall be enacted unless a report and recommendations of the Financial and Fiscal Commission referred to in section 170 has been tabled in and considered by Parliament.

(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of any of the defence, armed and military forces referred to in section 1[2] of Chapter 13 shall devolve upon the national Defence Force.

(5) Anything done in terms of this section shall be subject to audit by the Auditor-General.

Transitional arrangements: State Revenue Fund

200.(1) At the commencement of this Constitution the State Revenue Fund established in terms of section 81 of the previous Constitution shall continue to exist until an Act of Parliament contemplated in section 146(1) is adopted prescribing the administration of the National Revenue Fund.

(2) While the State Revenue Fund continues to exist it shall for all purposes be deemed to be the National Revenue Fund.

(3) The Accounts of the State Revenue Fund referred to in section 82 of the previous Constitution shall be phased out and closed as soon as circumstances permit.

(4) In the 1994/1995 financial year the head of the department of the Treasury, as defined in section (1) of the Exchequer Act, 1975 (Act no 66 of 1975), may, in consultation with the minister responsible for national financial matters appointed in terms of this Constitution, from the Exchequer Account, on conditions aimed at ensuring financial control, grant advances to provincial governments as he or she deems necessary for the purposes of establishing and funding structures of government at provincial level as provided for in this Constitution until Parliament has appropriated money for such purposes.

Transitional arrangements: Judiciary

201. (1) Every court established on the date of the coming into operation of this Constitution shall be deemed to have been duly constituted in terms of this Constitution or the law in force and shall continue to function until such functioning has been lawfully changed by the competent authority.

(2) The Chief Justice of South Africa, the judges president of the various divisions of the Supreme Court of South Africa, the judges of appeal of the Appellate Division and the other judges of the Supreme Court of South Africa holding office at the date on which this Constitution comes into operation shall be deemed to have been duly appointed in such positions in terms of section 93(1) of this Constitution and shall continue to hold office in accordance with the applicable law.

(3) All other judicial officers holding office on the date of the coming into operation of this Constitution shall be deemed to have been duly appointed in such positions in terms of the law in force and shall continue to hold office in accordance with the applicable law.

(4) Every attorney-general holding such position prior to the date of the coming into operation of this Constitution shall be deemed to have been duly appointed in such position in terms of the law in force and shall continue to hold office in accordance with the applicable law.

(5) Subject to the provisions of this Constitution all measures and legislation in operation on the date of the coming into operation of this Constitution in respect of all judicial officers and attorneys-general, shall subject to the same measures regarding the remuneration, pension, leave gratuity and any other condition of service benefits which applied to such judicial officers and attorneys-general before the coming into operation of this Constitution, remain in operation until amended or repealed by the competent legislature or authority: Provided that except in accordance with an applicable law no such measure shall be changed which affects such judicial officers or attorneys-general to their detriment.

(6) The provisions of subsections 196(4), (5) and (6) shall apply *mutatis mutandis* in respect of a person referred to in subsections (2), (3) and (4).

(7) A person referred to in subsections (2), (3) and (4) shall within 30 days of the commencement of this Constitution make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of person continuing in office as Chief Justice in terms of subsection (2), before the President. [This subsection should be amended to provide for the swearing in of the Chief Justice and the President of the Constitutional Court before the President.]

(8) All proceedings which immediately before the commencement of this Constitution were pending before any court including any tribunal or reviewing authority established by or under law exercising jurisdiction in accordance with the law then in force, shall be continued and concluded as if this Constitution had not been passed: Provided that if an appeal in such proceedings is noted or review proceedings with regard thereto are instituted after such commencement such proceedings shall be subject to the law as altered by this Constitution.

(9) Any legal proceedings instituted before or after the commencement of this Constitution by or against a government, authority or functionary which ceased to exist at or after such commencement, may be continued by or against the applicable government, authority or functionary which superseded the said government, authority or functionary.

(10) The laws and measures in force prior to the date of the coming into operation of this Constitution governing the jurisdiction of courts within the Republic of South Africa, the manner in which procedure in such courts shall be conducted and the power and authority of all judicial officers, shall remain in force until repealed or amended by Act of Parliament.

Rationalisation of court structures.

202. (1) All courts of law referred to in section 201(1) shall as soon as is possible after the commencement of this Constitution be rationalised with a view to establishing the court structures contemplated in Chapter 7 and any other law.

(2) The responsibility for the rationalisation of the courts referred to in subsection (1) shall rest with the national Government.

(3)(a) Section 197(3)(a), (c) and (d) shall *mutatis mutandis* apply in respect of any rationalisation under this section.

(b) Without derogating from the generality of section 197(3)(a), as applied by subsection (1) of this section, the steps referred to in that section may include -

- (i) the amendment, repeal or replacement of any law regulating the establishment, functions, jurisdiction and other matters relating to a court referred to in section 201(1), or of any law referred to in section 201(2), or of

any law which deals with any foregoing matters in a consequential way: Provided that if a law referred to in section 201(2) is repealed, provision shall be made for application of any general law regulating the service of judicial office-bearers, or any class of judicial office-bearers, to the judicial office-bearers, or class of judicial office-bearers, affected by such repeal; and

- (ii) measures relating to the transfer or secondment of judicial office-bearers, or the allocation of property, including judicial and administrative records, in order to establish the said court structures.

Transitional arrangements: Ombudsman

203.(1) A person who immediately before the commencement of this Constitution was -

(a) the Ombudsman in terms of the Ombudsman Act, 1979 (Act no 118 of 1979), shall continue to hold office and to exercise and perform the powers and functions of the Ombudsman in accordance with the said Act, until the public protector under section of this Constitution has been appointed and has assumed office;

(b) an assistant to the Ombudsman, shall continue as such until the Public Protector has been appointed and has assumed office, whereupon such person shall be deemed to have been appointed under section ...; or

(c) the ombudsman of any part of the national territory, and any person in the employ of such ombudsman, shall continue in such office or employment in accordance with the laws regulating such office or employment, until such office of such ombudsman is abolished or incorporated in any office or provincial public protector contemplated in section in terms of the law of a competent authority.

(2) Section 196(3), (4) and (5) shall apply *mutatis mutandis* to a person referred to in subsection (1)(c).

Transitional arrangements: Auditor-General

204. (1) A person who immediately before the commencement of this Constitution was -

(a) the Auditor-General in terms of the Auditor-General Act, 1989 (Act no 52 of 1989), shall, continue in office subject to section 161 of this Constitution, and the laws applicable to such office;

(b) employed in terms of the Audit Arrangements Act, 1992, (Act no 122 of 1992) shall continue in such employment and office subject to and in accordance with this Constitution, the said act and any other applicable laws regulating such employment and office;

(c) the Auditor-General of any other part of the national territory, shall continue in such office or employment in accordance with the laws regulating such office or employment, until such office of auditor-general is abolished by law: Provided that any such auditor-general shall be eligible for appointment under section 164: Provided further that should such a person not be appointed, he or she shall have the right to retire and if he or she so retires he or she shall be entitled to such pension as he or she would have been entitled to under the pensions law applicable to him or her if he or she had been compelled to retire from the public service owing to the abolition of his or her post;

(d) for the purpose of these transitional arrangements, the persons referred to in this subsection shall not be dealt with less favourably than an officer or employee in a public service.

Non-certification of the election by the Independent Electoral Commission

205. (1) If in the application of section 18 of the Independent Electoral Commission Act, 1993, the Independent Electoral Commission declares that it is unable to certify that any election referred to in that section was substantially free and fair, the Commission shall declare that either-

(a) it is able to determine a result based on the votes which could be counted; or

(b) it is unable to determine any result.

(2) If the Independent Electoral Commission declares as contemplated in subsection (1)(a)-

(a) a new election shall be held for the National Assembly or the relevant provincial legislature, as the case may be *mutatis mutandis* in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable but in any event not later than within 12 months after the date of the election in question: Provided that any reference to the TEC in the said Act shall be deemed to be a reference to Parliament.

(b) a national or provincial government, as the case may be, shall be established on the basis of the result determined in terms of sub-section (1)(a);

(c) no amendment of this Constitution, the Independent Electoral Commission Act, the Independent Media Commission Act or the Independent Broadcasting Authority Act shall be possible until the election in question has been certified as substantially free and fair in terms of the Independent Electoral Commission Act, and ;

(d) any provincial government established in terms of this section shall have no legislative competence save for the enactment of laws necessary for the appropriation of revenue or monies for the imposition of taxation within the framework of section 118, until the election in question has been certified as substantially free and fair in terms of the Independent Electoral Commission Act.

(3) If the Independent Electoral Commission declares as contemplated in sub-section (1)(b)-

(a) a new election shall be held for the National Assembly or the relevant provincial legislature, as the case may be in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable but in any event not later than within 6 weeks after the date of the election in question: Provided that if a new election is so required to be held for the National Assembly new elections shall be held simultaneously for all provincial legislatures.

(b) the constitutional arrangements under the Republic of South Africa Constitution Act 110 of 1983 and the Transitional

Executive Council Act, 1993, shall apply, until the election referred to in subsection (a) has been held.

(4) Notwithstanding the provisions of any other law, the Independent Electoral Commission shall continue to exist for the purposes set out in this section and shall certify any election contemplated in this section in accordance with the provisions of section 18 of the IEC Act: Provided that Parliament may by a 75% majority of its members appoint any suitably qualified person to replace any member of the IEC who is unable or unwilling to serve on the IEC for the election in question.

National Flag and Anthem

206.(1) The State President may at any time before the commencement of the Constitution or while continuing in office in terms of section 195(1)(a), exercise, on the advise of the Transitional Executive Council, the powers conferred upon the President by section 2(1) and (2).

(2) This section shall come into operation at the date of publication of this Constitution.

Transitional arrangement: Local Government

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

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

Transitional arrangements: Pensions of political office-bearers

208 The right of any person in terms of any law which at the commencement of this Act provides for the payment of pensions from the exchequer or from any pension fund or arrangement to which the State contributes or has contributed, to or in respect of political office-bearers or former political office-bearers (including members and former members of Parliament and of any other legislative assembly exercising legislative powers in respect of any part of the national territory) shall continue and shall not be diminished: Provided that those

who have already received benefits that were due to them do not benefit again from the provisions of this clause.

Transitional and other arrangements: Educational Institutions

209 (1) The National and provincial governments shall not alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools under existing laws, unless agreement, resulting from *bona fide* negotiations has been reached with such bodies and reasonable notice of implementation has been given.

(2) The National and provincial governments shall not alter the rights, powers and functions of the controlling bodies of universities and technikons under existing laws, unless agreement, resulting from *bona fide* negotiations, has been reached with such bodies.

(3) Should agreement not be reached in terms of subsections (1) and (2), the competence of the National and provincial governments to alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools as well as the controlling bodies of universities and technikons will not be constrained, provided that interested persons and bodies shall have recourse to challenge the exercise of the competence of the said governments under the provisions of this Constitution.

(4) In order to ensure an acceptable quality of education, the responsible government shall provide funds to departmental, community-managed or state-aided primary or secondary schools on an equitable basis.

Continuation of electoral system

210 (1) (a) The President may, subject to the provisions of this Constitution, by proclamation in the *Gazette* call a general election of members of the National Assembly in pursuance of its dissolution, to be held on a date to be determined by the President: Provided that such and any election shall take place in accordance with the provisions of the Electoral Act, 1993.

(b) The Premier of a provincial government may, subject to the provisions of this Constitution, call a general election of members of the legislature of

the province concerned, to be held on a date to be determined by the Premier in which event the provisions of subsection (1)(a) shall apply *mutatis mutandis*.

(2) The provisions of this Constitution and of the Electoral Act, 1993 relating to the holding of elections, shall subject to the provisions of this Constitution, remain in force until a further Parliament is elected in accordance with the provisions of Chapter 5 or in accordance with the new Constitutional text adopted in terms of Chapter 5.

(3) A referendum shall take place in accordance with the provisions of this Constitution and of the *Electoral Act*, 1993 provided that:

(a) Such referendum shall be limited to ascertaining the opinion of the electorate on a question formulated by the President.

(b) A referendum may take place in respect of any part of the Republic or any section of the electorate; and

(c) The Premier of a provincial government may call a referendum in respect of a territory or electorate of the province concerned, in which event the provisions of subsection (3)(a) shall apply *mutatis mutandis*.

Prescription of penalties

211. Subject to the provisions of this Constitution a competent legislature may prescribe penalties in respect of a contravention of any provision of law which falls within the competence of such legislature.

Definitions

212. In this Constitution, unless the context otherwise indicates -

Short title and commencement

213.(1) This Constitution shall be called *The Republic of South Africa Constitution Act, 1993*, and shall, subject to sub-section (2), come into operation on the day following the final day of the first election for the National Assembly.

(2) The State President may, in consultation with the Transitional Executive Council, by proclamation in the Gazette, provide that any provision of this

Constitution shall come into operation on a date prior to the date referred to in sub-section (1) and mentioned in the proclamation.

(3) Different dates may be fixed in terms of sub-section (2) in respect of different provisions of this Constitution.

(4) A reference in a provision of this Constitution to the commencement of this Constitution shall, unless the context otherwise indicates, be construed as a reference to the commencement of such provision.