

1/20/22

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(As considered by party advisers and technical experts on 10 October, 1996)

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**PROPOSED AMENDMENTS TO SECTION 23(5) AND (6)**

- 23 (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this chapter the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this chapter the limitation must comply with section 36(1).

**PROPOSED AMENDMENT TO SECTION 45(2)**

"(2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a [committee envisaged in subsection (1)] joint committee of the Assembly and the Council as those they have before the Assembly or the Council."

**PROPOSED AMENDMENT TO SECTIONS 59, 72 AND 118 BY ADDING THE FOLLOWING SUBSECTION:**

"(2) The National Assembly \* may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable in an open, accountable and democratic society."

\* Sec 72: National Council of Provinces

Sec 118: Provincial Legislature

**A. PROPOSED AMENDMENT TO SECTION 65(2)**

"(2) An Act of Parliament, enacted in accordance with the procedure established by either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which [provinces] provincial legislatures confer authority on their delegations to cast votes on their behalf."

**B. PROPOSED AMENDMENT TO ITEM 21(5) OF SCHEDULE 6**

"(5) Until the Act of Parliament referred to in section 65(2) is enacted each [province] provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces."

**PROPOSED AMENDMENT TO SECTION 74**

- (5) At least 30 days before a Bill amending the Consitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must -
- (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars [of the substance] of the proposed amendment for public comment.

Insert the following subsection after subsection (5):

"(5A) When a Bill amending the Constitution is introduced the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures -

- (a) to the Speaker for tabling in the National Assembly; and
- (b) in respect of amendments referred to in subsections (1), (2) and (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council.

**PROPOSED AMENDMENTS TO SECTIONS 101 AND 140 BY REPLACING  
SUBSECTION (1) WITH THE FOLLOWING SUBSECTION:**

- "101.(1) A decision by the President must be in writing if it-
- (a) is taken in terms of legislation; or
  - (b) has legal consequences.
- (2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member."

- "140.(1) A decision by the Premier of a province must be in writing if it-
- (a) is taken in terms of legislation; or
  - (b) has legal consequences.
- (2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member."

**PROPOSED AMENDMENT TO SECTION 146(6)(a)**

A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.



## **PROPOSED AMENDMENT TO SECTION 155**

155. (1) There are the following categories of municipality:
- (a) **Category A:** A municipality that has exclusive municipal executive and legislative authority in its area.
  - (b) **Category B:** A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.
  - (c) **Category C:** A municipality that has municipal executive and legislative authority in an area that includes one or more municipality.
- (2) National legislation must define the different types of municipality which may be established within each category.
- (3) National legislation must -
- (a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C ;
  - (b) establish criteria and procedures for the determination of municipal boundaries by an independent authority; and
  - (c) subject to section 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality.
- (4) The legislation referred to in subsection (3) must take into account the need to provide municipal services in an equitable and sustainable manner.
- (5) Provincial legislation must determine the different types of municipality to be established in the province.
- (6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must -
- (a) provide for the monitoring and support of local government in the province; and
  - (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.
- (7) The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

**PROPOSED AMENDMENTS TO 197(4)**

Within a framework of uniform norms and standards for the public service, provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations.

## PROPOSAL REGARDING COMMENCEMENT

1. Replace section 243 with the following section:

### **"Short title and commencement**

243. (1) This Act is called the Constitution of the Republic of South Africa, 1996, and comes into effect as soon as possible on a date set by the President by proclamation, which date may not be a date later than...
- (2) The President may set different dates before the date [referred to] mentioned in subsection (1) in respect of different provisions of the Constitution.
- (3) Unless the context otherwise indicates, a reference in a provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect.
- (4) If a different date is fixed for any particular provision of the Constitution in terms of subsection (2), any corresponding provision of the Constitution of the Republic of South Africa, 1993, mentioned in the proclamation, is repealed with effect from the same date.
- (5) Sections 213, 214, 215, 216, 218, 226, 228, 229 and 230 come into effect on 1 January 1998, but this does not preclude the enactment in terms of this Constitution of legislation envisaged in any of these provisions before that date. Until that date any corresponding provisions of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), remain in force."
2. Delete item 28 of Schedule 6.
  3. Amend Section 242 as follows:  
"242. The laws mentioned in Schedule 7 are repealed, subject to section 243[(4)] and Schedule 6."

**PROPOSED REFORMULATION OF SCHEDULE 6, ITEM 22**

"22 Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity."

**PROPOSED AMENDMENT TO SCHEDULE 6, ITEM 26**

Insert in place of 26 (1) and (2)

**Local Government**

**26. Until 30 April 1999 -**

- (a) local government may be restructured only in accordance with the Local Government Transition Act, 1993 (Act 209 of 1993);**
- (b) sections 151, 155, 156 and 157 of the new Constitution do not apply to the restructuring of local government, but any amendment of the Local Government Transition Act must be consistent with those sections; and**
- (c) section 182 of the previous Constitution remains in force unless it is repealed before that date by an Act of Parliament passed in accordance with section 75 of the new Constitution.**

**PROPOSED AMENDMENT TO ITEM 3 OF ANNEXURE D OF SCHEDULE 6**

"Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council [and] or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution."

WHEREAS the Constitutional Assembly, on 8 May 1996, passed the draft of the new constitutional text in terms of section 73(2) of the *Constitution of the Republic of South Africa, 1993* (Act No 200 of 1993); and

WHEREAS the Constitutional Court has, in terms of section 73A(1) of the Constitution, referred the draft of the new constitutional text back to the Constitutional Assembly, and

WHEREAS amendments to that draft of the new constitutional text are incorporated in the draft text (B 34B - 96) before the Constitutional Assembly;

NOW THEREFORE the Constitutional Assembly resolves to pass that amended text.

