

PROPOSED TRANSITIONAL PROVISIONS IN RESPECT OF ALL JUDICIAL OFFICERS AND THE ATTORNEYS-GENERAL, COURT STRUCTURES, LAW IN FORCE AND PENDING CASES

In order to ensure an orderly transition the SA Government is of the opinion that it is important to secure the position of existing judicial officers, attorneys-general and court structures. Provision should also be made for the continuation of pending court cases. The Government therefore proposes the following transitional provisions in this regard:

Judicial Officers and Attorney-general

"(1) The Chief Justice of South Africa, the judges president of the various divisions of the Supreme Court of South Africa and the 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 as if he or she had taken any necessary oath under this Constitution, and shall continue to hold office in accordance with the applicable law and this Constitution.

- (2) 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 position in terms of the law in force and as if he or she had taken any necessary oath under this Constitution and shall continue to hold office in accordance with the applicable law.
- (3) 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.
- (4) 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of this Constitution in respect of judicial officers and attorneys-general, shall remain in operation until amended or repealed by the competent legislature or authority: Provided that no measure shall be taken which affects such judicial officers or attorneys-general to their detriment."

Court structures and pending cases

- "(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 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.
- (3) All proceedings that, prior to the date of the coming into operation of this Constitution, are pending before any court exercising jurisdiction in accordance with the law in force on that date, shall be continued and concluded as if such law is still in force."

Law in Force prior to the commencement of Constitution

"Subject to the provisions of this Constitution, all laws which were in force immediately before the date of the coming into operation of this Constitution shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court."