

*Commission on Provincial Government***Establishment of Commission on Provincial Government**

127. A Commission on Provincial Government shall be appointed by the President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

128. (1) The objects and functions of the Commission regarding the establishment of provincial government in terms of this Chapter are to -

- (a) advise the National Government and provincial governments on the establishment and consolidation of administrative institutions and structures in the provinces and on any matter arising out of the provisions of section 118; and
- (b) make recommendations to the National Government and provincial governments on the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of provincial government.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the Constitutional Assembly in the form of draft constitutional provisions regarding -

- (a) the finalisation of the number and the boundaries of the provinces of the Republic;
- (b) the constitutional dispensations of such provinces, including the constitutional structures within such provinces as well as the method of their election and their authority, functions and procedures;
- (c) measures, including transitional measures, that provide for the phasing in of new provincial constitutional dispensations;

- (d) the final delimitation of powers and functions between national and provincial institutions of government with due regard to the criteria that are set out in subsection (3);
- (e) fiscal arrangements between the institutions of national government and those of provincial government;
- (f) the powers and functions of local governments; and
- (g) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -

- (a) The provisions of this Constitution;
- (b) The Constitutional Principles enumerated in Schedule 4;
- (c) Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;

- (j) Developmental potential;
- (k) Cultural and language realities.

Constitution and impartiality of the Commission

129. (1) The Commission shall be appointed by the President for the period during which this Constitution is in force, and shall consist of not less than 10, nor more than 15 full-time members, as the President may determine.

(2) At least one member of the Commission shall be appointed from each province with the approval of the Premier of the province.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission shall not hold office in any political party or political organisation.

(6) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

130. (1) The President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

- (2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

- (h) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

131. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) If a member of the Commission ceases to hold office, the President may, subject to section 129 appoint a person to fill the vacancy.

Meetings of the Commission

132. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

Committees

133. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the

committee the members present shall elect one from among their number to act as chairperson.

- (4) (a) The Commission may, subject to such directions as it may issue from time to time-
 - (i) delegate any power granted to it by or under section 128 to such a committee; and
 - (ii) grant authority that a duty assigned to it by or in terms of section 128 may be performed by such a committee.
- (b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

134. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

135. Members of the Commission and persons referred in section 134 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

136. The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with

the Commission for Administration, determine the remuneration and conditions of service of such staff.

Regulations

137. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 10

Local Government

Establishment and status of local government.

140. (1) Local government shall be established for residents of areas demarcated by law.

(2) Any law passed by a competent legislature providing for or relating to local government may make provision for categories of metropolitan, urban and rural governments with the differentiated powers, functions and structures according to considerations of demography, revenue, physical and environmental conditions and other factors which justify or necessitate such categories.

(3) A local government shall be autonomous and, within the limits prescribed by law, shall be entitled to regulate its affairs.

(4) A competent legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government and the status, boundaries, powers and functions of a local government shall only be changed after consultation with the local government concerned.

(5) A bill of a competent legislature or which materially affects the boundaries, powers and functions of local government shall be published for comment in the *Government Gazette* or the *Provincial Gazette* as the case may be, and a local government, interested persons or groups of persons affected thereby, including organised local government, shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

Powers and functions of local government

141. (1) The powers, functions and structures of local government shall be determined by law.

(2) A local government shall have powers and functions to provide such services as may be necessary to maintain and promote the wellbeing of all persons within the area of the local government.

(3) A local government shall make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health, education, housing and security: provided that such services and amenities are rendered in an environmentally sustainable manner and are financially and physically practicable.

(4) A local government shall have the power to make bylaws not inconsistent with an Act of Parliament or a provincial law.

(5) A local government shall have executive powers which shall allow it to function effectively.

(6) Any decision or legislative or executive action of any competent authority which may materially and detrimentally impact upon the environment of any local government shall be implemented only -

(a) in consultation with the local government concerned; or

(b) if reasonably required in the general public interest.

Administration and finance

142. (1) The local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.

(2) A local government shall, subject to conditions prescribed by law passed by a competent legislature after taking into consideration recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its duties and functions: provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction.

(3) A local government shall be entitled to an equitable allocation by the provincial government of funds and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations taking into account the different categories of local government referred to in section 140(3).

Elections

143. (1) A local government shall be elected democratically and such elections shall take place in terms of provincial legislation and at intervals of not less than 3 and not more than 5 years: provided that the first local government elections after the coming into force of this Constitution shall take place on the same day.

(2) The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a competent legislature.

(3) A voter for the election of a local government shall be -

(a) a natural person who -

(i) is eligible to vote in terms of section 6 of this Constitution;

(ii) is ordinarily resident within the area of jurisdiction of the local government for which such election is held, or under law which

such election is held, or under law is liable for the payment of assessment rates, service charges or levies to the local government concerned; and

(iii) is registered on the voters' role of the local government concerned.

(b) a juristic person which is -

(i) the owner of immovable property within the area of jurisdiction of the local government concerned;

(ii) liable for the payment of assessment rates, service charges or levies, and

(iii) registered on the voters' roll of the local government concerned.

(4) A voter shall not have more than one vote per local government.

(5) No person shall be elected a member of a local government if he or she -

(a) is not eligible to vote in terms of subsection (3); and

(b) is an elected member of any other legislature; or

(c) does not qualify to be elected as a member of the National Assembly under this Constitution; or

(d) is an employee of a local government unless, with due regard to the public interest, exemption of this qualification is given by the executive council of the province and proof of such exemption accompanies the nomination of such person; or

(e) is disqualified in terms of any other law.

Code of conduct

144. An enforceable code of conduct for members and officials of local government shall be provided for by law.

Transitional arrangement

145. (1) Until elections have 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.

CHAPTER "Y"

Traditional Authorities

Technical assistance

Indigenous law

1. Indigenous law or customary law may be subject to regulation by law.

Traditional authority and local government

2. (1) Traditional authorities recognised by and instituted in accordance with indigenous law and legislation, shall continue to exist and exercise their powers and functions in terms of indigenous law and as regulated by enabling legislation.

(2) The traditional leader of a traditional authority within the area of jurisdiction of an elected local government referred to in Chapter 10 shall be an ex-officio member of that local government and shall be eligible to be elected for any office of such local government.

Provincial House of Traditional Leaders

3. (1) A House of Traditional Leaders shall be established in each province for representatives of traditional authorities within such province where such authorities exist.

- (2) (a) A House shall consist of as many representatives elected or nominated by traditional authorities as shall be prescribed by provincial law: provided that such law shall be introduced not later than the end of the sitting held after the first sitting during which the Premier of the province concerned was elected.
- (b) The provincial legislature shall, prior to the introduction of such law, determine the method by which the views of the traditional leaders resident in the province concerned shall first be sought through consultation and established on the content of such law, and thereafter proceed to procure their views in the manner so determined.
- (3) (a) The House shall be entitled to advise and make proposals to the provincial legislature in respect of matters relating to traditional authorities, indigenous law, tradition and custom.
- (b) All provincial bills relating to traditional authorities, indigenous law, tradition and custom, and any other matter having a bearing thereon, shall be referred to the House by the Speaker of the provincial legislature for its comments before the passing of such bill.
- (c) The House shall indicate its support for or opposition to such bill within 30 days from the date of such referral.
- (d) If the House indicates that it is opposed to such bill, the provincial legislature shall not pass the bill before the lapse of a further period of 30 days from the date of receipt by the Speaker of such comment.

- (c) A provincial legislature shall enact laws to regulate the procedures applicable to the exercise of the powers and functions of the House in terms of this subsection.

Council of Traditional Leaders

4. (1) A Council of Traditional Leaders shall be established, composed of not more than 20 representatives of traditional authorities and elected by an electoral college, constituted by the members of the Provincial Houses of Traditional Leaders referred to in section 3 (1) in accordance with the procedures prescribed by Act of Parliament.

- (2) (a) The Council shall meet whenever necessary to perform its functions.

- (b) The composition, terms of office, functions, procedures and convening of meetings of the Council and all matters relating thereto shall be prescribed by Act of Parliament.

- (c) The provisions of section 3(2)(b) shall apply *mutatis mutandis* in respect of an Act referred to in subparagraph (b) and the reference therein to a provincial legislature shall be deemed to be a reference to Parliament.

(3) The Council shall be entitled to advise and make proposals to the national government in respect of all relevant matters relating to traditional authorities, indigenous law, tradition and custom.

(4) The President may seek the advice of the Council on any matter of national interest.

(5) All parliamentary bills pertaining to traditional authorities, indigenous law, tradition and custom and related matters, shall be referred by the Speaker, simultaneously with the submission of such bill to the Senate, to the Council for its comments.

(6) The comments of the Council shall indicate its support for or opposition to such bill within 30 days from the date of such referral.

(7) If the Council indicates its opposition to the bill such bill shall not be passed by the Senate or be finally adopted before the lapse of a further period of 30 days from the date of receipt of such comment by the Speaker.

(8) If the Council fails to comment within the period of 30 days it shall be deemed to support such bill.

(9) If a bill is introduced in the Senate and not in the National Assembly the procedures prescribed in subsections (5), (6), (7) and (8) shall *mutatis mutandis* apply.

(10) Procedures relating to the exercise of its powers and functions by the Council referred to in subsections (2) to (8) shall be prescribed by Act of Parliament.

CHAPTER II

Finance

Vesting of property

143. (1) All property which immediately prior to the coming into operation of this Constitution vested in any administration as defined in subsection (5), and

(a) which was being used by such administration for the purpose of or relating to a function in respect of which a province has legislative competence in terms of section 118 of this Constitution shall, subject to the provision of subsection (2), vest in such provincial government, and

(b) which was being used for any other purpose, shall, subject to the provisions of subsection (2) vest in the national government.

(2) When the rationalisation of administrations is carried out in accordance with section 119, or if a provincial government assumes responsibility for functions which were previously being carried out by the national government, the vesting of property under subsection (1) shall be reviewed by the governments concerned, on the

basis that property which was being used for or in connection with a particular function shall vest in the government performing such function.

(3) If there should be any disagreement between the governments concerned in relation to the change in the vesting of property under subsection (2), the advice of the Commission on provincial government shall be obtained.

(4) If notwithstanding the provisions of subsection (3) the governments concerned are unable to reach agreement, the differences between them shall be dealt with in accordance with parameters prescribed by Act of Parliament.

(5) For the purposes of this section -

"any administration" shall mean a provincial administration established in terms of the *Provincial Government Act*, 69 of 1986, administrations of the Self-governing Territories established in terms of the *Self-governing Territories Constitution Act*, 21 of 1971 and the Transkei, Bophuthatswana, Venda and Ciskei;

"property" shall mean and include movable and immovable property, whether corporeal or incorporeal and wheresoever situate, and shall include any right or interest therein or in respect thereof.

Transfer of property

144. (1) Immovable property transferred in terms of section 143 shall be transferred to the relevant government without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property and subject also to the provisions of this Constitution.

(2) The Registrar of Deeds concerned shall upon production to him or her of the title deed of any immovable property mentioned in section 143 endorse such title deed to the effect that the immovable property therein described is vested in the government concerned and shall make the necessary entries in the deeds register, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the said government to the said property.

Debts and liabilities

145. (1) All debts and liabilities which are directly linked to the property vesting in a province in terms of section 143 shall be assumed by such province.

(2) All debts and liabilities other than those referred to in subsection (1) shall vest in the national government.

(3) The Financial and Fiscal Commission shall make recommendations to Parliament concerning the re-allocation of debts and liabilities referred to in section 143(1) and (2), taking into account all relevant factors.

(4) The re-allocation of debts and liabilities shall be made by Act of Parliament after taking into account the recommendations of the Financial and Fiscal Commission.

Audit of property, debts and liabilities

145A. The Auditor-General shall audit the re-allocation of property, debts and liabilities made in terms of sections 143, 144 and 145.

National Revenue Fund

146. (1) There shall be established a National Revenue Fund into which shall be paid all revenues, as defined by Act of Parliament, raised or received by the National Government, and from which appropriations shall be made by Parliament in a manner prescribed by this Constitution and any other law, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by law in accordance with the provisions of this Constitution: provided that revenue to which a province is entitled in terms of section 121(2) (a) and (b) shall form a direct charge against the National Revenue Fund to be credited to the relevant Provincial Revenue Fund.

Appropriation bills

147. Any bill which appropriates or authorises the appropriation of revenue or money for the services provided by the National Government shall deal only with such appropriation.

Appropriation to be initiated by a Minister

148. The National Assembly shall not consider any bill for the appropriation of any part of the public revenue, or of any tax or impost, if such bill has not been initiated by a Minister, with the approval of the Minister responsible for national financial matters.

Annual Budget

149. The Minister responsible for national financial matters shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of receipts and expenditure, which shall *inter alia*, reflect capital and current expenditure, of the Government for that year.

Procurement administration

150. (1) The procurement of goods and services for any level of government shall be regulated by Act of Parliament and provincial laws which shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.

(2) The tendering system prescribed in terms of subsection (1) shall be fair, public and competitive, and tender boards shall be required to give reasons for their decisions to interested parties.

(3) No member of the Cabinet or the legislature or of any organ of the state or any other person shall improperly interfere with the decisions and operations of the tender boards.

(4) All decisions of any tender board shall be recorded.

Guarantees by the national government

151. The national government may not guarantee any provincial or local government loans, unless -

- (a) this guarantee complies with the framework and norms as set out in an Act of Parliament; and
- (b) the Financial and Fiscal Commission has made recommendations concerning compliance with the framework and norms referred to in subparagraph (a).

Special pensions

152. (1) Provision shall be made by Act of Parliament for payment by the national government to -

- (a) persons who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order; or
- (b) dependents of such persons.

(2) The Act of Parliament referred to in subsection (1) shall prescribe the qualifications of a beneficiary of a pension referred to in subsection (1), the conditions for the granting thereof and the manner of the determination of the amount of such pensions, taking into account all relevant factors, including *inter alia* any other remuneration or pension received by such beneficiary.

Auditor-General

Establishment and appointment

161. (1) There shall be an office of Auditor-General for the Republic to which shall be appointed, in terms of subsection (2), an Auditor-General who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate, shall, at the request of the President nominate a person to be appointed by the President as Auditor-General and such nomination shall be approved by resolution adopted by two-thirds of the members present at a joint sitting of the National Assembly and the Senate: provided that, in connection with such resolution, no debate shall be allowed.

(3) If the post of Auditor-General becomes vacant, the highest ranking member of the Auditor-General's office shall act as Auditor-General until the vacancy is filled, and for that purpose, shall have the functions, powers and duties of the Auditor-General.

(4) The Auditor-General shall be a South African citizen who is a fit and proper person to hold such office and who shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

(5) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Auditor-General shall be appointed for a specific period of not less than 5 years and not more than 10 years and shall not thereafter be eligible for reappointment.

(6) The remuneration and other conditions of service of the Auditor-General shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(7) The Auditor-General shall not perform remunerative work outside his or her official duties.

(8) The Auditor-General shall not hold office in any political party or political organisation.

(9) The Auditor-General may be removed from office by the President, but only on the grounds of misconduct, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of a request for such removal by Parliament adopted at a joint sitting of the National Assembly and the Senate.

(10) An Auditor-General who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (8) may be suspended by the President pending such investigation.

(11) The Auditor-General may at any time, subject to his or her conditions of service, resign by lodging his or her resignation in writing with the President.

Independence and Impartiality

162. (1) The Auditor-General shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed in terms of section 164(1) shall have such immunities and privileges as may be assigned to them by Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall improperly interfere with the Auditor-General or a person appointed in terms of section 164(1) in the exercise of his or her powers, duties and functions.

(4) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the execution of his or her functions, powers and duties.

Powers, Functions and Duties

163. (1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial government level, other than that of the office of Auditor-General, and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets.

(2) The Auditor-General shall audit and report on all the accounts and financial statements of any local government, board, fund, institution, company,

corporation or other organization established or constituted by or under any law and of which the accounts and financial statements shall in terms of law be audited by the Auditor-General and the accounts and financial statements of all persons in the employment of such a body, who have been entrusted by it with its assets, or any other assets.

(3) The Auditor-General shall also, at the request of the President or Parliament, conduct performance audits.

(4) The Auditor-General may, whenever he or she considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

(5) No further duty or function may be imposed upon or assigned to the Auditor-General other than by means of an Act of Parliament.

(6) Whenever the Auditor-General or a person appointed in terms of section 164 exercises his or her powers and functions in terms of this Constitution, he or she shall have access to all books, records and other documents and information relating to the accounts and financial statements referred to in this section.

(7) The Auditor-General shall report on the accounts examined by him or her and submit such reports to the authorities designated by Act of Parliament to receive them, and, unless otherwise provided by Act of Parliament, such reports or a report on any other matter shall be tabled in each house of Parliament within 7 days after receipt thereof by such authority; or if Parliament is not in session, within 7 days of the next ensuing session.

(8) The Auditor-General shall make public any report referred to in subsection (7) after the expiry of a period of 14 days from the date on which such report was submitted to the authorities concerned.

Staff and expenditure

164. (1) The Auditor-General may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of the work of the office of the Auditor-General.

(2) The Auditor-General may delegate any of his or her functions to persons referred to in subsection (1) subject to such conditions as shall be prescribed by law.

(3) Expenditure incurred during the performance of the functions of the Auditor-General in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from fees raised or money obtained in a manner authorised by Act of Parliament.

South African Reserve Bank

Central bank

165. The South African Reserve Bank, established and regulated by Act of Parliament, shall be the central bank of the Republic.

Primary objectives

166. (1) The primary objectives of the South African Reserve Bank shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its duties independently, subject only to the powers of Parliament as set out in section 167(1): provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

Powers and duties

167. (1) The powers and duties of the South African Reserve Bank shall be those customarily performed by central banks, which shall be determined by Act of Parliament and shall be subject to such conditions as may be described by such Act.

(2) All decisions of the Board of Governors and the Board of Directors of the South African Reserve Bank shall be recorded.

Financial and Fiscal Commission

Establishment

170. A Financial and Fiscal Commission shall be appointed by the President in terms of this Constitution within 60 days of its coming into operation.

Objects and functions

171. (1) The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including -

- (a) financial and fiscal policies;
- (b) equitable fiscal and financial allocations to the national, provincial and local governments from revenue collected nationally;
- (c) taxes, levies, imposts and surcharges that a provincial government intends to levy;
- (d) the raising of loans by a provincial or local government and the financial norms applying thereto;
- (e) criteria for the allocation of financial and fiscal resources; and

(f) any other matter allocated to the Commission by law.

(2) In carrying out its functions the Commission shall, *inter alia*, take into consideration the provisions of section 121(4)(b) and any other provision of this Constitution.

Constitution, expertise and impartiality

172. (1) The Commission shall consist of -

- (a) a chairperson and deputy chairperson, who shall also be the chief executive officer and deputy chief executive officer of the Commission's staff, appointed by the President on the advice of the Cabinet; and
- (b) nominees of the provincial executives, each nominating one person, who shall be appointed by the President; and
- (c) 7 members appointed by the President on the advice of the Cabinet, at least one of whom shall have experience in local government finance.

(2) No person shall be qualified to be appointed to the Commission unless he or she -

- (a) is a South African citizen; and
- (b) is a person who, by reason of his or her training and experience, has expertise in economics, public finance, public administration, taxation, management or accountancy.

(3) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, a member of the Commission may only be removed from office by the President on account of misconduct, incapacity or incompetence: provided that removal of a member of the Commission from office and the reasons therefor shall be communicated by the President by message to Parliament and to the provincial legislatures within 14 days after such removal or, if Parliament or a provincial legislature is not then in session, within 14 days after the commencement of its next ensuing session.

(4) Vacancies in the Commission shall be filled in accordance with the provisions of this section.

(5) A member of the Commission shall be eligible for re-appointment.

(6) A member of the Commission shall perform his or her duties fairly, impartially and independently.

(7) The chairperson and deputy chairperson shall not perform or commit himself or herself to perform remunerative work outside their official duties.

(8) A member of the Commission shall not hold office in any political party or political organisation.

(9) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (6).

(10) The chairperson and deputy chairperson shall be the only full-time members of the Commission.

(11) The chairperson and deputy chairperson shall be appointed for a period of 5 years and the other members of the Commission for a period of 2 years.

Meetings of the Commission

173. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson. If both the Chairperson and Deputy Chairperson are absent from a meeting, the members present shall elect one from amongst their members to act as Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of two-thirds of the members present shall constitute a decision of the Commission.

(4) All the decisions of the Commission shall be recorded.

Committees

174. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time -

(i) delegate any function entrusted to it by or under section 171 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 171 may be performed by such a committee.

(b) The Commission shall not be divested of a function so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

175. (1) A committee may co-opt any person to serve on such committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

176. Members of the Commission and persons referred in section 175 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

177. (1) The Commission may appoint and accept secondment of staff as it may deem necessary in consultation with the Public Service Commission.

(2) Expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

Regulations

178. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 12

Public Service Commission and Public Service

Public Service Commission

Establishment

180. There shall be a Public Service Commission for the Republic which shall have the powers, functions and duties provided for by this Constitution and by law, and it shall be accountable to Parliament.

Powers and functions

181. (1) The Commission shall be competent to -

- (a) make recommendations, give directions and conduct enquiries regarding -
 - (i) the organisation and administration of departments and the public service;
 - (ii) the conditions of service of members of the public service and matters related thereto;
 - (iii) personnel practices in the public service, appointments, promotions, transfers, discharge and other career incidents of members of the public service and matters connected with the employment of personnel;
 - (iv) the promotion of efficiency and effectiveness in departments and the public service; and
 - (v) a code of conduct applicable to members of the public service;
- (b) when so requested, advise the President, a Minister or a member of a provincial executive in regard to any matter relating to the public service or in relation to the employment, remuneration or other conditions of service of functionaries employed by any institution or body which

receives funds wholly or partly appropriated by the national or provincial legislature;

- (c) exercise such other powers, perform such other functions and carry out such other duties entrusted to it by any law; and
- (d) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation imposed by law.

(2) Until amended by law, the powers of the Commission set out in subsection (1) shall be exercised in accordance with statutory provisions in force at the time of the coming into operation of this Constitution.

(3) A recommendation or direction of the Commission shall be implemented by the appropriate person or institution within 6 months unless:

- (a) such recommendation or direction involves expenditure from public funds and the approval of the treasury therefor is not obtained; or
- (b) the President rejects it and refers it back to the Commission before its implementation.

(4) The Commission may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of its work.

(5) Expenditure incurred during the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from fees raised or money obtained in a manner authorised by Act of Parliament.

(6) On recommendation of the Commission the President may assign any power, function or duty of the Commission to a provincial service commission.

(7) The Commission shall annually frame and submit a report to Parliament on matters which have been dealt with by the Commission.

182. Composition

(1) (a) The Commission shall consist of no fewer than 3 members and no more than 5 members appointed by the President, one of whom shall be designated as chairperson by the President.

(b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently.

(c) The remuneration and other conditions of service of a member of the Commission shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(d) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions.

(e) A member of the Commission may be removed from office by the President on account of misconduct or unfitness for his or her duties or incapacity to carry them out efficiently or if, for reasons other than unfitness or incapacity, his or her removal from office will promote efficiency, and the removal and the reasons therefor shall be communicated by the President by message to Parliament within 14 days after such removal or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(2) A person shall be qualified to be appointed to the Commission if he or

she -

(a) is a South African citizen; and

(b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.

(3) The composition, appointment, tenure, vacation of office, conditions of service and functioning of the Commission shall be as determined by Act of Parliament, and shall ensure the independence and impartiality of the Commission and the efficient and effective exercise of its powers, performance of its functions and carrying out of its duties.

The Public Service

183. (1) There shall be a public service for the Republic, structured in terms of law to provide effective public administration.

(2) Such public service shall -

- (a) be non-partisan, career-orientated and function according to fair and equitable principles;
- (b) be obliged to promote an efficient public service broadly representative of the South African community;
- (c) serve all members of the public in an unbiased and impartial manner;
- (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service;
- (e) loyally execute the policies of the government of the day in the performance of its administrative functions; and
- (f) be organised in departments and other organizational components and the head of such department or organizational component shall be responsible for the efficient management and administration of his department or organizational component.

(3) Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law for employment in such service.

(4) In the making of any appointment or the filling of any post in the public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.

(5) Subsection (4) shall not preclude measures to promote the objectives set out in subsection (2).

(6) Provision shall be made by law for a pension for a member of the public service by means of a pension fund or funds by law and members of the public service who are required by law to be members of a pension fund shall be entitled to fair representation on the body which manages the applicable fund.

(7) (a) In the event of changes to the law governing pension funds which prejudice persons referred to in subsection (6), the real value of the accrued benefits of a member of a fund, and his or her beneficiaries, as represented by the fund's actuarial liability towards the member or his or her beneficiaries, shall be maintained.

(b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.

Provincial Service Commissions

184. (1) A provincial legislature may provide by law for a provincial service commission and, subject to the national norms and standards, such commission shall, in respect of public servants employed by the province, have -

(a) the power to make recommendations, give directions and conduct inquiries -

(i) pertaining to the establishment and organisation of departments of the province;

- (ii) relating to appointments, promotions, transfers, discharge and other career incidents of such public servants; and
 - (iii) regarding the promotion of efficiency and effectiveness in departments of the province;
- (b) the power to -
- (i) when so requested, advise the Premier or a member of the provincial executive in regard to any matter relating to the public service or in relation to the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by the provincial legislature; and
 - (ii) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law; and
- (c) such other powers, functions and duties of the public service commission assigned to it by the President with the approval of the Premier of the province.

(2) The measures contained in sections 181(2),(3) and (4), and 182(1), (2), and (3) pertaining to the public service commission, shall *mutatis mutandis* apply to the provincial service commissions established by provincial legislation, save that any reference to an act of Parliament, Parliament or to the President shall be deemed to be a reference to a provincial law, provincial legislature or the Premier of the province respectively.

185. (Removed to Chapter 14)

CHAPTER 13

Police and Defence

*South African Police Service***Establishment**

186. (1) There shall be established and regulated by Act of Parliament a South African Police Service structured both at national and provincial levels which shall function under the direction of both the national and provincial governments.

(2) The Act of Parliament referred to in sub-section 1 shall -

- (a) provide for the appointment of a Commissioner of the Service and a Commissioner for each Province;
- (b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding:
 - (i) the exercise of police powers;
 - (ii) the recruitment, appointment, promotion and transfer of members of the Service;
 - (iii) suspension, dismissal, disciplinary and grievance procedures;
 - (iv) training, conduct, and conditions of service of members of the Service;
 - (v) the general management, control, maintenance and provisioning of the Service;
 - (vi) returns, registers, records, documents, forms and correspondence; and

- (vii) generally, all matters which are necessary or expedient for the achievement of the purposes of this Constitution.

Powers and functions

187. The powers and functions of the Service shall be:

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

Minister and Commissioner

188. (1) The President shall, subject to the provisions of this Constitution, charge a Minister with responsibility for the Service.

(2) Without derogating from the provisions of section 185(2) the President shall appoint a Commissioner of the South African Police Service, who shall exercise executive command of the Service subject to the directions of the Minister referred to in subsection (3).

(3) The State President may, if the Commissioner has lost the confidence of the Cabinet, institute appropriate proceedings against the Commissioner in accordance with law.

Powers of Province

189. (1) The Provincial Premier shall charge a member of the provincial executive with responsibility for the performance by the Service of the functions set out in section 191(1).

(2) The member of the provincial executive referred to in subsection (1):

(a) shall approve or veto the appointment of the Provincial Commissioner in terms of section 190(1)(h); and

(b) may, if the Provincial Commissioner has lost the confidence of the provincial executive, institute appropriate proceedings against the said Commissioner according to law.

(3) The provincial legislature may pass laws not inconsistent with national legislation regarding the functions of the Service set out in section 191(1).

(4) No provincial law may permit lower standards of performance of the functions of the Service than those provided for by Act of Parliament or detract from the rights which citizens have under Act of Parliament.

National Commissioner

190. (1) Subject to the provisions of section 186, and under the direction of the relevant Minister, the Commissioner of the South African Police Service shall be responsible for -

(a) the maintenance of an impartial, accountable, transparent and efficient police service;

(b) the appointment of provincial commissioners, subject to the provisions of section 189 (2)(a);

(c) the preservation of the internal security in the Republic;

(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: provided that the Act referred to in section 186(1) shall set out the circumstances which shall be regarded as organised crime and the circumstances which require national investigation and prevention or specialised skills;

(e) international police liaison;

- (f) the keeping and provision of crime intelligence data, criminal records and statistics;
- (g) the training members of the Service, including any municipal or metropolitan police services to be established;
- (h) the recruitment, appointment, promotion and transfer of all members of the Service;
- (i) the provision of forensic laboratory services;
- (j) such functions relating to border control and the import and export of goods as may be allocated to the Service by law;
- (k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner: provided that the Act referred to in section 186 shall provide that the President, in consultation with the Cabinet, may direct the National Commissioner to deploy the said unit in circumstances where the Provincial Commissioner is unable to maintain public order and the deployment of the said unit is necessary to restore public order;
- (l) national protection services;
- (m) establishment of a special task force for high risk operations which require specialised skills; and
- (n) such other functions not referred to in section 19 which:
 - (i) are necessary to achieve the objectives set out in section 187; and
 - (ii) are appropriate for the National Commissioner to take responsibility for.

(2) The National Commissioner may *[and with the approval of the relevant provincial executive]* delegate responsibility for any function set out in this section to a Provincial Commissioner.

Provincial Commissioners

191. (1) Subject to the provisions of section 186 and section 190 and under the direction of the relevant member of the provincial executive, a Provincial Commissioner shall be responsible for:

- (a) the investigation and prevention of crime;
- (b) the development of community-policing services;
- (c) the maintenance of public order;
- (d) the provision in general of all other visible policing services, including
 - (i) the establishment and maintenance of police stations,
 - (ii) crime reaction units; and
 - (iii) patrolling services;
- (e) protection services in regard to provincial institutions and personnel;
- (f) transfers within the province of members of the Service performing functions in terms of this section; and
- (g) promotion of members of the Service performing functions set out in this section up to the rank of lieutenant-colonel.

(2) Subject to the provisions of sections 186 and 191, and under the direction of the National Commissioner a provincial commissioner shall be responsible for -

- (a) the maintenance and discipline of the Service in the province;
- (b) the recruitment, and, the promotion to the rank of colonel and above of all members of the Service responsible for functions set out in this subsection;

- (c) such other functions as may be delegated to him or her by the National Commissioner; and
- (d) subject to any procedures or mechanisms established by the Board of Commissioners referred to in section 19, the transfer of members of the Service under his or her command to positions outside his or her jurisdiction, or vice versa.

Co-ordination and co-operation

192. (1) A committee consisting of the Minister referred to in section 188 and the members of the provincial executives referred to in section 189(1) shall be established to ensure the effective co-ordination of the Service and effective co-operation between the various Commissioners.

(2) A Board of Commissioners consisting of the National Commissioner and the Provincial Commissioners presided over by the National Commissioner, or his or her nominee, shall be established in terms of the Act referred to in section 186(1) to promote co-operation and co-ordination in the Service.

Local Policing

193. (1) The Act of Parliament referred to in section 186(1) shall provide for the establishment of community-police forums at police station level.

(2) The functions of community-police forums referred to in sub-section (1) may include -

- (a) the promotion of local accountability of the Service to communities and cooperation of communities with the Service;
- (b) the monitoring of the effectiveness and efficiency of the Service;
- (c) advising the Service regarding local policing priorities;
- (d) the evaluation of the provision of visible police services, including -

- (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;
 - (iii) the provision of protective services at gatherings;
 - (iv) the patrolling of residential and business areas; and
 - (v) the prosecution of offenders; and
- (c) requesting enquiries into policing matters in the locality.

(3) The Act referred to in section 186(1) shall make provision for the establishment by a local authority of a municipal or metropolitan police service: provided that :

- (a) such police service may only be established with the consent of the relevant member of the provincial executive;
- (b) said member of the provincial executive shall, subject to the provisions the act determine the powers, duties and functions of such police service which may have powers relating only to crime prevention and municipal and metropolitan by-laws; and
- (c) the provisions of the Act shall apply *mutatis mutandis* to any such police service.

Independent complaints mechanism

194. There shall be established and regulated by Act of Parliament an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the Service.

Acts of members outside their territorial jurisdiction

195. (1) No act of a member of the Service shall be invalid solely by reason of the fact that it was committed outside the province in which that member is stationed.

(2) The National Commissioner shall by regulation determine the procedures and the powers of the members of the Service to enable them to perform their functions outside their area of provincial jurisdiction.

Transitional Provisions

196. (1) At the coming into operation of this Constitution the South African Police existing in terms of the Police Act, 7 of 1958, and all other police forces established by law within the Republic, shall be deemed to constitute the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.

(2) Any reference in any Act to the South African Police shall, unless the context indicates otherwise, bear the meaning and be interpreted as the South African Police Service in terms of this Constitution.

(3) The national and provincial governments shall assume responsibility for the consolidation and rationalisation of all the police forces in accordance with section 119.

National Defence Force

Establishment of a National Defence Force

1. (1) A National Defence Force is hereby established as the only defence force for the Republic.

(2) The National Defence Force, shall consist of -

(a) all members of -

(i) the South African Defence Force; and

(ii) the defence forces of the Republics of Transkei, Bophuthatswana, Venda and Ciskei; and