

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 13 of 1978	National States Citizenship Amendment Act, 1978	The whole
Act No. 36 of 1978	Alteration of Provincial Boundaries Act, 1978	The whole
Act No. 107 of 1979	Status of Venda Act, 1979	The whole
Act No. 2 of 1980	Borders of Particular States Extension Act, 1980	The whole
Act No. 101 of 1980	Republic of South Africa Constitution Fifth Amendment Act, 1980	The whole
Act No. 77 of 1981	Borders of Particular States Extension Amendment Act, 1981	The whole
Act No. 101 of 1981	Republic of South Africa Constitution Second Amendment Act, 1981	The whole
Act No. 102 of 1981	Financial Relations Amendment Act, 1981	The whole
Act No. 110 of 1981	Status of Ciskei Act, 1981	The whole
Act No. 34 of 1982	Financial Relations Amendment, 1982	The whole
Act No. 25 of 1983	Borders of Particular States Extention Amendment Act, 1983	The whole
Act No. 88 of 1983	Provincial Affairs Act, 1983	The whole except section 5.

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 109 of 1983	Borders of Particular States Extension Second Amendment Act, 1983	The whole
Act No. 110 of 1983.	Republic of South Africa Constitution Act, 1983	The whole
Act No. 105 of 1984	Constitution Amendment Act, 1984	The whole
Act No. 114 of 1984	Financial Relations Amendment Act, 1984	The whole
Act No. 26 of 1985	Alteration of Provincial Boundaries Act, 1985	The whole
Act No. 104 of 1985	Constitutional Affairs Amendment Act, 1985	The whole
Act No. 69 of 1986	Provincial Government Act, 1986	The whole
Act No. 80 of 1986	Joint Executive Authority for KwaZulu and Natal Act, 1986	The whole
Act No. 112 of 1986.	Borders of Particular States Extension Amendment Act, 1986	The whole
Act No. 32 of 1987	Constitutional Laws Amendment Act, 1987	The whole, except sections 1, 21, 22, 24, 25, 30, 33, 34, 35, and 36
Act No. 43 of 1988	Constitutional Laws Amendment Act, 1988	Sections 10 to 13

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 50 of 1988	Constitution Amendment Act, 1988	The whole
Act No. 59 of 1988	Borders of Particular States Extension Act, 1988	The whole
Act No. 85 of 1988	National States Constitution Amendment Act, 1988	The whole
Act No. 86 of 1988	Promotion of Constitution Development Act, 1988	The whole
Act No. 42 of 1989	Incorporation of Certain Land in the Republic of South Africa Act, 1989	The whole
Act No. 71 of 1989	Constitution Fourth Amendment Act, 1989	The whole
Act No. 61 of 1990	Constitution Amendment Act, 1990	The whole
Act No. 111 of 1990	National States Constitution Amendment Act, 1990	The whole
Act No. 59 of 1991	Provincial Matters Amendment Act, 1991	The whole
Act No. 62 of 1991	Financial Relations Amendment Act, 1991	The whole
Act No. 74 of 1991	Joint Executive Authority for KwaZulu and Natal Amendment Act, 1991	The whole

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 146 of 1992	Constitution Second Amendment Act, 1992	The whole
Act No. 149 of 1992	Constitution Amendment Act, 1992	The whole
Act No. 82 of 1993	Constitution Amendment Act, 1993	The whole

30/11/93

CONSTITUTION PART 1.

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A C T

To introduce a new Constitution for the Republic of South Africa and to provide for matters incidental thereto.

PREAMBLE

In humble submission to Almighty God,
We the people of South Africa declare that: -

WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

AND WHEREAS it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

NOW THEREFORE the following provisions are adopted as the Constitution of the Republic of South Africa:

CHAPTER 1

Constituent and Formal Provisions

The Republic of South Africa

1. (1) The Republic of South Africa shall be one, sovereign state.

(2) The national territory of the Republic shall be defined in Schedule 1.

National symbols

2. (1) The national flag of the Republic shall be the flag of which the design is determined by the President by proclamation in the Gazette.

(2) The national anthem of the Republic shall be as determined by the President by proclamation in the Gazette.

(3) The national coat of arms and the seal of the Republic under the previous constitution shall continue to be the coat of arms and the seal of the Republic.

Languages

3. (1) Afrikaans, English, siNdebele, sePedi, seSotho, siSwati, xiTsonga, seTswana, tshiVenda, siXhosa and siZulu shall be the official South African languages at national level and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

(2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).

(3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the national level in any official South African language of his or her choice.

(4) Regional differentiation in relation to language policy and practice shall be permissible.

(5) A provincial legislature may, by a resolution adopted by a majority of at least two-thirds of all its members, declare any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in

relation to any function at the time of the commencement of this Constitution, shall be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at provincial level in any one of the official languages of his or her choice as contemplated in terms of subsection (5).

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:

- (a) the creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;
- (b) the extension of those rights relating to language and the status of languages which at the date of commencement of this Constitution are restricted to certain regions;
- (c) the prevention of the use of any language for the purposes of exploitation, domination or division;
- (d) the promotion of multilingualism and the provision of translation facilities;

- (e) the fostering of respect for languages spoken in the Republic other than the official languages and the encouragement of their use in appropriate circumstances; and
- (f) the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10) (a) Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.

(b) The Pan South African Language Board shall be consulted and invited to make recommendations in relation to any proposed legislation contemplated in this section.

(c) The Pan South African Language Board shall be responsible for promoting respect for and the development of Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic and Hebrew and other languages used for religious purposes.

[Note: We suggest consideration of the following alternative formulation which would, in our view, be more inclusive:]

(11) The Pan South African Language Board shall be responsible for promoting respect for and the development of all other languages used by communities in South Africa, including other languages used for religious purposes.

The Supremacy of the Constitution

4. (1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.

(2) This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.

CHAPTER 2

Citizenship and Franchise

Citizenship

5. (1) There shall be a South African citizenship.

(2) Every person who -

(a) in terms of an Act of Parliament was a South African citizen immediately before the commencement of this Constitution; or

(b) [Restoration of South African citizenship to citizens of the TBVC states]

shall be a South African citizen under this Constitution.

[Note: Restoration of South African citizenship to the TBVC states can comfortably be regulated here. We require instructions on the detail to finalise this provision. If the Council prefers that the restoration of South African citizenship be effected by way of a new South African Citizenship Act to be passed during the current Parliamentary session, subclause (2)(b) can simply be deleted.]

(3) The acquisition, loss and restoration of South African citizenship shall, subject to section 20 read with section 33(1), be regulated by an Act of Parliament.

(4) Every person who is a South African citizen shall, subject to this Constitution, be entitled to exercise franchise rights in the Republic and to enjoy all other rights, privileges and benefits and shall be subject to all duties, obligations and responsibilities of South African citizenship as are accorded or imposed upon him or her in terms of this Constitution or an Act of Parliament.

The franchise

6. Every person who is -

- (a) (i) a South African citizen; or
- (ii) not such a citizen but in terms of an Act of Parliament accorded to exercise the franchise;

- (b) of or over the age of 18 years; and
- (c) not subject to any disqualifications as may be prescribed by law,

shall be entitled to vote in elections of members of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.

CHAPTER 3

Fundamental Rights

Application

7. (1) This Chapter shall bind the legislative and executive organs of state at all levels of government.

(2) This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution.

(3) Juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of the rights permits.

(4) (a) When an infringement of or threat to any right entrenched in this Chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights.

(b) An application referred to in paragraph (a) may be brought by -

- (i) a person acting in his or her own interest;
- (ii) an association acting in the interest of its members;
- (iii) a person acting on behalf of another person who is not in a position to bring such application in his or her own name;
- (iv) a person acting as a member of or in the interest of a group or class of persons; or
- (v) a person acting in the public interest.

Equality

8. (1) Every person shall have the right to equality before the law and to equal protection of the law.

(2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

(3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination in order to enable their full and equal enjoyment of all rights and freedoms.

(b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2)

shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.

(4) *Prima facie* proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.

Life

9. Every person shall have the right to life.

Human dignity

10. Every person shall have the right to respect for and protection of his or her dignity.

Freedom and security of the person

11. (1) Every person shall have the right to freedom and security of the person, which shall include the right not to be detained without trial.

(2) No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

Servitude and forced labour

12. No person shall be subject to servitude or forced labour.

Privacy

13. Every person shall have the right to his or her personal privacy, which shall include the right not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

Religion, belief and opinion

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.

(2) Without derogating from the generality of subsection (1), religious observances may be conducted at state or state-aided institutions under rules established by an appropriate authority for that purpose, provided that such observances are conducted on an equitable basis and attendance at them is free and voluntary.

(3) Nothing in the section shall preclude legislation recognising -

(a) personal and family law adhered to by persons professing a particular religion; and

- (b) the validity of marriages concluded under a system of religious law subject to specified procedures.

Freedom of expression

15. (1) Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research.

(2) All media financed by or under the control of the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion.

Assembly, demonstration and petition

16. Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions.

Freedom of association

17. Every person shall have the right to freedom of association.

Freedom of movement

18. Every person shall have the right to freedom of movement anywhere within South Africa.

Residence

19. Every person shall have the right freely to choose his or her place of residence anywhere in South Africa.

Citizens' rights

20. Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall without justification be deprived of his or her citizenship.

Political rights

21. (1) Every citizen shall have the right -

- (a) to form, to participate in the activities of and to recruit members for a political party;
- (b) to campaign for a political party or cause; and
- (c) freely to make political choices.

(2) Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.

Access to court

22. Every person shall have the right to have justifiable disputes settled by a court of law or, where appropriate, another independent and impartial forum.

Access to information

23. Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the protection or exercise of any of his or her rights.

Administrative justice

24. Every person shall have the right to -

- (a) lawful administrative action where any of his or her rights or interests is affected or threatened;
- (b) procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;
- (c) be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and
- (d) administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.

Detained, arrested and accused persons

25. (1) Every person who is detained, including every sentenced prisoner, shall have the right -

- (a) to be informed promptly in a language which he or she understands of the reason for his or her detention;
- (b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;
- (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state;
- (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice; and
- (e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

- (a) in a language which he or she understands, promptly to be informed that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, to be brought before an ordinary court of law and to be charged or to be informed of the reason for his

or her further detention, failing which he or she shall be entitled to be released;

- (c) not to be compelled to make a confession or admission which could be used in evidence against him or her; and
- (d) to be released from detention with or without bail, unless the interests of justice require otherwise.

(3) Every accused person shall have the right to a fair trial, which shall include the right -

- (a) to a public trial before an ordinary court of law within a reasonable time after having been charged;
- (b) to be informed with sufficient particularity of the charge;
- (c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;
- (d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
- (e) to be represented by a legal practitioner of his or her choice or, where substantial injustice would otherwise result, to be provided with legal representation at state expense, and to be informed of these rights;
- (f) not to be convicted of an offence in respect of any act or omission which was not an offence at the time it was committed, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;
- (g) not to be tried again for any offence of which he or she has previously been convicted or acquitted;

- (h) to have recourse by way of appeal or review to a higher court than the court of first instance;
- (i) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her; and
- (j) to be sentenced within a reasonable time after conviction.

Economic activity

26. (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory.

(2) Subsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

Labour relations

27. (1) Every person shall have the right to fair labour practices.

(2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.

(3) Workers and employers shall have the right to organise and bargain collectively.

(4) Workers shall have the right to strike for the purpose of collective bargaining.

(5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired subject to section 33(1).

Property

28. (1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.

(2) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.

(3) Where any rights in property are expropriated pursuant to a law referred to in section (2), such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interest of those affected.

Environment

29. Every person shall have the right to an environment which is not detrimental to his or her health or well-being.

Children

30. (1) Every child shall have the right -
- (a) to a name and nationality as from birth;
 - (b) to parental care;
 - (c) to security, basic nutrition and basic health and social services;
 - (d) not to be subject to neglect or abuse; and
 - (e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.

(2) Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.

(3) For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interest shall be paramount.

Language and culture

31. Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

Education

32. Every person shall have the right -

- (a) to basic education and to equal access to educational institutions;
- (b) to instruction in the language of his or her choice where this is reasonably practicable; and
- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.

Limitation

33. (1) The rights entrenched in this Chapter may be limited by law of general application provided that such limitation -

- (a) shall be permissible only to the extent that it is -
 - (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and
 - (b) shall not negate the essential content of the right in question,
- and provided further that any limitation to -

- (aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or
- (bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,

shall, in addition to being reasonable as required in paragraph (a)(1), also be necessary.

(2) Save as provided for in subsection (1) or any other provision of this Constitution, no law, whether a rule of the common law, customary law or legislation, shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights in terms of this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with the provisions of this Chapter.

(4) This Chapter shall not preclude measures designed to prohibit unfair discrimination by bodies and persons other than those bound in terms of section 7(1).

(5) (a) The provisions of a law in force at the commencement of this Constitution promoting fair employment practices, orderly and equitable collective bargaining and regulating industrial action shall remain of full force and effect until repealed or amended by the legislature.

(b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 2A of the Labour Relations Act, 1956 (Act No. 28 of 1956), or any other similar body which may replace the said

Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the said Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto.

State of emergency and suspension

34. (1) A state of emergency shall be proclaimed prospectively under an Act of Parliament and shall be declared only where the security of the Republic is threatened by war, invasion, general insurrection or disorder or at a time of national disaster, and if the declaration of a state of emergency is necessary to restore peace or order.

(2) The declaration of a state of emergency and any action taken, including any regulation enacted, in consequence thereof, shall be of force for a period of not more than 21 days unless it is extended for a period of no longer than three months, or consecutive periods of no longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members.

(3) Any superior court shall be competent to enquire into the validity of a declaration of a state of emergency, any extension thereof, and any action taken, including any regulation enacted, under such declaration.

(4) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency, and only to the extent necessary to restore peace or order.

(5) Neither any law which provides for the declaration of a state of emergency, nor any action taken, including any regulation enacted, in consequence thereof, shall permit or authorise -

- (a) the creation of retrospective crimes;
- (b) the indemnification of the state or of persons acting under its authority for unlawful actions during the state of emergency; or
- (c) the suspension of this section, and sections 7, 8(2), 9, 10, 11(2), 12, 14, 27(1) and (2), 30(1)(d) and (e) and (2) and 33(1) and (2).

(6) Where a person is detained under a state of emergency the detention shall be subject to the following conditions:

- (a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;
- (b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Gazette within five days of their detention;
- (c) when rights entrenched in section 11 or 25 have been suspended -

- (1) the detention of a detainee shall, as soon as it is reasonably possible but not later than 10 days after his or her detention, be reviewed by a court of law, and the court shall order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;

(ii) a detainee shall at any stage after the expiry of 10 days of a review in terms of subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore
; or order;

(d) the detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;

(e) the detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;

(f) the detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and

(g) the state shall for the purpose of a review referred to in paragraph (c) (i) or (ii) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.

(7) If a court of law, having found the grounds for a detainee's detention unjustified, orders his or her release, such a person shall not be detained again on the same grounds unless the state shows good cause to a court of law prior to such re-detention.

.....

Interpretation

35. (1) In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.

(2) No law which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used *prima facie* exceeds the limits imposed in this Chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event such law shall be construed as having the said more restricted interpretation.

(3) In the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport and objects of this Chapter.

CHAPTER 4

Parliament

Constitution of Parliament

36. Parliament shall consist of the National Assembly and the Senate.

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Legislative authority of Republic

37. The legislative authority of the Republic shall, subject to this Constitution, vest in Parliament which shall have the power to make laws for the Republic in accordance with this Constitution.

Duration of Parliament

38. (1) Parliament as constituted in terms of the first election under this Constitution shall subject to subsection (2) continue for five years as from the date of the first sitting of the National Assembly under this Constitution.

(2) If during the period referred to in subsection (1) Parliament is dissolved under section 44(5), 73(9) or 93(1) or (3)(c), the Houses of Parliament as constituted then, shall continue for the period up to the day immediately preceding the commencement of polling for the election of the National Assembly held in pursuance of such dissolution.

- (3) Notwithstanding any dissolution of Parliament -
- (a) every person who at the date of the dissolution is a member of the National Assembly or the Senate shall remain a member thereof;
 - (b) the National Assembly and the Senate shall remain competent to perform their functions; and
 - (c) the President shall be competent to summon Parliament by proclamation in the Gazette to an extraordinary sitting for the despatch of urgent business,

during the period for which the Houses of Parliament continue in terms of subsection (2) after the dissolution.

(4) If Parliament is dissolved and a new Parliament is elected as contemplated in subsection (2) this section shall apply *mutatis mutandis* in respect of such new Parliament save that the new Parliament shall continue for the unexpired part of the period referred to in subsection (1).

Elections

39. (1) If Parliament is dissolved in terms of section 73(9) or 93(1) or (3)(c), the President shall upon such dissolution by proclamation in the Gazette -

- (a) call an election of the National Assembly, which election shall take place on a date specified in the proclamation within 90 days after the dissolution of Parliament; and
- (b) request the provincial legislatures to elect senators for the respective provinces in accordance with section 48.

(2) An election referred to in subsection (1)(a) shall be conducted in accordance with the Electoral Act, 1993.

THE NATIONAL ASSEMBLY

Composition of National Assembly

40. (1) The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters provided for in Schedule 2 and the Electoral Act, 1993.

(2) Of the members of the National Assembly 200 shall be elected from national lists of party candidates and 200 from provincial lists of party candidates.

Speaker and Deputy Speaker of National Assembly

41. (1) At its first sitting after it has been convened under section 46(2), and after the election of the President, the National Assembly, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the Chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker.

(2) The provisions of Schedule 5 shall apply *mutatis mutandis* to the election of the Speaker and the Deputy Speaker.

(3) The Speaker shall be vested with all powers and functions assigned to him or her by this Constitution, an Act of Parliament and the rules and orders.

(4) If the Speaker is absent or for any reason unable to exercise or perform the powers or functions vested in the office of Speaker, or when the office of Speaker is vacant, the Deputy Speaker shall act as Speaker during the Speaker's absence or inability or until a Speaker is elected.

(5) If any of the circumstances described in subsection (4) applies with reference to both the Speaker and the Deputy Speaker a member of the National Assembly designated in terms of the rules and orders shall act as Speaker while the said circumstances prevail.

(6) The Deputy Speaker or the member designated under subsection (5) shall while acting as Speaker exercise and perform the powers and functions vested in the office of Speaker.

(7) The Speaker, the Deputy Speaker or any other member designated for that purpose in terms of the rules and orders, shall preside over sittings of the National Assembly.

(8) While presiding at a sitting of the National Assembly, the Speaker, Deputy Speaker or other member presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

(9) The Speaker or Deputy Speaker shall vacate his or her office if he or she ceases to be a member of the National Assembly, and may be removed from office by resolution of the National Assembly, and may resign by lodging his or her resignation in writing with the Secretary to Parliament.

(10) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly, presided over as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the Speaker shall in such event preside at the election of the Deputy Speaker.

Qualification for membership of National Assembly

42. (1) No person shall become or remain a member of the National Assembly unless he or she is and remains qualified in terms of section 6 to vote in an election of the National Assembly or if he or she -

- (a) at the time of the first election of the National Assembly held under this Constitution is serving a sentence of imprisonment of more than twelve months without the option of a fine;
- (b) at any time after promulgation of this Constitution is convicted of an offence in the Republic, or outside the Republic if the conduct constituting such offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court; or
- (e) holds any office of profit under the Republic: Provided that the following persons shall be deemed not to hold an office of profit under the Republic for the purpose of this paragraph, namely -
 - (i) an Executive Deputy President or a Minister or Deputy Minister;
 - (ii) a person in receipt of a pension paid from public funds or from a pension fund aided by public funds;
 - (iii) a justice of the peace or appraiser; or
 - (iv) a member of any council, board, committee, commission of enquiry or similar body established under law or a committee of the National Assembly who receives remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.

(2) For the purposes of subsection (1)(b) no person shall be deemed as having been convicted of an offence until any appeal against the conviction or sentence has been determined, or, if no appeal against the conviction or sentence has been noted, the time for noting such an appeal has expired.

Vacation of seats

43. A member of the National Assembly shall vacate his or her seat if he or she -

- (a) ceases to be eligible to be a member of the National Assembly in terms of section 42;
- (b) ceases to be a member of the party which nominated him or her to sit in the National Assembly;
- (c) resigns his or her seat by submitting his or her resignation in writing to the Secretary to Parliament;
- (d) absents himself or herself voluntarily from sittings of the National Assembly or other parliamentary forums of which he or she is a member, for 15 consecutive days on which the National Assembly or any of such forums sat without having obtained leave in accordance with the rules and orders;
- (e) becomes a member of the Senate, a provincial legislature or a local government; or
- (f) fails within a period of six months after the commencement of this Constitution, and on an annual basis thereafter, to provide adequate proof to the Secretary to Parliament, that he or she -

- (i) is registered under any appropriate law as a taxpayer for income tax purposes; and
- (ii) has, subject to any extension granted under such law, submitted all such returns of income as are required to be submitted by him or her in terms of such law.

Filling of vacancies

44. (1) If a member of the National Assembly vacates his or her seat the vacancy shall be filled by a person nominated in terms of subsection (2) by the party which nominated the vacating member.

(2) The party entitled in terms of subsection (1) to nominate a person for the purpose of filling a vacancy in the National Assembly shall -

- (a) if the name of the vacating member appears on one of that party's lists of candidates compiled in terms of Schedule 2 for the previous election of the National Assembly, nominate that person who according to the order of preference of the candidates on the list in question is the next qualified and available person entitled to represent that party as a member of the National Assembly; or
- (b) if the name of the vacating member does not appear on any of the said lists of candidates of that party or if the name of the vacating member does so appear on such a list but there are no names of persons remaining on that list who are qualified and available to represent that party as a member of the National Assembly, nominate any person of

its choice who is a member of the party and qualified and available to fill the vacancy.

(3) A nomination in terms of this section shall be submitted in writing to the Speaker.

Oath or affirmation by members of National Assembly

45. Every member of the National Assembly, before taking his or her seat, shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a member nominated under section 44, before the Speaker.

Sittings of National Assembly

46. (1) The National Assembly shall sit at the Houses of Parliament in Cape Town, unless the Speaker, in accordance with the rules and orders and in consultation with the President of the Senate, directs otherwise on the grounds of public interest, security or convenience.

(2) The Chief Justice shall convene the National Assembly within 10 days after an election of the National Assembly.

(3) The National Assembly shall sit during such periods and on such days and during such hours as it may determine: Provided that the President may at any time by proclamation in the Gazette summon the National Assembly to an extraordinary sitting for the despatch of urgent business.

Quorum

47. The presence of at least one third or, when a vote is taken on a Bill, the presence of at least one half, of the members of the National Assembly, other than the Speaker or other presiding member, shall be necessary to constitute a meeting of the National Assembly.

THE SENATE

Composition of Senate

48. (1) The Senate shall be composed of 10 senators from each province, elected by the provincial legislature of each province within 10 days of -

- (a) its first meeting held after an election of such legislature; or
- (b) an election of the National Assembly held in pursuance of a dissolution of Parliament.

(2) Candidates for election to the Senate shall be nominated by a party represented in the provincial legislature and the election shall be conducted according to the principle of proportional representation of the parties represented in such legislature, as to be determined by such legislature.

(3) A member of a provincial legislature who is in terms of this section elected to the Senate, shall vacate his or her seat in the provincial legislature.

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President and Deputy President of Senate

49. (1) At its first sitting after it has been convened under section 53(2), and before proceeding to despatch any other business, the Senate, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the Chairperson, shall elect one of its members to be the President of the Senate, and shall thereafter elect another of its members to be the Deputy President of the Senate.

(2) The provisions of Schedule 5 shall apply *mutatis mutandis* to the election of the President and Deputy President of the Senate.

(3) The President of the Senate shall be vested with all powers and functions assigned to him or her by this Constitution, an Act of Parliament and the rules and orders.

(4) If the President of the Senate is absent or for any reason unable to exercise and perform the powers and functions vested in the office of President of the Senate, or when the office of President of the Senate is vacant, the Deputy President of the Senate shall act as President of the Senate during the absence or inability of the President of the Senate or until a President of the Senate is elected.

(5) If any of the circumstances described in subsection (4) applies with reference to both the President and Deputy President of the Senate, a senator designated in terms of the rules and orders shall act as President of the Senate while the said circumstances prevail.

(6) The Deputy President of the Senate or the senator designated under subsection (5) shall while acting as President of the Senate exercise and perform the powers and functions vested in the office of President of the Senate.

(7) The President or Deputy President of the Senate or other senator designated in terms of the rules and orders shall preside over sittings of the Senate.

(8) While presiding at a sitting of the Senate, the President or Deputy President of the Senate or other senator presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

(9) The President or Deputy President of the Senate shall vacate his or her office if he or she ceases to be a senator, and may be removed from office by resolution of the Senate, and may resign by lodging his or her resignation in writing with the Secretary to Parliament.

(10) If the office of President or Deputy President of the Senate becomes vacant, the Senate, presided over as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the President of the Senate shall in such event preside at the election of the Deputy President of the Senate.

Qualification for membership of Senate

50. No person shall be qualified to become or remain a senator unless he or she is or remains eligible to be nominated for the election of members of the relevant provincial legislature.