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TECHNICAL COMMITTEE

ON

CONSTITUTIONAL ISSUES

COMBINED REPORTS

10 AUGUST 1993

**EMBARGOED UNTIL
TABLING IN THE
NEGOTIATING COUNCIL**



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CONSTITUTIONAL ISSUES (10 AUGUST 1993)**

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(DRAFT OUTLINE: 6 AUGUST 1993)**

administrations of the provinces, the self-governing territories and those TBVC states that are reincorporated, are restructured into the new government structures at national and SPR levels established in terms of the Constitution.

2. We have also developed preliminary texts for chapters 6, 7, 8 and 10 of the Constitution. We have not annexed these preliminary texts to this report because they are still under discussion in our committee and need to go through a further discussion and editing process before they are in a form in which they can be made the subject of detailed debate. We hope to have these chapters in a suitable form for debate when we next report to the Negotiating Council.
3. We plan from now onwards to refine the texts of the completed chapters in the light of the debates which take place in the Negotiating Council, and in this way to build up a core document which will contain detailed provisions covering all aspects of the framework identified in the draft outline attached to our Eighth Report. As changes are made in the detailed texts in the light of the debate, these will be reflected in the core document, and marked up for easy identification in the same way as is being done in the development of the core document dealing with constitutional principles.
4. A number of matters were raised during the debate in the Negotiating Council on our Eighth Report on which different views were expressed. We need greater clarification from the Council in regard to these issues than we could derive from that debate. These include, in particular:
 - 4.1 the deadlock breaking mechanism set out in chapter 5.
 - 4.2 SPR constitutions
 - 4.3 Whether the CMB will have the power to alter the number, boundaries and powers of SPRs as set out in the Constitution for the transitional period.

constitutional supremacy the exercise of both original and delegated powers are subject to review by the court if they are exercised in a manner that is inconsistent with the requirements of the Constitution. Delegated powers are, however, open to challenge on additional grounds in which, inter alia, the motive, procedure and to some extent the reasoning of the authority that has exercised the power can be challenged. These additional grounds cannot be invoked in respect of the exercise of original powers. Put simply, original powers vested in SPRs which are derived from the Constitution cannot be withdrawn by the national government, nor can they be changed without amending the Constitution itself. They are stronger and less open to challenge than delegated powers.

9. "Exclusive powers" refer to those powers which are essentially within the primary legislative competence of the authority in whom they are vested. Ordinarily an authority with "exclusive powers" is the only authority with the competence to enact legislation in the field of such powers. It can do so itself, or it can delegate its authority to a lower level of Government. That power is, however, subject to limitations imposed by the Constitution itself. First, there is the limitation applicable to all forms of legislation, imposed by the "bill of rights" and procedural provisions contained in the Constitution. Secondly, they are subject to limitations arising out of overlapping competencies. The national government has competence in matters of overriding national interest such as national security etc. This overriding national interest, when it exists, is a cross-cutting competence, relevant to all fields of government, which permits the National Government to intervene in all fields affected by it. The constitutional principles address the circumstances in which the National Government would be entitled to make such interventions, and these provisions have been incorporated into our draft of the Constitution for the transitional period. Put simply, the National Government may not legislate in the field of "exclusive powers" reserved for the SPRs save in the special circumstances identified in the Constitution, and then only to the extent that the Constitution permits such intervention.

it clear that SPR legislatures and governments will be vested with definite powers from the moment that the Constitution comes into force, whilst at the same time, making provision on a transitional basis, for the way in which administration will be handled and supervised until the necessary co-ordination and rationalisation has been completed.

12. We attach to this report detailed drafts of chapters 1, 2, 4, 5, and 9. We suggest that for the purposes of the debate in the Negotiating Council it might be convenient to deal with our report by allowing us to begin by presenting each of these component parts sequentially. We will draw attention during the oral presentation to the changes we have made in the draft outline attached to our Eighth Report, and to issues which call for decisions of principle to be taken. In this way we would be able to draw attention at the time of presentation to the aspects of our report which are relevant to the particular part of the Constitution which is under discussion. In the light of greater clarification secured as a result of the debate we would, where necessary, and as instructed by the Council, refine or amend the text and present it to the Council in an amended form in the further draft at the time of our next report.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1993

(Draft Outline: 6 August 1993)

PREAMBLE

CHAPTER 1

Formal and Constituent Provisions

The New Republic of South Africa

1. (1) The Republic of South Africa shall be one sovereign state.
- (2) The national territory shall consist of all the territory defined in Schedule 1.

National symbols

2. (1) The design of the national flag of South Africa shall be as set out in Schedule 2.
- (2) The national anthem of South Africa shall be
- (3) The national coat of arms of South Africa shall be in accordance with the description set out in Schedule 3.
- (4) The national seal of South Africa shall be in accordance with the description set out in Schedule 4.

Languages

3. *[The text of this provision will be formulated after the committee of the MPNP has reported.]*

The supremacy of the Constitution

4. (1) This Constitution shall be the supreme law of the land and any law inconsistent with its provisions shall, to the extent of its inconsistency, be of no force or effect.

(2) The provisions of this Constitution binds all the legislative, executive and judicial organs of the state at all levels of government.

CHAPTER 2

Citizenship and the Franchise

Citizenship

5. (1) Every person who is a South African citizen in terms of legislation applicable on the date of the coming into operation of this Constitution, shall retain such citizenship.

(2) The acquisition, loss and restoration of South African citizenship shall be regulated by Act of Parliament.

(3) A South African citizen shall not be deprived of his or her citizenship other than as provided for by Act of Parliament.

The franchise

6. Every person who is -

(a) a South African citizen;

(b) of or over the age of 18 years; and

- (c) not subject to any of the disqualifications set out in the *Electoral Act*, 1993,

shall, subject to the provisions of the *Electoral Act*, 1993, be entitled to vote in any election for members of the National Assembly, the Legislatures of the SPRs and local governments.

CHAPTER 3 Fundamental Rights

[The wording has been taken from the Seventh Report of the Technical Committee on Fundamental Rights during the Transition, which is still under discussion in the Negotiating Council.]

Application

7. (1) The provisions of this Chapter shall -
- (a) bind the legislative, executive and, where appropriate, the judicial branches of government at all levels as well as all statutory bodies and functionaries;
 - (b) bind, where just and equitable, other bodies and persons; and
 - (c) be enforced by the [designated authority].
- (2) In the case of an infringement of any provision of this Chapter, the [designated authority] may, where appropriate, put any body or person referred to in subsection (1)(a) or (b) on terms as to how and within what period such infringement should be remedied.
- (3) The provisions of this Chapter shall apply to all laws in force and all administrative decisions taken during the period of operation of this Chapter.

(4) All juristic persons shall be entitled to the rights contained in this Chapter to the extent that the nature of these rights permit.

(5) (a) Every person who alleges that his or her rights or every association which alleges that its members' rights entrenched in this Chapter, have been infringed or are threatened, shall be entitled to apply to a competent [designated authority] for appropriate relief, which may include a declaration of rights.

(b) Nothing in this subsection shall prevent a person from applying for relief on behalf of a group or class of persons whose rights entrenched in this Chapter are alleged to have been infringed or are threatened.

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 in any way from the generality of this provision, on the grounds of race, gender, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language in particular.

(3) This section shall permit measures aimed at the adequate protection and advancement of persons disadvantaged by discrimination in order to enable their full and equal enjoyment of all rights and freedoms.

(4) In any action in which unfair discrimination is alleged, prima facie proof of such discrimination shall be sufficient to bring it within the class of conduct contemplated in subsection (2), 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 and not to be subject to searches of his or her person, home or property, seizure of private possessions or the violation of private communications.

Religion and Belief

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion.

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

Freedom of Expression

15. Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.

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. (1) Every person shall have the right to freedom of association.

(2) Without derogating from the generality of the provisions of section 2(2), nothing in this section shall permit discrimination on the ground of race.

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.

Citizen's Rights

20. Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall be deprived of his or her citizenship.

Political Rights

21. (1) Every person 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 of voting age shall have the right to vote in secret and to stand for election to public office.

Access to Court

22. Every person shall have the right to have justiciable 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 necessary for the protection or exercise of his or her rights.

Administrative Decisions

24. (1) Every person shall have the right to lawful and procedurally fair administrative decisions.

(2) Every person shall have the right to be furnished with reasons in writing for an administrative decision which affects his or her rights or interests.

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, including 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 the interests of justice so require, to be provided with the services of a legal practitioner by the State; and
- (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse, next-of-kin, religious counsellor and a medical practitioner of his or her choice.

(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) to be informed promptly, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b) to be brought before an ordinary court of law as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, 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; and
- (c) 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 by 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;
- (e) to be represented by a legal practitioner of his or her choice or, where the interests of justice so demand, 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.

Eviction

26. No person shall be removed from his or her home, except by order of a court of law after taking into account all relevant factors, which may include the availability of appropriate alternative accommodation and the lawfulness of the occupation.

Economic Activity

27. (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in South Africa.

(2) Nothing in this section shall preclude legislation aimed at 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 legislation is justifiable in a free, open and democratic society based on the principle of equality.

Labour Relations

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

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

(3) Workers shall have the right to take collective action, including the right to strike, and employers shall have the right to lock out workers.

Property

29. (1) Every person shall have the right to acquire, hold and dispose of rights in property.

(2) Expropriation of property by the State shall be permissible in the public interest and shall be subject either to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, the value of the owner's investment in it and the interests of those affected.

(3) Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating persons who have been dispossessed of rights in land as a consequence of any racially discriminatory policy, where such restoration or compensation is feasible.

Environment

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

Children

31. Every child shall have the right to security, basic nutrition and basic health services and not to be subject to neglect, abuse or child labour.

Language and Culture

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

Education

33. 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 or colour.

Limitation

34. (1) The rights entrenched in this Chapter may be limited by a law applying generally and not solely to an individual case, provided that such limitation -

- (a) shall be permissible only to the extent that it is -
 - (i) reasonable; and

(ii) justifiable in a free, open and democratic society based on the principle of equality; and

(b) shall not negate the essential content of the right in question.

(2) Notwithstanding the provisions of this Chapter, a law in force at the commencement of this Chapter promoting fair employment practices, orderly and equitable collective bargaining and the regulation of industrial action shall remain in force until repealed or amended by the legislature.

Suspension

35. (1) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency proclaimed prospectively under an Act of Parliament and only to the extent demanded by the situation.

(2) Any such suspension shall comply with the following requirements:

(a) A state of emergency may be declared only where the security of the State is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster, and if such declaration is necessary to restore peace or order.

(b) The declaration of a state of emergency and any action, whether a regulation or otherwise, taken in consequence of that declaration, shall cease to be valid in law unless the declaration is ratified by a majority of the total number of the directly elected members of Parliament within fourteen days of the declaration.

(c) No state of emergency shall endure for longer than six months provided that it may be renewed, subject to the ratification of such renewal in the manner referred to in paragraph (b).

- (d) The Supreme Court shall be competent to enquire into the validity of any declaration of a state of emergency, any renewal thereof, and any action, whether a regulation or otherwise, taken under such declaration.

(3) Neither the enabling legislation which provides for the declaration of a state of emergency, nor any action taken in consequence thereof, shall permit or authorise -

- (a) the creation of retrospective crimes;
- (b) the indemnification of the State or persons acting under its authority for unlawful actions taken during the state of emergency; or
- (c) the suspension of this section.

(4) Any person detained under a state of emergency shall have at least the following rights:

- (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 Government Gazette within five days of their detention;
- (c) the detention of a detainee shall, as soon as is reasonably possible but not later than ten days after his or her detention, be reviewed by a court of law, which may order the release of such a detainee if satisfied that such detention is not necessary to restore peace or order. The State shall submit written reasons to justify the detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review;
- (d) a 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) a detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;
- (f) a detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and
- (g) if detained for longer than ten days, the detainee shall be entitled to apply to a court of law for his or her release from detention at any stage after the expiry of a period of ten days from the date of determination of the review procedure provided for in paragraph (c).

(5) 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

36. (1) In interpreting the provisions of this Chapter the [designated authority] shall promote the values which underlie a free, open and democratic society based on the principle of equality.

(2) Save as provided for in this Chapter, no rule of the common law, custom or legislation shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights included in this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised and conferred by common law, custom or legislation.

(4) A law limiting a right entrenched in this Chapter shall be presumed constitutionally valid until the contrary is proved: Provided that a law limiting -

- (a) a right entrenched in section 21; or

- (b) a right entrenched in sections 15, 16, 17, 18, 23 or 24, insofar as such right relates to the expression of free and fair political activity,

shall be strictly construed for constitutional validity.

(5) No law existing at the commencement of this Chapter 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 permissible limits imposed in this Chapter, provided such a law is capable of a more restricted interpretation which does not exceed such limits, in which event such a law shall be construed as having the said more restricted meaning.

Duration

37. This Chapter shall be of full force and effect until a Bill of Rights duly enacted by the elected constitution-making body has come into effect.

CHAPTER 4 **The Legislature**

Legislative authority

38. (1) The legislative authority of the Republic shall, subject to the provisions of this Constitution, be vested in the Parliament of the Republic, which shall consist of the National Assembly and the Senate and shall have the power to make laws for the Republic.

(2) Parliament shall be competent to delegate by law any matter within its powers to the legislature of an SPR or of a local government.

Duration of Parliament

39. (1) Parliament shall continue until it is dissolved under Chapter 5 or until a new Parliament is constituted in terms of the new constitutional text adopted in accordance with the provisions of Chapter 5.

(2) If Parliament is dissolved in terms of Chapter 5 an election for a new Parliament shall be called by the President, and such election shall take place within 90 days from the date of such dissolution.

(3) Notwithstanding the dissolution of Parliament in terms of Chapter 5, the National Assembly and the Senate shall remain competent to perform their functions until a new National Assembly and a new Senate have been elected.

(4) The President shall have the power to summon the National Assembly and the Senate for the conduct of urgent and necessary business during the period following the dissolution under Chapter 5, until a new National Assembly and Senate have been elected.

Composition of the National Assembly

40. (1) The National Assembly shall consist of 400 members elected according to a system of proportional representation, of whom 200 shall be elected on national and 200 on SPR party lists as provided for in Schedule 5.

(2) Persons who are nominated as candidates on SPR party lists shall be ordinarily resident in the SPR in respect of which the party list applies.

Speaker of the National Assembly

41. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected National Assembly, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the Speaker, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the National Assembly.

(2) The National Assembly shall thereafter elect a Deputy Speaker from amongst its members, and the Deputy Speaker shall act as Speaker whenever the Speaker is not available, and for that purpose shall have all the powers vested in the Speaker.

(3) The Speaker, or in his or her absence the Deputy Speaker, shall preside over meetings of the National Assembly.

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

(5) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly shall in like manner elect a member to fill the vacancy.

(6) Where neither the Speaker nor the Deputy Speaker is available, the National Assembly, with the Secretary of Parliament acting as Chairperson, shall elect a member to act as Speaker during such absence.

(7) The Speaker or the Deputy Speaker or the acting Speaker presiding at a meeting of the National Assembly shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Qualification of Members of the National Assembly

42. (1) No persons may be nominated or become members of the National Assembly if -

- (a) at the date of such nomination or election they are serving a sentence of imprisonment of more than twelve months without the option of a fine; or
- (b) at any time after the adoption of this Constitution, they are convicted of an offence in South Africa or outside of South Africa if such conduct would have constituted an offence within South Africa, and for which they have been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon; or
- (c) they are unrehabilitated insolvents; or

- (d) they are of unsound mind and have been so declared by a competent court;
or
- (e) they are remunerated employees of any public service within the Republic.

(2) For the purposes of subsection (1) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction or sentence has expired.

Vacation of Seats

43. (1) Members of the National Assembly shall vacate their seats if they:

- (a) cease to be eligible for membership of the National Assembly; or
- (b) cease to be members of the political party which nominated them to sit in the National Assembly; or
- (c) resign their seats in writing addressed to the Speaker; or
- (d) absent themselves voluntarily from the National Assembly for 30 consecutive sitting days, without having obtained leave in the manner and on grounds specified in the rules and standing orders of the National Assembly; or
- (e) become members of the Senate, an SPR Legislature or of a local government.

(2) If a seat of a member of the National Assembly is vacated in terms of subsection (1), the party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on the party's election list compiled for the previous general election, or if there is no such person, by nominating any member of the party.

(3) If the vacancy occurs in respect of a person who was elected from a national list, it shall be filled from the national list, and if the vacancy occurs in respect of a person who was elected from an SPR list, it shall be filled from the SPR list, by a person ordinarily resident in such SPR.

Quorum

44. The presence of at least one third of the members of the National Assembly, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers and for the performance of its functions.

Oath or Affirmation by Members of the National Assembly

45. Every member of the National Assembly shall, before taking his or her seat, make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Sessions of the National Assembly

46. (1) The National Assembly shall sit:

- (a) at the Houses of Parliament in Cape Town, unless the Speaker directs otherwise on the grounds of public interest, security or convenience;
- (b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the National Assembly and not later than 10 days after such election, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (c) in ordinary session on such dates as the National Assembly may determine by resolution, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.

(2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as its rules and standing orders may provide.

(3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.

(4) There shall be a session of the National Assembly at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Composition of the Senate

47. (1) The Senate shall be composed of ten members from each SPR, elected by the SPR legislature of each SPR within 10 days of the commencement of the first session after its election.

(2) Candidates for the election of the Senate shall be nominated by a party represented in the SPR legislature and the election shall be conducted according to the principle of proportional representation, as set out in Schedule 5.

(3) Any member of an SPR legislature elected in terms of subsection (2) to the Senate, shall vacate his or her seat in the SPR legislature.

President of the Senate

48. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected Senate, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the President of the Senate, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the Senate.

(2) The President of the Senate shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.

(3) In the absence of the President of the Senate, a person shall be elected by Senators from amongst their number to preside at their meetings during such absence.

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

(5) If the office of the President of the Senate becomes vacant, the Senate shall in like manner fill the vacancy.

(6) The President of the Senate or the person presiding at a meeting of the Senate shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Qualification of members of the Senate

50. Persons shall be qualified to be Senators under this Constitution if they are qualified to stand for election as members of the SPR legislature by whom they are elected.

Quorum

51. The presence of at least one third of the number of senators other than the President of the Senate or the presiding senator shall be necessary to constitute a meeting of the Senate for the exercise of its powers and for the performance of its functions.

Oath or affirmation by Senators

52. Every Senator, before taking his or her seat, shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Vacation of Seats by Senators

53. (1) Senators shall vacate their seats if they:

- (a) cease to be eligible for membership of the Senate; or
- (b) resign their seats in writing addressed to the President of the Senate; or
- (c) absent themselves voluntarily from the Senate for 30 consecutive sitting days, without having obtained the leave of the Senate on grounds specified in its rules and standing orders; or
- (d) become members of the National Assembly, an SPR legislature or a local government.

(2) If a seat of a member of the Senate is vacated in terms of subsection (1), the political party which nominated that Senator shall nominate a person to fill the vacancy.

Sessions of the Senate

54. (1) The Senate shall sit:

- (a) at the Houses of Parliament in Cape Town, unless the President of the Senate directs otherwise on the grounds of public interest, security or convenience;
- (b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the Senate and not later than 10 days after such election, and such session shall terminate on such date as the Senate may determine by resolution;
- (c) in ordinary session on such dates as the Senate may determine by resolution, and such session shall terminate on such date as the Senate may determine by resolution;
- (d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.

(2) During such sessions the Senate shall sit on such days and during such times of the day or night as its rules and standing orders may provide.

(3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the President of the Senate on the grounds of public interest or convenience.

(4) There shall be a session of the Senate at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Privileges and immunities of members of Parliament

55. (1) Notwithstanding the provisions of any other law, no member of Parliament shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he or she has brought by petition, bill, motion or otherwise or may have said before or in any meeting of Parliament or any committee thereof.

(2) Provision for other privileges and immunities of members of Parliament may be made by Act of Parliament.

Public access to Parliament

56. All sessions of the National Assembly and the Senate shall be held in public and members of the public and the media shall have access to such meetings: provided that reasonable measures may be instituted to regulate such access, and to search, and where appropriate, to refuse entry to persons.

Parliamentary procedure

Rules and orders and committees

57. (1) The National Assembly and the Senate may each make rules of procedure for the conduct of its business and proceedings and may also make rules for the

establishing, functioning and procedures of committees, and formulate standing orders, including restrictions on access to such committees.

(2) For the purposes of exercising their powers and performing their functions any committee of the National Assembly or Senate established in terms of subsection (1) shall have the power to *subpoena* persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.

(3) The National Assembly and the Senate may jointly make rules and orders concerning the order and conduct of their joint proceedings, including all matters referred to in subsections (1) and (2).

(4) Parliament may institute standing committees representative of all parties in the National Assembly and the Senate, in order to resolve possible disagreements between the Houses and to make joint reports.

Ordinary legislation

58. (1) All laws, except laws relating to finance, specified SPR matters, and the amendment of this Constitution, shall be considered to be ordinary legislation.

(2) Ordinary legislation may be introduced in either the National Assembly or the Senate and shall be passed by each House.

(3) Ordinary legislation passed by one House and rejected by the other shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments to the bill, whereafter the bill shall be referred to a joint sitting of both Houses at which it may be adopted with or without amendment by a majority of the total number of members of both Houses of Parliament.

Finance Bills

59. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly and after they have been considered and

reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

(2) A bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(3) The Senate may not amend any bills in so far as they impose taxation or appropriate revenue or moneys.

(4) If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys, and the Senate in the same session rejects or fails to pass it within 30 days after it has been passed by the National Assembly, the bill shall be reconsidered by the National Assembly.

(5) The National Assembly may adopt a bill referred to in terms of subsection (4), with or without amendment, and if adopted it may thereafter be presented to the President for his or her assent, and shall as soon as it has been assented to by the President become an Act of Parliament as if it had been approved by the Senate.

Bills concerning specified SPR matters

60. (1) Bills affecting the exercise of powers and functions allocated to SPR governments under Chapter 9 of this Constitution shall be approved by the National Assembly and the Senate.

(2) A bill which affects the exercise of powers or functions of a particular SPR only, shall also be approved by a majority of the Senators of that particular SPR.

Amendment of the Constitution

61. (1) Save for the provisions of subsection (2) and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 7.

Requisite Majorities

62. Save as provided in this Constitution, a majority of votes cast shall be sufficient for the passing of any Bill, or the taking of any decision or resolution by the National Assembly or the Senate.

Assent to Bills

63. A Bill duly passed by the National Assembly, and where required by this Constitution, by the Senate, shall require the assent of the President, to be signified by the signing of the Bill, and the publication of the Act in the *Government Gazette*, in order to acquire the status of a valid Act of Parliament.

Signature and Enrolments Acts

64. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the *Government Gazette* shall be lodged in the office of the Registrar of the Appellate Division of the Supreme Court and such copy shall be conclusive evidence of the provisions of the Act.

(2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff.

Provision should further be made for the following matters:

- *Resolution of conflicts between texts in different official languages*
- *Rights and obligations of President and Ministers regarding speaking, sitting and voting in the Houses of Parliament.*

CHAPTER 5

The Adoption of the new Constitution

The Constitution-making Body

65. (1) The National Assembly and the Senate, sitting in joint session, shall be the CMB.

(2) The CMB shall adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.

(3) The first meeting of the CMB shall be convened by the President of the Senate not later than seven days after the first sittings of the National Assembly and the Senate have been held.

(4) At its first sitting, and before proceeding to dispatch any other business, the CMB shall elect one of its members to preside at its meetings and a deputy to preside in his or her absence.

(5) In the absence of the President of the CMB or his or her deputy, a person elected by the CMB for such purpose shall preside for as long as such absence continues.

(6) The CMB may make rules of procedure for the conduct of its business and proceedings, and also make rules for the establishing, functioning and procedures of committees and formulate such standing orders, including restrictions on access to such committees as may appear to it to be expedient or necessary, having regard to the business of such committees.

Constitutional Principles

66. (1) In undertaking its task of drafting a new constitutional text, the CMB shall comply with the Constitutional Principles contained in Schedule 7.

(2) During the course of the drafting of the new constitutional text, any constitutional proposal pertaining to such drafting shall be referred to the Constitutional Court by the Chairperson after being petitioned by one third of the members of the CMB

to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would comply with the Constitutional Principles.

(3) A new constitutional text, or any separate part thereof, shall not come into operation unless the Constitutional Court certifies that all its provisions comply with the Constitutional Principles.

(4) A decision of the Constitutional Court in terms of subsections (2) and (3) shall be final and binding and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of any constitutional provision which has been certified by the Constitutional Court in terms of subsection (3).

Appointment of commissions, committees and advisory bodies

67. (1) The CMB shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.

(2) The CMB shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five persons being recognised constitutional experts not holding office in any political party, to advise it and the Chairperson on constitutional matters and to perform such other tasks as are provided for in this Constitution.

Adoption of a new constitutional text

68. (1) A new constitutional text shall be adopted by the CMB within two years from the commencement of the first session of Parliament.

(2) A new constitutional text shall be approved by two thirds of all the members of the CMB.

(3) Should the CMB fail to adopt a new constitutional text by the required two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for their advice, to be given within 30 days of such referral, on amendments