

- (h) the members of any armed or military force not established by or under any law and which is under the authority and control of or associated with and promotes the objectives of a political organisation,

who are considered to be members of such respective defence, armed and military forces under the provisions of section 16(3) or (9), as the case may be, of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993): provided that this section shall not apply to the members of any such defence or armed force if the political organisation under whose authority and control it stands or with whom it is associated and whose objectives it promotes does not take part in the elections contemplated in sections 40 or 101(3).

(3) Save for the National Defence Force referred to in subsection (1) no other armed force or military force or armed organisation shall be established in or for the Republic other than -

- (a) as provided for in this Constitution;
- (b) a force established by or under Act of Parliament for the protection of public property or the environment; or
- (c) a service established by or under law for the protection of persons or property.

### **Chief of the National Defence Force**

2. *Without derogating from the provisions of section 185(2),* the President shall appoint a Chief of the National Defence Force, who shall exercise military executive command of the National Defence Force subject to the directions of the Minister of Defence and, during a state of national defence, of the President.

### **Members of the National Defence Force**

3. (1) The National Defence Force shall comprise both a permanent force and a part-time reserve component.

(2) The establishment, organisation, training, conditions of service and other matters concerning the permanent force shall be provided for by Act of Parliament.

(3) The establishment, organisation, training, state of preparedness, calling up, obligations and conditions of service of the part-time reserve component shall be provided for by Act of Parliament.

(4) The National Defence Force shall be established and trained in such a manner that will provide a balanced military force capable of exercising its functions in terms of this Constitution.

(5) The National Defence Force shall strive to be a technologically advanced military force which complies with international standards of competency.

(6) A member of the National Defence Force shall have all the rights of a citizen save for those inconsistent with military service, provided that no full-time member of the Force shall hold office in any political party or political organisation.

(7) A member of the National Defence Force shall be obliged to comply with all lawful orders, but shall be entitled to refuse to execute any order if the execution of such order would constitute an offence or would breach *international law of armed conflict binding on the Republic*.

(8) An Act of Parliament shall provide for adequate compensation to a member of the National Defence Force who suffers loss due to physical or mental disability in the execution of his or her duties.

(9) Provision shall also be made for the adequate compensation to the immediate dependants of a member of the National Defence Force who suffer loss due to the death of or physical or mental disability of the member referred to in subsection (1).

#### **Functions of the National Defence Force**

4. (1) The National Defence Force may be employed -



- (a) for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;
- (b) for service in compliance with the international obligations of the Republic with regard to international bodies and other states;
- (c) for service in the preservation of life, health or property;
- (d) for service in the provision or maintenance of essential services;
- (e) subject to the provisions of section 5, for service in the upholding of law and order in the Republic in co-operation with the South African Police Service under circumstances set out in law where the said Police Service is unable to maintain law and order on its own; and
- (f) for service in support of any department of state for the purpose of socio-economic upliftment.

(2) The National Defence Force shall -

- (a) perform its functions and duties and exercise its powers solely in the national interest by -
  - (i) upholding the Constitution;
  - (ii) providing for the defence of the Republic; and
  - (iii) ensuring the protection of the inhabitants of the Republic,

in accordance with the provisions of this Constitution and any law;

- (b) perform its functions, exercise its powers and comply with its duties under the directions of the government of the Republic;
- (c) refrain from furthering or prejudicing party political interests;

- (d) not breach international customary law binding on the Republic relating to aggression;
- (e) in armed conflict comply with its obligations under international customary law and treaties binding on the Republic; and
- (f) be primarily defensive in the performance of its powers, duties and functions.

(3) The employment, training, organisation and deployment of the Defence Force shall be in accordance with the requirements of subsection (2).

### Accountability

5. (1) The Minister of Defence shall be accountable to Parliament for the employment of the National Defence Force.

(2) Parliament shall annually approve a budget for the defence of the Republic.

(3) A joint standing committee of Parliament on defence shall -

- (a) be established consisting of members of all political parties holding more than 20 seats in the National Assembly;
- (b) be constituted in proportion to the number of seats held by each participating party in the National Assembly; and
- (c) be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to exercise such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

(4) The President shall, whenever he exercises any of his powers referred to in section 76(4)(b)(i), forthwith communicate the reasons for such action to Parliament: provided that if Parliament is not then sitting, the President shall summon the joint



standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after having taken such action to communicate to it the reason for taking the action.

(5) The President shall, if Parliament is in session at the time of his employing the National Defence Force for service as contemplated in section 4(1)(c), forthwith communicate the reason for such action to Parliament and if Parliament is not then sitting, the President shall do so not later than 14 days after the commencement of the next sitting of Parliament, and Parliament may by motion terminate such employment: provided that any act or omission committed prior to such termination, shall be deemed to have been committed in terms of section 4(1)(d).

### Transitional provisions

6. (1) The provisions of section 183(1), (2), (3), (4), (5), (6) and (7) shall apply *mutatis mutandis* to members of the National Defence Force.

(2) The provisions of section 185 (1), (2), (4) and (6) shall apply *mutatis mutandis* to all members of forces referred to in section 1 (2).

(3) The provisions of section 152 shall apply to all members referred to in section 1 (2)(b).

(4) If the number of the members of the National Defence Force in terms of subsection (1) exceeds the personnel strength determined in the force design and structure for that Force, any member of that Force who, due to the integration, consolidation and rationalisation of the National Defence Force is not included in such force design and structure, shall be dealt with in accordance with law.

(5) Continuance of membership of members referred to in section 1(2)(b) shall be subject to such members entering into agreement for temporary or permanent appointment with the National Defence Force within a reasonable time: provided that such contracts shall be in accordance with normal employment policies and terms and conditions of service.

(6) Any reference in any law to the South African Defence Force shall, unless the context indicates otherwise, bear the meaning and be interpreted as the National Defence Force.

(7) The National Defence Force shall, subject to this Constitution and any Act of Parliament, be governed by the Defence Act, 44 of 1957.

## **CHAPTER 14**

### **General and transitional provisions**

#### **Repeal of laws**

190. (1) The laws mentioned in Schedule ... are hereby repealed to the extent set out in the third column of that Schedule.

(2) Notwithstanding the repeal of section 13 and 101(2) of the previous Constitution, any pension which but for such repeal would have been payable shall continue to be payable as if such repeal has not been effected.

#### **Continuation of existing laws and conventions**

191. (1) Subject to the provisions of this Constitution, all laws which immediately prior to the commencement of this Constitution were in force in any part of the national territory shall continue in force until repealed or amended by a competent authority.

(2) The constitutional and parliamentary conventions which existed immediately before the commencement of this Constitution shall continue to exist, except to the extent that they are inconsistent with the provisions of this Constitution.

#### **Continuation of international rights and obligations**

192. All rights and obligations under international agreements which were vested in or binding on the Republic immediately before the commencement of this Constitution, shall after such commencement continue to be vested in or binding on the Republic.



## Status of International Law

192A. (1) Parliament shall subject to the provisions of this Constitution have the powers and functions to agree to the ratification of or accession to international agreements negotiated and signed in terms of section 76 (1)(i).

(2) International agreements approved by Parliament in terms of subsection (1) shall, unless inconsistent with the provisions of this Constitution or excluded by express provision in an Act of Parliament, be binding and shall form part of the law of the Republic.

(3) Rules of customary international law binding on the Republic, unless inconsistent with the provisions of this Constitution or an Act of Parliament, shall form part of the law of the Republic.

## Construction of certain references

193. Unless the context otherwise indicates, a reference in a law referred to in section 191 -

(a) State President ...

(b) Republic ...

(c) Parliament ...

(d) Administrator ...

(e) Province ...

## Transition: Legislatures

194. (1) A person who immediately before the commencement of this Constitution was a member of Parliament or of any other legislative assembly which exercised legislative powers in respect of any part of the national territory, shall at such commencement cease to be such a member, but shall for the purpose of any law relating

to the payment of pension benefits to such members not be disqualified solely by reason of this section.

(2) A person who immediately before the commencement of this Constitution was an officer or employee in the service of Parliament shall after such commencement and notwithstanding section 190 continue in such service subject to the laws regulating such service.

(3) The provisions of section 196(3), (4) and (5) shall apply *mutatis mutandis* in respect of a person referred to in subsection (2).

(4) A person who immediately before the commencement of this Constitution was an officer or employee in the service of a legislature referred to in subsection (1) other than Parliament, shall be deemed to be an officer or an employee in the service of the administration of that part of the national territory in which such legislature exercised legislative powers, and sections 196 and 197 shall apply *mutatis mutandis* in respect of such person.

(5) Any matter before Parliament or any such other legislative assembly which immediately before the commencement of this Constitution has not yet been disposed of by Parliament or such legislative assembly, as the case may be, shall lapse upon such commencement.

(6) The rules and orders of Parliament in force immediately before the commencement of this Constitution, shall, to the extent that they can *mutatis mutandis* be applied in respect of the affairs of Parliament under this Constitution, continue in force until amended or replaced in terms of this Constitution.

#### **Transitional arrangements: The Executive**

195. (1) A person who immediately before the commencement of this Constitution was -

- (a) the State President or a Minister or Deputy Minister of the Republic within the meaning of the previous Constitution;
- (b) the Administrator or a member of the Executive Council of a province; or



- (c) the President, Chief Minister or other chief executive or a Minister, Deputy Minister or other political functionary in the government of

any part of the national territory in terms of a constitution or other constitutional arrangement in force in such part of the said territory, shall after such commencement and notwithstanding section 190 continue in office until the President under this Constitution has been elected and has assumed office.

(2) Any vacancy which may occur in an office referred to in subsection (1)(a), (b) or (c) shall, if necessary, be filled by a person designated by the persons continuing in office in terms of subsection (1)(a), acting in consultation with the Transitional Executive Council.

(3) Executive authority vested in a person or persons referred to in subsection (1)(a), (b) or (c) in terms of a constitution or constitutional arrangement in force immediately before the commencement of this Constitution, shall during the period in which the said person or persons remain in office in terms of subsection (1), be exercised in accordance with such constitution or constitutional arrangement as if it had not been repealed or superseded by this Constitution, and any such person or persons shall continue to be competent to administer any department of state, administration or other institution which was entrusted to, and to exercise and perform any power or function which vested in, him or her or them immediately before the commencement of this Constitution.

(4) Upon the assumption of office by the President in terms of this Constitution -

- (a) the executive authority of the Republic as contemplated in section 70 shall vest in the President acting in accordance with that section; and
- (b) the executive authority of a province as contemplated in section 113 shall vest in the Premier of that province acting in accordance with that section, or if the Premier of a province has not yet assumed office, in the President acting in accordance with section 70 until the Premier assumes office.

(5) The power to exercise executive authority in terms of laws which immediately prior to the commencement of this Constitution were in force in any part of the national territory and which in terms of section 191 continue in force after such commencement, shall be allocated in accordance with the following rules:

(a) All laws with regard to matters which -

(i) do not fall within the functional areas specified in Schedule 6; or

**[(ii) do fall within such functional areas but which are matters in respect of which Parliament has overriding legislative competence in terms of section 118,]**

shall be administered by a competent authority within the jurisdiction of the national government referred to in subsection (4)(a).

(b) All laws with regard to matters which fall within the functional areas specified in Schedule 6 and which are matters in respect of which a provincial legislature has legislative competence in terms of section 118 shall -

(i) if any such law was immediately before the commencement of this Constitution administered by or under the authority of a functionary referred to in subsection (1)(a) or (b), be administered by a competent authority within the jurisdiction of the national government until the administration of any such law is with regard to any particular province assigned under subsection (6) to an appropriate authority within the jurisdiction of the government of such province referred to in subsection (4)(b); or

(ii) if any such law was immediately before the said commencement administered by or under the authority of a functionary referred to in subsection (1)(c), be administered by a competent authority within the jurisdiction of the government of the province in which that law applies, to the extent that it so applies.

(c) In this subsection "competent authority" shall mean -



- (i) in relation to a law of which the administration is allocated to the national government, an authority designated by the President; and
  - (ii) in relation to a law of which the administration is allocated to the government of a province, an authority designated by the Premier of the province.
- (6) (a) The President may, and shall if requested to do so by the Premier of a province, by proclamation in the *Gazette* assign, within the framework of section 118, the administration of a law referred to in subsection (5)(b)(i) to an appropriate authority within the jurisdiction of the government of a province, either generally or to the extent specified in the proclamation.
- (b) When the President so assigns the administration of a law, or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may -
- (i) amend or adapt such law in order to regulate its application or interpretation;
  - (ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or to the extent that the assignment relates to them; and
  - (iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including the transfer or admission of persons to or in the service of the State or any other person, subject to conditions not less favourable than those under which they serve, and the transfer of assets, liabilities, rights and obligations, including moneys, to or from the national or a provincial government or any other person or body established by law.

(c) Any reference in a law so assigned in terms of paragraph (a) to the authority administering such law, shall upon the assignment be deemed to be a reference *mutatis mutandis* to the appropriate authority of the province concerned.

(7) (a) If for any reason the government of a province is unable to assume responsibility within 14 days of its appointment for the administration of any law referred to in subsection (5)(b)(ii), the President shall by proclamation in the *Gazette* assign the administration of such law to a special administrator or other appropriate authority within the jurisdiction of the national government, either generally or to the extent specified in the proclamation, until the government of such province is able to assume such responsibility.

(b) Subsection (6)(b) and (c) shall *mutatis mutandis* apply in respect of an assignment under paragraph (a) of this subsection.

(8) Proclamations contemplated in subsections (6) and (7) shall be tabled before Parliament in session and if not approved within 14 days of such tabling, such proclamations shall lapse.

(9) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired or accrued or incurred as at the said date under and by virtue of such proclamation.

#### **Transitional arrangements: Public administration**

196. (1) A public service, department of state, administration or other institution which immediately before the commencement of this Constitution performed governmental functions under the control of an authority referred to in section 195(1)(a), (b) or (c), shall after such commencement and notwithstanding section 190 continue as such and to perform the said functions in accordance with the laws applicable to it until it is abolished, consolidated with any other public service, department of state, administration or institution or otherwise rationalized as contemplated in section 197.



- (h) any other public service commission existing immediately before the commencement of this Constitution, shall cease to exist upon the establishment under section 184 of a provincial service commission for a province in the area of which such public service commission continued as such in terms of subsection (1).

### **Rationalization of public administration**

197. (1) All public services, departments of state, administrations and other institutions referred to in section 196(1), and all public service commissions established for such public services, shall as soon as is possible after the commencement of this Constitution be rationalized with a view to establishing -

- (a) a public administration at the national level of government to deal with matters within the jurisdiction of the national government referred to in section 195(4)(a); and
  - (b) a public administration for each province to deal with matters within the jurisdiction of each provincial government referred to in section 195(4)(b).
- (2) (a) The responsibility for the rationalization of public services, departments, administrations and other institutions, and public service commissions, shall primarily but not exclusively rest with the national government which shall exercise such responsibility in co-operation with the provincial governments and the Commission on Provincial Government referred to in section 127.
- (b) The responsibility for the internal rationalization of an administration referred to in subsection (1)(b) shall rest with the relevant provincial government.
- (3) (a) The President may, subject to subsection (2)(a), by proclamation in the *Gazette* take such steps as he or she considers necessary in order to achieve the aim mentioned in subsection (1).
- (b) Without derogating from the generality of paragraph (a) the steps referred to in that paragraph may include -

- (i) the amendment, repeal or replacement of any law regulating the establishment, functions and other matters relating to any public service, department, administration, institution or public service commission referred to in section 196(1), or of any law referred to in section 196(2), or of any law which deals with any of the foregoing matters in a consequential way: Provided that if a law referred to in section 196(2) is repealed, provision shall be made for the application of any general law regulating the employment of persons, or any class of persons, in the service of the state to the persons, or class of persons, affected by such repeal; and
- (ii) measures prescribing the transfer or secondment of personnel, or the allocation of assets and liabilities, rights and obligations (including moneys), and administrative records, in order to establish the administrations referred to in subsection (1)(a) and (b).
- (c) A proclamation under paragraph (a) shall be submitted to Parliament in session within 14 days after the publication thereof.
- (d) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.
- (5) (a) A special tribunal consisting of a judge and two assessors shall in accordance with an Act of Parliament determine all claims and disputes of rights in terms of laws regulating as at 1 November 1993 employment in a public service referred to in section 196(1) and arising out of the implementation of this section and section 196.



(b) The Act of Parliament referred to in paragraph (a) shall prescribe expeditious procedures for the adjudication of claims and disputes including the granting of interim and final relief.

(c) Notwithstanding the provisions of any law the procedures contemplated in paragraph (b) shall be the only procedures to be followed by such tribunal.

(d) The decisions of the tribunal on any such claim or dispute shall be final and binding.

(e) The provisions of this subsection shall lapse one year from the commencement of this Constitution.

#### **Transitional arrangements: Assets and liabilities**

198. (1) All assets, including administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 195(1)(a), (b) or (c), or in a government or administration under the control of such an authority, shall be allocated in accordance with the following rules:

(a) Where any asset is applied or intended to be applied for or in connection with a matter which -

(i) does not fall within a functional area specified in Schedule 6; or

[(ii) does fall within such a functional area but is a matter in respect of which Parliament has overriding legislative competence in terms of section 118,]

such asset shall vest in the national government.

(b) Where any asset is applied or intended to be applied for or in connection with a matter which falls within a functional area specified in Schedule 6 and is a matter in respect of which a provincial legislature has legislative competence, such asset shall, subject to paragraph (c), vest in the appropriate provincial government.

- (c) Where any asset referred to in paragraph (b) is applied or intended to be applied for or in connection with the administration of a particular law or the performance of a particular function in a particular area, such asset shall vest in the government to which the administration of that law is assigned, or is assigned in that particular area, in terms of section 195(5), (6) or (7) or to which the performance of that function is entrusted, or entrusted in the particular area, in terms of section 197.
- (d) Where any asset cannot in terms of the foregoing rules be classified with reference to a particular matter, law or function, or where there is disagreement between two or more governments, the advice of the Commission on Provincial Government referred to in section 127 shall be obtained, and any dispute shall be resolved with due regard to such advice.
- (e) Parliament shall be competent to enact a law to facilitate the application of this section and to prescribe guide-lines for the resolution of disputes arising from such application.
- (2)
  - (a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of subsection (1), make such entries or endorsements in or on any relevant register, title deed or other document to register such immovable property in the name of such government.
  - (b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).
- (3)
  - (a) Subject to paragraph (b) all debts and liabilities -
    - (i) directly linked to an asset vesting in terms of subsection (1) in a provincial government, shall be assumed by such provincial government; and



- (ii) other than those referred to in subparagraph (i) shall be assumed by the national government.

(h) Parliament shall be competent to enact a law regulating the re-allocation of debts and liabilities to the national and respective provincial governments, but no such law shall be enacted unless a report and recommendations of the Financial and Fiscal Commission referred to in section 170 has been tabled in and considered by Parliament.

(4) Anything done in terms of this section shall be subject to audit by the Auditor-General.

#### **Transitional arrangements: Judiciary**

199. (1) A superior or lower court of law which immediately before the commencement of this Constitution exercised judicial functions in any part of the national territory, shall after such commencement and notwithstanding section 190 continue as such and to perform judicial functions in accordance with the laws applicable to it until it is abolished, consolidated with any other court or otherwise rationalized as contemplated in section 200.

(2) A person who immediately before the commencement of this Constitution was -

- (a) the Chief Justice or a judge of appeal of the Appellate Division or a judge president of a provincial division or a judge of a provincial or local division of the Supreme Court of South Africa, or a magistrate or other judicial office-bearer of any lower court under the jurisdiction of the said Supreme Court;
- (b) a chief justice, judge of appeal or judge of any superior court in any part of the national territory, other than the Supreme Court of South Africa, or a magistrate or other judicial officer in any lower court under the jurisdiction of any such superior court; or
- (c) an attorney-general in the jurisdictional area of any superior court referred to in paragraph (a) or (b), shall after such commencement and

notwithstanding section 190 continue in office subject to this Constitution and the laws relating to such office.

(3) The provisions of section 196(3), (4) and (5) shall apply *mutatis mutandis* in respect of a person referred to in subsection (2).

(4) A person referred to in subsection (2) shall within 30 days of the commencement of this Constitution 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 the person continuing in office as Chief Justice in terms of subsection (2)(a), before any judge of appeal.

(5) All proceedings which immediately before the commencement of this Constitution were pending before any court exercising jurisdiction in accordance with the law in force then, shall be continued and concluded as if this Constitution had not been passed: Provided that if an appeal in such proceedings is noted after such commencement the appeal proceedings shall be subject to the law as altered by this Constitution.

#### **Rationalization of court structures**

200. (1) All courts of law referred to in section 199(1) shall as soon as is possible after the commencement of this Constitution be rationalized with a view to establishing the court structures contemplated in Chapter 7.

(2) The provisions of section 197(2) (a) and (3) shall apply *mutatis mutandis* in respect of any rationalization under this section.

#### **Transitional and other arrangements: Educational Institutions**

201. (1) The National and provincial governments shall not alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools under existing laws, unless agreement, resulting from *bona fide* negotiations has been reached with such bodies and reasonable notice of implementation has been given.



(2) The National and provincial governments shall not alter the rights, powers and functions of the controlling bodies of universities and technikons under existing laws, unless agreement, resulting from *bona fide* negotiations, has been reached with such bodies.

(3) Should agreement not be reached in terms of subsections (1) and (2), the competence of the national and provincial governments to alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools as well as the controlling bodies of universities and technikons will not be constrained, provided that interested persons and bodies shall have recourse to challenge the exercise of the competence of the said governments under the provisions of this Constitution.

(4) In order to ensure an acceptable quality of education, the responsible government shall provide funds to departmental, community-managed or state-aided primary or secondary schools on an equitable basis.

#### **Continuation of electoral system**

202. (1) (a) The President may, subject to the provisions of this Constitution, by proclamation in the *Gazette* call a general election of members of the National Assembly in pursuance of its dissolution, to be held on a date to be determined by the President: Provided that such and any election shall take place in accordance with the provisions of the Electoral Act, 1993.

(b) The Premier of a provincial government may, subject to the provisions of this Constitution, call a general election of members of the legislature of the province concerned, to be held on a date to be determined by the Premier in which event the provisions of subsection (1)(a) shall apply *mutatis mutandis*.

(2) The provisions of this Constitution and of the Electoral Act, 1993, relating to the holding of elections, shall subject to the provisions of this Constitution, remain in force until a further Parliament is elected in accordance with the provisions of Chapter 5 or in accordance with the new constitutional text adopted in terms of chapter 5.

(3) A referendum shall take place in accordance with the provisions of this Constitution and of the *Electoral Act*, 1993 provided that:

- (a) Such referendum shall be limited to ascertaining the opinion of the electorate on a question formulated by the President;
- (b) A referendum may take place in respect of any part of the Republic or any section of the electorate; and
- (c) The Premier of a provincial government may call a referendum in respect of the territory or electorate of the province concerned, in which event the provisions of this subsection (3)(a) shall apply *mutatis mutandis*.

### Prescription of penalties

203. Subject to the provisions of this Constitution a competent legislature may prescribe penalties in respect of a contravention of any provision of law which falls within the competence of such legislature.

### Definitions

204. (1) In this Constitution;

- (a) "a decision in consultation with" a person or body means a decision taken jointly by the persons or bodies concerned, in which each person or body concurs;
- (b) "a decision after consultation with" a person or body means a decision taken in good faith by the person or body vested with that power, after consulting and giving serious consideration to the views of the person or body concerned.

(2) In this Constitution, unless the context otherwise indicates -

**"Administrator"**



**"Administration"**

**"Chief Justice"**, means the Chief Justice of the Supreme Court of South Africa;

**"Constitutional Principles"** means the principles set out in Schedule 4;

**"Constitutional Assembly"** means the National Assembly and the Senate sitting in joint session for the purposes of Chapters 5 and 9 of this Constitution;

**"Parliament"** means the legislative authority of South Africa consisting of the National Assembly and the Senate;

**"Party"** means a party registered in terms of the *Electoral Act, 1993*;

**"Premier"** means

**"President"** means the President of the Republic of South Africa;

**"Republic"** means the Republic of South Africa as defined in section 1.

**"State President"** means the State President under the *Republic of South Africa Constitution Act, 1983*.

*(A complete list of definitions will be prepared in due course.)*

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

205. (1) This Constitution shall be called the Republic of South Africa Constitution Act, 1993, and shall, save to the extent as may be otherwise required in order that affect may be given to any provision thereof, come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Constitution.

(3) A reference in a provision of this Constitution to the commencement of this Constitution shall, unless the context otherwise indicates, be construed as a reference to the commencement of such provision.

Nkosi sikelel' iAfrika. God seën Suid-Afrika.

Morena boloka sechaba sa heso. May God bless our country.

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika.



**SCHEDULE I**

**The National Territory and Boundaries and Designation of provinces**

## SCHEDULE 2

### *TO BE REVISITED IN CONJUNCTION WITH THE DRAFT ELECTORAL ACT* *System for the Election of the National Assembly and Provincial Legislatures*

#### Nomination of candidates and compilation of party lists

1. Parties registered in terms of the *Electoral Act*, 1993 shall nominate candidates for election to the National Assembly and provincial legislatures, and compile party lists in accordance with the provisions of the *Electoral Act*, 1993.

#### Election of 200 members of the National Assembly on national party lists

2. For the purpose of electing the members of the National Assembly on the national party lists contemplated in section 40, such registered parties shall take part in the election by submitting to the chief electoral officer a list of candidates, not exceeding two hundred, in such order as that party may determine.
3. For the purpose of filling the two hundred seats in the National Assembly contemplated in item 2, the total number of votes cast in a general election shall be divided by two hundred and the result shall be the quota of votes per seat.
4. The total number of votes cast in favour of a registered party, shall be divided by the quota of voters per seat and the result shall, subject to item 5, determine the number of seats allocated to that party. The allocation shall be made in terms of the provisions of the *Electoral Act*, 1993.
5. Where the formula set out in item 4 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 4) shall be awarded to the party or parties concerned in sequence of the highest surplus.

#### Election of 200 members of the National Assembly on regional party lists

6. For the purpose of electing the members of the National Assembly on the regional party lists contemplated in section 40, such parties shall take part in the election by



submitting to the chief electoral officer a list of candidates for each province in which it wishes so to take part, in such order as that party may determine.

7. For the purpose of determining the number of seats of the National Assembly to be filled from regional party lists from a province, the number of votes cast in the province shall be divided by the total number of votes cast nationally and be multiplied by 200. Fractions shall be approximated to the nearest complement.

8. For the purpose of filling the seats in the National Assembly contemplated in item 6, the total number of votes cast in a general election in a province shall be divided by the number of seats to be filled from such province in terms of item 7, and the result shall be the quota of votes per seat for such province.

9. The total number of votes cast in a province in favour of a party shall be divided by the quota of voters per seat for such province and the result shall, subject to item 10, determine the number of seats allocated to that party in respect of such province. The allocation shall be made in terms of the *Electoral Act*, 1993.

10. Where the formula set out in item 9 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 9) shall be awarded to the party or parties concerned in sequence of the highest surplus.

### **Election of members of provincial legislatures**

11. The provisions of items 6, 9 and 10 shall apply *mutatis mutandis* to the election of the members of a provincial legislature contemplated in section 101 of this Constitution: Provided that the quota of votes per seat shall be 50 000.

### **Manner of casting and counting votes**

12. (1) The election of the National Assembly and the election of the provincial legislatures shall be conducted at the same time and in accordance with a single ballot.

(2) Subject to the provisions of item 13, the name of a party that wishes to contest any of the elections referred to in subitem (1), shall appear on the ballot paper.



(3) Each voter shall be entitled to cast one vote only.

(4) The vote contemplated by subitem (3) shall be cast in favour of a party which has entered the election and, subject to the provisions of item 13, such vote shall be counted as a vote in favour of such party -

- (a) in respect of the national list of candidates in the election of the National Assembly; and
- (b) in respect of the regional list of candidates for the province in which the vote was cast in the election of the National Assembly; and
- (c) in respect of the party's list of candidates in the election of the provincial legislature of the province in which the vote was cast.

#### **Declaration of support by one party of another party**

13. (1) If a party wishes to contest the election of one or more provincial legislatures, but does not wish to contest the election of the National Assembly, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of the National Assembly, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be a vote in favour of such other party.

(2) If a party wishes to contest the election of the National Assembly, but does not wish to contest the election of one or more of the provincial legislatures, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of a provincial legislature, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the relevant provincial legislature, be deemed to be a vote in favour of such other party.

(3) If a party wishes to contest the election of one or more provincial legislatures but does not wish to contest the election of all provincial legislatures, it may, within the time and in the manner prescribed by the *Electoral Act*, 1993, declare that it supports a party which has entered the election of the provincial legislatures that it is not contesting, and if it makes such a declaration, all votes cast in its favour shall, for the



purposes of the elections of the provincial legislatures that it is not contesting, be deemed to be a vote in favour of such other party.

(4) For the purposes of subitems (2) and (3), a party may support different parties in the different provinces.

(5) If a party does not make a declaration in terms of subitems (1), (2) or (3), it shall be deemed to have entered the election of the National Assembly and of all the provincial legislatures.

### **SCHEDULE 3**

#### **Oaths and Affirmations of Office**

##### **Oath or Affirmation of the President or Acting President**

In the presence of those assembled here today and in full realisation of the high calling I assume office as President/ Acting President in the service of South Africa I, AB do swear/solemnly affirm to be faithful to the Republic of South Africa and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic; to obey, observe, uphold, and maintain the Constitution and all other laws of South Africa; to discharge my duties with all my strengths and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of South Africa and all its people.

(In the case of an oath:) So help me God.

##### **Oath or Affirmation of a Cabinet and provincial Minister**

I, AB do swear/solemnly affirm to be faithful to the Republic of South Africa and to undertake before those assembled to hold my office as Minister with honour and dignity; to respect and uphold the Constitution and all other laws of South Africa; to be a true and faithful counsellor; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office conscientiously and to the best of my ability.

(In the case of an oath:) So help me God.

##### **Oath or Affirmation of member of Parliament and provincial legislature**

I, AB., do swear/solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my duties as a member of the National Assembly/Senate/provincial legislature to the best of my ability.

(In the case of an oath:) So help me God.

##### **Oath or Affirmation of Office of Judges**

I, AB, do hereby swear/solemnly affirm that I will in my capacity as Judge of the Supreme Court/Constitutional Court uphold and protect the Constitution of the Republic of South Africa and the fundamental rights enshrined therein and in so doing administer



justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the laws of the Republic of South Africa.

(In the case of an oath:) So help me God.

## SCHEDULE 4

### Constitutional Principles

#### I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

#### II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter 3 of this Constitution.

#### III

The Constitution shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

#### IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

#### V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

#### VI

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

#### VII

The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.



## VIII

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and in general, proportional representation.

## IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

## X

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

## XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged. This principle shall not derogate from the provisions of Principle III.

## XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

## XIII

The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

## XIV

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

## XV

Amendments to the Constitution shall require special procedures involving special majorities.

## XVI

Government shall be structured at national, provincial and local levels.

## XVII

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII.

## XVIII

The powers, boundaries and functions of national and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a special majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

## XIX

The powers and functions of the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

## XX

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need for and promotes national unity, and legitimate provincial autonomy and acknowledges cultural diversity.

## XXI

The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:



1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
5. The determination of national economic policies, and the power to promote inter-provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
6. provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia -
  - 6.1 for the purposes of provincial planning and development and the rendering of services; and
  - 6.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the province.
7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers

should be allocated concurrently to the national government and the provincial governments.

8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or provincial governments.

## XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

## XXIII

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

## XXIV

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

## XXV

National and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

## XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.



## XXVII

A Financial and Fiscal Commission, in which each province shall be represented, recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

## XXVIII

**[Notwithstanding the provision of any other clause,]** The right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

## XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, and Auditor-General and Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

## XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functions of the public service, as well as the conditions of service of its members, shall be regulated by law.
2. Every member of the public service shall be entitled to a fair pension.

## XXXI

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

## XXXII

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.



**SCHEDULE 5**  
**Procedure for the Election of the President**

1. Nominations of candidates shall be called for by the person presiding at the meeting at which the President is to be elected.
2. Every nomination shall be submitted in the form prescribed by the Chief Justice and shall be signed by two members of Parliament and also by the person nominated, unless he or she has in writing signified his or her willingness to accept the nomination.
3. The names of the persons duly nominated as provided for in item 2 shall be announced at the meeting at which the election is to take place by the person presiding thereat, and no debate shall be allowed at the election.
4. If in respect of any election only one nomination has been received, the person presiding at the meeting shall declare the candidate in question to be duly elected.
5. Where more than one candidate is nominated for election, a vote shall be taken by secret ballot, each person present and entitled to vote having one vote and any candidate in whose favour the majority of all the votes cast is recorded, shall be declared duly elected by the person presiding at the meeting.
6.
  - (a) If no candidate obtains a majority of all the votes so cast, the candidate who has received the smallest number of votes shall be eliminated and a further ballot shall be taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast and is declared duly elected.
  - (b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the meeting shall by separate vote, to be repeated as often as may be necessary, determine which of those candidates shall for the purpose of subitem (a) be eliminated.
7. Whenever -
  - (a) only two candidates have been nominated; or

- (h) after the elimination of one or more candidates in accordance with the provisions of this Schedule, only two candidates remain,

and there is an equality of votes between those two candidates, the person presiding at the meeting shall at the time the result of the election is announced, fix the time and date at which a further meeting will be held, being a date not more than 7 days thereafter.

8. At the further meeting referred to in item 7, the provisions of this Schedule shall apply as if such further meeting were the first meeting called for the purpose of the election in question.

9. (a) The Chief Justice shall make rules in regard to the procedure to be observed at a meeting at which the President is to be elected, and rules defining the duties of the presiding officer and of any person appointed to assist him and prescribing the manner in which the ballot at any such meeting shall be conducted.

(b) Any such rules shall be made known in such manner as the Chief Justice may consider necessary.

10. The election of the President in terms of section 2(2) shall be held at a time and place to be fixed by the Chief Justice and made known by notice in the *Government Gazette* at least 7 days before the date fixed for such election.



## SCHEDULE 6

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at all levels, excluding university and technikon education.

Health services

Housing

Language policy and the regulation of the use of official languages within a province, subject to section 3.

Local government subject to the Provision of Chapter 10

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police subject to the provisions of Chapter 13

Provincial public media

Public Transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

## SCHEDULE 7

NUMBER AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 46 of 1959	Representation between the Republic of South Africa and Self-governing Territories Act, 1959	The whole
Act No. 32 of 1961	Provincial Government Act, 1961	The whole
Act No. 22 of 1963	Provincial Councils and Executive Committees Act, 1963	The whole
Act No. 26 of 1969	South Africa Act Amendment Act, 1969	The whole
Act No. 26 of 1970	National States Citizenship Act, 1970	The whole
Act No. 21 of 1971	Self-governing Territories Constitution Act, 1971	The whole
Act No. 65 of 1976	Financial Relations Act, 1976	The whole, except sections 27 and 28
Act No. 100 of 1976	Status of Transkei Act, 1976	The whole
Act No. 30 of 1977	Constitution Amendment Act, 1977	The whole
Act No. 31 of 1977	Financial Relations Amendment Act, 1977	The whole
Act No. 89 of 1977	Status of Bophuthatswana Act, 1977	The whole
Act No. 8 of 1978	Bophuthatswana Border Extension Act, 1978	The whole