

- (i) declare, with the approval of Parliament, a state of national defence;
- (ii) with the approval of Parliament, employ the National Defence Force in accordance with the provisions of sections 4 and 5 (*of Chapter 13*); and
- (iii) confer permanent commissions on members of the national Defence Force and cancel commissions in accordance with law.

Executive Deputy Presidents

77. (1) Every party holding at least 80 seats in the National Assembly shall be entitled to designate an Executive Deputy President from among the members of the National Assembly.

(2) Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest number of seats, and the party holding the second largest number of seats, shall each be entitled to designate one Executive Deputy President.

(3) On being designated as such, an Executive Deputy President may vacate his or her seat in the National Assembly, and the party to which he or she belongs shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on such party's election list compiled for the general election, or if there is no such person, by nominating any member of such party.

(4) An Executive Deputy President shall perform such functions as may be assigned to him or her by the President.

(5) The provisions of section 75 shall apply *mutatis mutandis* to an Executive Deputy President.

(6) *The President shall appoint on a rotational basis one of the Executive Deputy Presidents to act as President during his or her absence or temporary incapacity:*

provided that if the President is unable to do so, the Cabinet shall make such appointment.

Salaries of the President and Executive Deputy Presidents

78. (1) There shall be paid to the President and the Executive Deputy Presidents out of and as a charge on the National Revenue Fund and apart from any privilege which they may enjoy, such salaries and allowances as may be determined from time to time by resolution of Parliament.

(2) The President and Executive Deputy Presidents shall not hold any other public offices and shall not perform remunerative work outside the duties of their offices.

Removal from office of the President and filling of the vacancy

79. (1) The President or an Executive Deputy President shall be removed from office if two thirds of all the members of the National Assembly and the Senate, at a joint sitting adopt a resolution impeaching the President or the Executive Deputy President on the grounds of a serious violation of the laws of the land, of misconduct or inability rendering him or her unfit to perform his or her functions in accordance with the provisions of section 75.

(2) If the President resigns, or is removed from or ceases to hold office for any reason, the vacant office of President shall be filled in accordance with the provisions of section 72.

(3) If the office of President becomes vacant an Executive Deputy President, designated by a majority of the members of the Cabinet, shall act as President pending the election in terms of subsection (2).

(4) If the office of an Executive Deputy President becomes vacant, the vacancy shall be filled in accordance with the provisions of section 77.

The Cabinet

80. (1) The Cabinet shall consist of the President, the Executive Deputy Presidents and not more than 27 Ministers appointed by the President in accordance with

the provisions hereof to administer one or more of the Departments of State established by the President.

(2) A party holding at least 20 seats in the National Assembly shall be entitled to be allocated a number of Cabinet portfolios in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other parties represented in the Cabinet.

(3) The President shall allocate portfolios to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Ministers from among the members of Parliament to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The President shall terminate the appointment of any Minister if requested to do so by the leader of the party by which such Minister was designated.

(6) In the event of a vacancy in the Cabinet, occurring for any reason, the President shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No member of the Cabinet may take up any other paid employment, engage in activities inconsistent with membership of the Cabinet, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a member of the Cabinet and his or her private interests.

(8) No member of the Cabinet shall use his or her position as such, or use information entrusted confidentially to him or her in such capacity, directly or indirectly to enrich himself or herself or any other person.

Procedure in the Cabinet

81. (1) Meetings of the Cabinet shall be presided over by the President, or in his or her absence, by an Executive Deputy President: provided that the Executive Deputy

Presidents shall, in the absence of the President, preside over consecutive meetings of the Cabinet in turn.

(2) The Cabinet shall endeavour to reach consensus on all its decisions, in the absence of which, and if any member of the Cabinet requests a vote, by a majority of 7/10 of the Ministers present and voting: provided that, if the Cabinet takes a vote on the national budget, any other financial matter or on a matter concerning the security of the Republic, a majority of 7/10 shall be required.

Accountability of Ministers and the Cabinet

82. (1) A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio allocated to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the government and for its policies.

(2) A Minister shall administer his or her portfolio in accordance with the policy determined by the Cabinet.

(3) If a Minister fails to administer his or her portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with such policy, and may, if the Minister fails to do so and after consultation with the Minister and the leader of his or her party, remove the Minister from office.

Vote of no confidence

83. (1) If a vote of no confidence is passed by Parliament in the President and the Cabinet, the President shall dissolve Parliament and call a general election.

(2) If a vote of no confidence is passed by Parliament in the President, but not the Cabinet, the President shall resign, and the vacancy shall be filled in accordance with the provisions of section 72.

(3) If a vote of no confidence is passed by Parliament in the Cabinet, but not the President, the President may either -

(3) If a vote of no confidence is passed by Parliament in the Cabinet, but not the President, the President may either -

(a) reconstitute the Cabinet in accordance with the provisions of section 80; or

(b) dissolve Parliament and call a general election.

(4) Should the President resign or dissolve Parliament in accordance with the provisions of this section, the President and the Cabinet shall continue to hold office until the vacancy of President has been filled in terms of section 72.

Appointment of Deputy Ministers

84. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet establish deputy ministerial posts for specified Cabinet portfolios.

(2) A party shall be entitled to be allocated a number of deputy ministerial posts in the same proportion as that in which the portfolios in the Cabinet is allocated to it.

(3) The President shall allocate the deputy ministerial posts to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Deputy Ministers from among the members of Parliament to the posts referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) A Deputy Minister shall exercise or perform on behalf of the relevant Minister any of the powers, functions and duties entrusted to such Minister in terms of any law or otherwise which may, subject to the directions of the President and the Cabinet, be assigned to him or her them by such Minister.

(6) The President shall terminate the appointment of any Deputy Minister if requested to do so by the leader of the party which such Deputy Minister represents.

Composition and functioning of Cabinet in the event of non-participation by parties

85. (1) Should any party, other than the party of the President, entitled to designate an Executive Deputy President, fail to do so, the remaining Executive Deputy President or Executive Deputy Presidents, shall exercise all the functions of the Executive Deputy Presidents provided for by this Constitution.

(2) If any party entitled to Cabinet portfolios declines to be represented in the Cabinet, portfolios shall be allocated to the other parties entitled to such representation, in proportion to the number of seats each such party holds in the National Assembly.

(3) If all parties entitled to Cabinet portfolios, other than the party of the President, decline to be represented in the Cabinet, appointments to the Cabinet shall be made at the discretion of the President.

CHAPTER 7

The Judicial Power and the Administration of Justice

Judicial authority

86. (1) The judicial authority of the Republic shall vest in the courts established in terms of this Constitution and any other law.

(2) The judiciary shall be independent, impartial and subject only to the Constitution and the law.

(3) No person or organ of the state shall interfere with judicial officers in the execution of their duties.

Appointment of Chief Justice and President of the Constitutional Court

87. (1) There shall be a Chief Justice of the Supreme Court of South Africa who shall, subject to the provisions of section 94, be appointed by the President after consultation with the Judicial Service Commission and in consultation with the Cabinet.

(2) There shall be a President of the Constitutional Court who shall, subject to the provisions of section 89, be appointed by the President after consultation with the Chief Justice for a non-renewable period of 7 years.

The Constitutional Court and its jurisdiction

88. (1) There shall be a Constitutional Court consisting of a President and 10 other judges appointed in terms of section 89.

(2) The Constitutional Court shall have jurisdiction in all parts of the Republic as the court of final instance over all matters relating to the interpretation, protection and enforcement of all the provisions of this Constitution, including -

(a) the violation or anticipated violation of any fundamental right enshrined in Chapter 3 of this Constitution;

- (b) the constitutionality of executive and administrative conduct of all organs of the state;
- (c) the constitutionality of any law, including an Act of Parliament, irrespective of whether such law came into operation or was adopted prior to or after the coming into operation of this Constitution;
- (d) disputes of a constitutional nature between organs of the state at all levels of government;
- (e) compliance in accordance with the provisions of Chapter 5 and Chapter 9 of this Constitution with the Constitutional Principles contained in Schedule 4;
- (f) whether any matter falls within its jurisdiction;
- (g) to consider and advise on the constitutionality of a bill or draft bill; and
- (h) any other matter provided for in this Constitution or any other law.

(3) Subject to the provisions of section 90(2), the Constitutional Court shall have original jurisdiction over issues referred to in subsection (2) to the extent that such jurisdiction does not overlap with the provisions of section 91(3).

(4) A decision of the Constitutional Court shall bind all persons and all legislative, executive and judicial organs of the state.

(5) In the event of the Constitutional Court finding that any law or any provision thereof is inconsistent with this Constitution, it shall declare such law or provision invalid to the extent of its inconsistency: provided that the Constitutional Court may, in the interests of justice and good government, require Parliament or the competent authority, within a period specified by the Court, to correct the defect in the law, which shall then remain in force pending correction or the expiry of the specified period.

(6) Unless the Constitutional Court in the interests of justice and good government orders otherwise, and save to the extent that it so orders, the declaration of invalidity of a law or any provision thereof -

- (a) existing at the commencement of this Constitution, shall not invalidate anything done in terms thereof before the coming into effect of such declaration of invalidity; or
- (b) enacted after the commencement of this Constitution shall invalidate anything done in terms thereof.

(7) In the event of the Constitutional Court declaring executive or administrative conduct to be unconstitutional, it may order the relevant organ of the state to refrain from such conduct, or it may order it, subject to such conditions and within such time as may be specified by it, to correct its conduct, in order to conform with the Constitution.

(8) The Constitutional Court may in respect of the proceedings before it make such order as to costs as it may deem just and equitable in the circumstances.

Composition of the Constitutional Court and appointment of judges of the Constitutional Court

89. (1) The judges of the Constitutional Court shall be appointed by the President in accordance with the provisions of subsection (3) and (4) for a non-renewable period of 7 years.

(2) No person shall be qualified to be appointed President or Judge of the Constitutional Court unless he or she -

- (a) is a South African citizen; and
- (b) is a fit and proper person to be a Judge of the Constitutional Court; and
- (c) is a judge of the Supreme Court of South Africa or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having so qualified:

- (i) practised as an advocate or an attorney, or
 - (ii) lectured in law at a university; or
- (d) is a person who, by reason of his or her training and experience, has expertise in the field of constitutional law relevant to the application of this Constitution and South African law.

(3) Four judges of the Constitutional Court shall be appointed from amongst the judges of the Supreme Court of South Africa by the President in consultation with the Chief Justice and the Cabinet.

(4) Six judges of the Constitutional Court shall be appointed by the President, after consultation with the President of the Constitutional Court and in consultation with the Cabinet: provided that not more than two persons shall be appointed from the category of persons referred to in subsection (2)(d).

(5) Vacancies in the Constitutional Court shall be filled as follows -

- (a) a vacancy in respect of a judge appointed under subsection (3) shall be filled in accordance with the provisions of subsection (3); and
- (b) a vacancy in respect of a judge appointed under subsection (4) shall be filled in accordance with the provisions of subsection (4).

Engaging the Constitutional Court

90. (1) The conditions upon which the Constitutional Court may be seized of any matter in terms of this Constitution or any other law, and all matters relating to the conduct of proceedings before the Court, shall be regulated by rules prescribed by the President of the Constitutional Court in consultation with the Chief Justice, which rules shall be published in the *Government Gazette*.

(2) The rules of the Constitutional Court may make provision for direct access to the Court where it is in the interests of justice to do so in respect of any matter over which it has jurisdiction.

The Supreme Court

91. (1) There shall be a Supreme Court of South Africa which, subject to section 97, shall consist of an Appellate Division and such provincial and local divisions as may be prescribed by law.

(2) Subject to the provisions of this Constitution, the Supreme Court shall have the jurisdiction, including the inherent jurisdiction, vested in it prior to the coming into operation of this Constitution and any further jurisdiction conferred upon it by this Constitution or by any law.

(3) A provincial or local division of the Supreme Court shall, subject to the provisions of this Constitution have jurisdiction in the following additional matters -

- (a) to inquire into and pronounce upon the validity of a law, other than an Act of Parliament, within its area of jurisdiction;
- (b) the violation or anticipated violation of the fundamental rights enshrined in Chapter 3 of this Constitution within the area of its jurisdiction; and
- (c) subject to subparagraph (a), the constitutionality or validity of executive or administrative actions of all organs of the state taken in terms of any legislation or law applicable within the area of its jurisdiction;
- (d) disputes of a constitutional nature between local governments as well as local and provincial governments;
- (e) to consider and advise on the constitutionality of a provincial bill or draft bill; and
- (f) any other matter provided for by law.

(4) In exercising its jurisdiction under subsection (3) a provincial or local division of the Supreme Court shall have the powers vested in the Constitutional Court in terms of sections 88, (5), (6) and (7) and (8).

(5) The Appellate Division shall have no jurisdiction to adjudicate on any issue within the jurisdiction of the Constitutional Court.

(6) Subject to the provisions of section 92(13) and notwithstanding the provisions of sections 88(2) and 91(3), a provincial division of the Supreme Court may hear a matter, provided that all interested parties shall agree to the jurisdiction of that Court as a court of first instance.

Procedural matters

92. (1) If in any matter before a provincial or local division, there is an issue which may be decisive of the case, and which falls within the exclusive jurisdiction of the Constitutional Court in terms of section 88(3), the provincial or local division concerned shall, if it considers it to be in the interest of justice to do so, refer such matter to the Constitutional Court for its decision: provided that, if it is necessary for evidence to be heard for the purposes of deciding such issue, the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring the matter to the Constitutional Court.

(2) If, in any matter there is any issue, other than the issue or issues referred to the Constitutional Court in terms of subsection (1), the provincial or local division concerned shall, if it refers an issue to the Constitutional Court, suspend the proceedings before it, pending the decision of the Constitutional Court.

(3) If, in any matter before a provincial or local division there are both constitutional and other issues, the provincial or local division concerned shall, if it does not refer an issue to the Constitutional Court, hear the matter, make findings of fact which may be relevant to a constitutional issue within the exclusive jurisdiction of the Constitutional Court, and give a decision on such issues as are within its jurisdiction.

(4) An appeal shall lie to the Appellate Division against a decision of a provincial or local division given in terms of subsection (3).

(5) If the Appellate Division is able to dispose of an appeal brought in terms of subsection (3), without dealing with the constitutional issue or issues that have been raised, it shall do so.

(6) If it is necessary for the purposes of disposing of the appeal for the constitutional issue to be decided, the Appellate Division shall refer such issue to the Constitutional Court for its decision.

(7) The Chief Justice and the President of the Constitutional Court shall jointly formulate rules to facilitate the procedure for dealing with appeals in which there are both constitutional and other issues, which may provide for the constitutional issues to be referred to the Constitutional Court before or after the appeal has been heard by the Appellate Division.

(8) If any division of the Supreme Court disposes of a matter in which constitutional issues have been raised and such court is of the opinion that the constitutional issues are of such public importance that a ruling should be given thereon, it may, notwithstanding the fact that the matter has been disposed of, refer such issues to the Constitutional Court for a ruling.

(9) When a constitutional issue has been referred to the Constitutional Court by a division of the Supreme Court in terms of subsection (8), the Minister of Justice shall, at the request of the President of the Constitutional Court, appoint counsel to argue such constitutional issues.

(10) If the validity of legislation is in dispute in any matter, and the relevant government is not a party to the proceedings, it shall be entitled to intervene as a party before the competent court, or shall be entitled to submit written argument to the said Court.

(11) Appeals to the Appellate Division and the Constitutional Court shall be regulated by law, including the rules of such courts, which may provide that leave of the Court from which the appeal is brought, or to which the appeal is noted, shall be required as a condition for such appeal.

(12) Appeals arising from matters referred to in section 91(3) and which relate to issues of constitutionality shall lie to the Constitutional Court.

(13) If a dispute arises between organs of the state regarding the question whether or not any conduct of one of those organs is consistent with this Constitution, the organ disputing the validity of the act may apply to a provincial or local division to

refer the question of the validity of such conduct to the Constitutional Court for its decision.

(14) If the provincial or local division concerned is of the opinion that the conduct referred to in subsection (14) may be unconstitutional, it shall refer the matter to the Constitutional Court.

(15) If evidence is necessary for the purpose of a matter referred to in subsections (14) and (15) the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring such matter to the Constitutional Court.

(16) A decision not to refer a matter to the Constitutional court in terms of subsection (15), shall be appealable to the Constitutional Court.

(17) If in any matter before a provincial or local division of the Supreme Court the only issue raised is a constitutional issue within the exclusive jurisdiction of the Constitutional Court in terms of section 88(3), refusal to refer such issue to the Constitutional Court shall be appealable to the Constitutional Court.

Other Courts

93. (1) The establishment, jurisdiction, composition and functioning of all other courts shall be regulated by legislation.

(2) If in any proceedings before a court referred to in subsection (1) it is alleged that any law or provision of such law is invalid on the ground of inconsistency with a provision of this Constitution, the court shall, subject to the other provisions of this section, decide the matter on the assumption that the law or provision is valid.

(3) If in any proceedings before a court referred to in subsection (1) the presiding officer is of the opinion that it is in the interests of justice so to do, he or she may postpone the proceedings to enable the party who has alleged that a law is invalid, to apply to the Supreme Court for relief in terms of subsection (4).

(4) If the Supreme Court to which the matter is referred in terms of subsection (3) is of the opinion that a decision regarding the validity of the law or provision is

material to the adjudication of the matter and there is a reasonable prospect that the relevant law will be held to be invalid, the Court shall -

- (a) if the matters raised are within its jurisdiction, deal with such matters itself, and if they are in the exclusive jurisdiction of the Constitutional Court, refer them to the Constitutional Court for its decision after making findings on any evidence which may be relevant to such issue; and
- (b) suspend the proceedings before the court referred to in subsection (1) pending the decision of the Supreme Court or the Constitutional Court, as the case may be.

Appointment, removal, term of office and tenure of judges

94. (1) Judges of the Supreme Court shall be fit and proper persons appointed by the President under his hand and the seal of the Republic of South Africa acting on the advice of the Judicial Service Commission as constituted in terms of section 95.

(2) Judges appointed under subsection (1), sections 87 and 88 shall receive such remuneration as may be prescribed by law, and their remuneration shall not be reduced during their continuation in office.

(3) Any Judge shall, before commencing to exercise the functions of his or her office, take an oath or make an affirmation which shall be subscribed by him or her in the form set out in Schedule 3 of this Constitution.

(4) A Judge may only be removed from office by the President on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Service Commission and upon receipt of an address from both the National Assembly and the Senate in the same session praying for such removal.

(5) A Judge who is the subject of investigations by the Judicial Service Commission in terms of subsection (4) may be suspended by the President pending such investigations.⁶

Judicial Service Commission

95. (1) There shall be a Judicial Service Commission which shall, subject to the provisions of subsection (3), consist of -

- (a) the Chief Justice, who shall preside at meetings of the Commission;
- (b) the President of the Constitutional Court;
- (c) one Judge President designated by the Judges President;
- (d) the Minister of Justice or his or her nominee;
- (e) 2 practising advocate designated by the advocates' profession;
- (f) 2 practising attorney designated by the attorneys' profession;
- (g) one professor of law designated by the deans of all the law faculties at South African universities;
- (h) 4 Senators designated by the Senate *en bloc* by a two thirds majority;
- (i) 4 persons, 2 of whom shall be practising attorneys or advocates who shall be designated by the President in consultation with the Cabinet;
- (j) on the occasion of the consideration of matters specifically relating to a provincial division of the Supreme Court, the Judge President of the relevant division and the Premier of the relevant province.

(2) The functions of the Judicial Service Commission shall be -

- (a) to make recommendations regarding the appointment, removal from office, term of office and tenure of judges of the Supreme Court in terms of section 94;
- (b) to make recommendations regarding the removal from office of judges of the Constitutional Court in terms of section 94(4); and

- (c) to advise the national and provincial governments on all matters relating to the judiciary and the administration of justice.

(3) When the Commission performs its functions in terms of subsection (2)(c) it shall sit without the 4 senators referred to in subsection (1)(h).

(4) The Commission shall determine its own procedure, provided that the support of at least an ordinary majority of all its members shall be required for its decisions and resolutions.

(5) The Commission may appoint committees from among its number and delegate any of its functions to such committee.

Seats of the Constitutional Court and the Appellate Division

96. (1) The seat of the Constitutional Court shall be Johannesburg.

(2) The seat of the Appellate Division of the Supreme Court shall be Bloemfontein.

Languages of the courts

97. (1) A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.

(2) The record of the proceedings of a court shall be kept either in Afrikaans or in English.

98. *(removed to Chapter 1-4)*

Attorney-General

99. (1) The authority to institute criminal prosecutions on behalf of the state shall vest in the attorneys-general of the Republic.

(2) The area of jurisdiction, powers, functions and duties of an attorney-general shall be prescribed by law.

(3) No person shall be appointed as an attorney-general unless he or she is academically qualified in terms of a law regulating the admission of advocates in the Republic to practise as an advocate and, after having become so qualified, has been involved in the practice, administration or teaching of law for a period of at least 10 years.

Magistrates Commission

100. There shall be a Magistrates Commission constituted by law to ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against magistrates, takes place without favour or prejudice, and that the applicable laws and administrative directives in this regard are applied uniformly and properly and to ensure that no victimisation or improper influencing of magistrates occurs.

CHAPTER 8

The Public Protector and Human Rights Commission

The Public Protector

Establishment and appointment

1. (1) There shall be an Office of the Public Protector for the Republic to which shall be appointed a Public Protector who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate shall within 60 days of the first sitting of the Senate nominate a person to be appointed as the Public Protector and if such nomination is approved by resolution adopted by 75% of the members present at a joint sitting of the National Assembly and the Senate, the nominee shall be appointed by the President as Public Protector.

(3) If the nomination is not approved at the joint sitting as contemplated in subsection (2), the matter shall be referred back to the joint standing committee for reconsideration.

(4) A vacancy in the office of Public Protector shall be filled in accordance with the procedure prescribed in this section.

(5) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who -

(a) is a Judge of the Supreme Court of South Africa; or

(b) is qualified to be admitted as an advocate and has, for a cumulative period of at least 10 years after having so qualified:

(i) practised as an advocate or an attorney, or

(ii) lectured in law at a university; or

(c) has specialised knowledge of or experience of a period of at least 10 years in the administration of justice, public administration or public finance.

(6) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Public Protector will hold office for a period of 7 years.

(7) The remuneration and other conditions of employment of the Public Protector shall be prescribed by an Act of Parliament and such remuneration shall not be reduced, nor shall such conditions be adversely altered, during his or her term of office.

(8) The Public Protector shall not perform remunerative work outside his or her official duties.

(9) The Public Protector may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of an address from both the National Assembly and the Senate requesting such removal.

(10) A Public Protector who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (9) may be suspended by the President pending such investigation.

Independence and Impartiality

2. (1) The Public Protector shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Public Protector and the persons appointed in terms of section 4(1) shall have such immunities and privileges as may be assigned to them by Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall **[improperly interfere with]** hamper the Public Protector in the exercise of his or her powers, duties and functions.

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

Powers, Functions and Duties

3. (1) The Public Protector shall be entitled -

(a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged -

(i) maladministration in connection with the affairs of the government at any level; or

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function; or

- (iii) improper or dishonest act, omission or corruption with respect to public money; or
 - (iv) improper or unlawful enrichment or the receipt of any improper advantage or promise of such enrichment or advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
 - (v) any alleged act or omission by an employee of government at any level or a person performing a public function which results in unlawful or improper prejudice to any other person.
- (b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by -
- (i) mediation, conciliation or negotiation; or
 - (ii) advising, where necessary, any complainant regarding appropriate remedies; or
 - (iii) any other means as may be expedient in the circumstances.
- (c) at any time prior to, during or after an investigation -
- (i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
 - (ii) if he or she deems it advisable, to refer any matter which has a bearing on the investigation contemplated in subparagraph (a) to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected or any other public body or authority.

- (d) Nothing in this subsection shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.

(2) The Public Protector shall conduct an investigation under subsection (1) with due regard to the circumstances of each case, and shall for the purposes of such investigation, in addition to such powers as may be prescribed by law, but subject to the provisions of this Constitution and the law of privilege, have the power to -

- (a) direct any person to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which in the opinion of the Public Protector, has a bearing on the matter being inquired into, and may examine such person for that purpose; and
- (b) enter or authorise another person to enter any building or premises and there to make such investigation or inquiry as he or she may deem necessary and seize anything on those premises which in his or her opinion has a bearing on the purpose of the investigation.

(3) The Public Protector or any member of his or her staff shall be competent but not compellable to answer questions in any proceedings in a court of law or before any body or institution established by or under any law in connection with any information which in the course of his or her investigation has come to his or her knowledge.

(4) .Recourse to or exercise of any powers, functions and duties of the Public Protector, shall not oust the jurisdiction of the Court to hear any matter or cause whatsoever.

(5) Notwithstanding any other provision the Public Protector shall report in writing on his or her activities to Parliament at least once every year.

Staff and expenditure

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

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

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

Provincial Public Protector offices

5. (1) A provincial legislature may by law establish and regulate an Office of Provincial Public Protector.

(2) A provincial law referred to in subsection (1) shall not in any way derogate from the powers of the Office of the Public Protector established in terms of section 1.

(3) The Provincial Public Protector shall be appointed by the Premier in consultation with the Public Protector, provided that the appointment shall be confirmed by resolution of a two thirds majority of the provincial legislature.

(4) The powers, duties and functions of the Provincial Public Protector are to be exercised in consultation and conjunction with the Public Protector who has concurrent jurisdiction in the province concerned.

Human Rights Commission

Establishment and appointment

6. (1) There shall be a Human Rights Commission which shall consist of 11 fit and proper persons who are South African citizens and broadly representative of the South African community.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate shall within 60 days of the first sitting of the Senate nominate persons to be appointed to the Commission and if such nominations are approved by resolution adopted by 75% of the

members present at a joint sitting of the National Assembly and the Senate, the nominees shall be appointed to the Commission by the President.

(3) If the nominations are not approved at the joint sitting as contemplated in subsection (2), the matter shall be referred back to the joint standing committee for reconsideration.

(4) A vacancy on the Commission shall be filled in accordance with the procedure prescribed in this section.

(5) The Human Rights Commission shall have powers, duties and functions vested in it by an Act of Parliament which shall include the duty to -

- (a) promote the observance of, the respect for and the defence of fundamental rights;
- (b) develop an awareness of fundamental rights amongst all people of the Republic;
- (c) make recommendations to the government and all organs of the state at all levels when it considers such action advisable for the adoption of progressive measures in favour of fundamental rights within the framework of the law and this Constitution as well as appropriate measures for the further observance of those rights;
- (d) prepare such studies for report on or relating to fundamental rights as it considers advisable in the performance of its duties;
- (e) request any organ of government to supply it with information on any legislative or executive measures adopted by it in or relating to matters of fundamental rights; and
- (f) receive and consider recommendations or representations from any person or organisation on the application of the provisions of Chapter 3.

(6) If the Commission is of the opinion that any provisions of any proposed legislation might be contrary to the provisions of Chapter 3 of this Constitution or to

norms of international human rights law which form part of South African law or to other relevant norms of international law, it shall immediately report that fact to the relevant legislature.

(7) The Commission shall be entitled to investigate on its own initiative or on receipt of a complaint any alleged violation of fundamental rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, insofar as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum.

Staff and expenditure

7. (1) The Commission shall appoint a director who shall be the chief executive officer of the Commission, who shall be empowered to appoint staff subject to the approval of the Commission and such conditions of service as may be prescribed by Act of Parliament.

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

Reports

8. The Commission shall be required to report to the President at least once in every year on the performance of its mandate, and the President shall cause such report to be tabled promptly in the National Assembly and the Senate.

CHAPTER 9

Provincial Government

Establishment of provinces

100. The provinces of South Africa shall be the Eastern Cape, the Eastern Transvaal, KwaZulu/Natal, Northern Cape, Northern Transvaal, the Northwest, the Orange Free State, Pretoria-Witwatersrand-Vereeniging, and the Western Cape, the boundaries of which are defined in Schedule 1.

Provincial legislatures

101. (1) There shall be a legislature for each province with the power to make laws in accordance with and subject to the provisions of this Constitution.

(2) Laws made by a provincial legislature shall, subject to exceptions provided for by Act of Parliament, be applicable only within the territory of the province.

(3) The legislature of each province shall consist of the members elected at the time of the election of Parliament according to a system of proportional representation on provincial party lists as provided for in Schedule 2.

(4) The number of seats in a provincial legislature shall be determined by dividing the total number of votes cast in the province in the election held in terms of subsection (3) by 50 000, approximated to the nearest complement: provided that no provincial legislature shall have less than 30 nor more than 100 seats.

(5) After consultation with the Commission on Provincial Government an Executive Council shall appoint a Secretary and other officers of the Provincial Legislature.

(6) For the purposes of setting up a provisional administration for a provincial legislature, the Transitional Executive Council established in terms of the *Transitional Executive Council Act*, 1993 shall appoint for each provincial legislature a provisional secretary who shall hold office as Secretary until an appointment is made in terms of subsection (5) and shall be remunerated out of the Provincial Revenue Fund.

Sessions and Speakers of Provincial Legislatures

102. (1) A session of a provincial legislature shall commence at the time of the first sitting after its election and shall continue until its dissolution.

(2) The first sitting of a provincial legislature after its election shall be convened by the Secretary of the provincial legislature within 7 days after such legislature has been elected.

(3) A provincial legislature shall sit on such days and during such hours as may be determined by the rules and orders referred to in section 107: provided that a provincial legislature may adjourn and fix the time for its next sitting by resolution.

(4) At its first sitting, and after the election of the Premier, the newly elected provincial legislature shall, with the judge presiding in terms of section 114, elect one of its members to be Speaker of the legislature, and one of its members to be Deputy Speaker, who shall be vested with all powers, duties and functions assigned to them by the rules and orders of the provincial legislature.

Qualifications for Election to Provincial Legislatures

103. No person shall be qualified to be a member of a provincial legislature unless he or she:

- (a) is ordinarily resident within the boundaries of the province; and
- (b) is qualified to stand for election as a member of the National Assembly.

Vacation of Seats by Members of Provincial Legislatures

104. (1) A member of a provincial legislature shall vacate his or her seat if he or she -

- (a) ceases to be eligible to be a member of the provincial legislature; or
- (b) ceases to be a member of the party which nominated him or her for election to the provincial legislature; or

- (c) resigns his or her seat in writing addressed to the Premier of the province;
or
- (d) absent himself or herself voluntarily from the provincial legislature for 30 consecutive sitting days, without having obtained the leave of the provincial legislature on grounds specified in its rules and standing orders.

(2) If a seat of a member of a provincial legislature is vacated in terms of subsection (1), the party which nominated such member to sit in the provincial legislature 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 provincial election, or if there is no such person, by nominating any member of the party.

Quorum of meetings of provincial legislature

105. The presence of at least one third of the number of members of the provincial legislature other than the Speaker or the presiding member thereof shall be necessary to constitute a meeting of the provincial legislature for the exercise of its powers and for the performance of its functions: provided that, for the purpose of the passing of a Bill, the quorum shall be one half of the total number of members of the provincial legislature.

Requisite Majorities

106. (1) Save as provided in this Constitution or in a constitution adopted in terms of section 124, a majority of votes cast shall be sufficient for the passing of any Bill, or the taking of any decision or resolution by a provincial legislature.

(2) The Speaker of the provincial legislature or the person presiding at a meeting of the provincial legislature shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Rules and orders and committees

107. (1) A provincial legislature may 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 its powers and performing its functions any committee of a provincial legislature 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.

Privileges and immunities of provincial legislatures

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

(2) Provision for other privileges and immunities of members of provincial legislatures may be made by law of the provincial legislature concerned.

Assent to Bills passed by the provincial legislatures

109. A Bill passed by a provincial legislature in terms of this Constitution shall require the assent of the Premier to be signified by his or her signature attached to the bill, and the publication of the Act in the *Provincial Gazette* in order to acquire the status of a valid law of a provincial legislature.

Signature and Enrolment of provincial legislation

110. (1) Any valid law of a provincial legislature which has been duly passed by such legislature, shall be signed by the Premier, published in the *Provincial Gazette*, enrolled in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and such copy shall be conclusive evidence of the provisions of the law.

(2) In case of conflict between the copies of a law enrolled in terms of subsection (1), the copy signed by the Premier shall prevail.

(3) The public shall have the right of access to the copies of the laws of a provincial legislature enrolled in terms of subsection (1) subject to such regulations as may be prescribed by Parliament to protect the safety and durability of the said copies and the convenience of the Registrar's staff.

Public access to provincial legislature

111. All sessions of a provincial legislature 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.

Duration of the provincial legislature

112. (1) The provincial legislature shall continue until Parliament is dissolved under Chapter 5.

(2) Notwithstanding the dissolution of a provincial legislature, every person who at the date of dissolution is a member of the provincial legislature shall remain a member thereof, the provincial legislature shall remain competent to perform its functions until a legislature replacing it is duly constituted, and the Premier shall be competent to summon it for the dispatch of business.

Executive power of the province

113. (1) The executive power of a province shall vest in the Premier who shall exercise his or her powers and functions subject to the provisions of this Constitution.

(2) A province shall have executive power over all matters regarding which such province has lawfully exercised its legislative competence and matters allocated to it in terms of *section 119 (now removed to Chapter 14)* or any law, and matters delegated to it under any law.

The Premier

114. (1) The Premier shall be elected by the provincial legislature from among its number in the manner, *mutatis mutandis*, provided for in Schedule 5: provided that a Judge designated by the Chief Justice shall preside at the election.

(2) The Premier shall hold office until he or she is removed from office in terms of this Constitution, or until he or she is replaced in terms of the provisions of a provincial constitution adopted in terms of section 124.

(3) The Premier shall be responsible for the observance of the provisions of this Constitution and all other laws by the executive of the province.

(4) The Premier shall exercise all powers and perform all functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law in consultation with the Executive Council.

(5) The Premier shall be competent to exercise the following powers and functions -

(a) to assent to, sign and promulgate bills duly passed by the provincial legislature;

(b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by the provincial legislature back for further consideration by such legislature;

(c) to convene meetings of the Executive Council;

(d) during an adjournment of the provincial legislature, to convene a special sitting thereof; and

(e) all other powers and functions conferred on him or her by law.

(6) The Premier shall be removed from office if two thirds of all the members of the provincial legislature adopt a resolution impeaching the Premier on the grounds of

a serious violation of the laws of the land, or misconduct or inability rendering him or her unfit to perform his or her functions.

(7) If the Premier resigns, or is removed from or ceases to hold office for any reason, the vacant office of Premier shall be filled in accordance with the provisions of subsection (1).

(8) If the office of Premier becomes vacant, a Member of the Executive Council designated by a majority of such Council shall act as Premier pending the election in terms of subsection (1).

The Executive Council

115. (1) The Executive Council shall consist of the Premier and not more than 10 Members appointed by the Premier in accordance with the provisions of this section to administer one or more of the departments of the province established by the Premier.

(2) A party holding at least 10% of the seats in the Provincial Legislature shall be entitled to be allocated a number of Executive Council portfolios in proportion to the number of seats held by it in the Provincial Legislature relative to the number of seats held by the other parties represented in the Executive Council.

(3) The Premier shall allocate portfolios to the parties represented in the Executive Council after consultation with the leaders of the parties represented in the Executive Council.

(4) The Premier shall appoint Members of the Executive Council from among the members of the Provincial Legislature to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The Premier shall terminate the appointment of any Member of the Executive Council if requested to do so by the leader of the party which such member represents.

(6) In the event of a vacancy in the Executive Council, occurring for any reason, the Premier shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No Member of the Executive Council may take up any other paid employment, engage in activities inconsistent with membership of the Executive Council, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a Member of the Executive Council and his or her private interests.

(8) A Member of the Executive Council shall preserve the confidentiality of any information entrusted to him or her in such capacity and shall not use his or her position or such information directly or indirectly to enrich himself or herself or any other person.

(9) Every Member of the Executive Council shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Procedure in the Executive Council

116. (1) Meetings of the Executive Council shall be presided over by the Premier, or in his or her absence, by a Member of the Executive Council elected by the Executive Council for that purpose.

(2) The Executive Council shall endeavour to reach consensus on all its decisions, in the absence of which, and if any Member of the Executive Council requests a vote, by a % of the Members of the Executive Council present and voting.

Accountability of Members of the Executive Council

117. (1) A Member of the Executive Council shall be accountable individually both to the Premier and to the Provincial Legislature for the administration of the portfolio allocated to him or her, and all Members of the Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.

(2) A Member of the Executive Council shall administer his or her portfolio in accordance with the policy determined by the Executive Council.

(3) If a Member of the Executive Council fails to administer his or her portfolio in accordance with the policy of the Executive Council, the Premier may require the Member concerned to bring the administration of the portfolio into conformity with such policy, and may, if the Member fails to do so and after consultation with him or her and the leader of his or her party, remove such Member from office.

(4) If a vote of no confidence is passed by the Provincial Legislature in the Premier and the Executive Council, the Premier shall dissolve the Provincial Legislature and call an election.

(5) If a vote of no confidence is passed by the Provincial Legislature in the Premier, but not the Executive Council, the Premier shall resign, and the vacancy shall be filled in accordance with the provisions of section 114(1).

(6) If a vote of no confidence is passed by the Provincial Legislature in the Members of the Executive Council, but not the Premier, the Premier shall either -

(a) reconstitute the Executive Council in accordance with the provisions of section 115; or

(b) dissolve the Provincial Legislature and call an election.

(7) Should the Provincial Legislature be dissolved in accordance with the provisions of this section, the Premier shall continue to hold office until a Premier is elected in terms of section 114, and the Members of the Executive Council shall continue to hold office until a new Executive Council is appointed in terms of section 115.

Remuneration of Premiers, Members of the Executive Council and Members of Provincial Legislatures

117A. The Premier, Members of an Executive Council and Members of the Provincial Legislature shall be paid out of and as a charge on the Provincial Revenue Fund such

salary and allowances and pensions, as may be determined from time to time by resolutions of the Provincial Legislature.

Legislative competences of provinces

118. (1) A provincial legislature shall, subject to the provisions of subsections (3) and (4), have concurrent competence with Parliament to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6.

(2) The legislative competence referred to in subsection (1) shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

(3) An Act of Parliament which deals with a matter referred to in subsections (1) and (2) shall prevail over a provincial law inconsistent therewith only to the extent that -

- (a) it deals with a matter that cannot be regulated effectively by provincial legislation; or
- (b) it deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic; or
- (c) it is necessary to set minimum standards across the nation for rendering of public services; or
- (d) it is necessary for the determination of national economic policies, the maintenance of economic unity, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour or the maintenance of national security; or
- (e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.

(4) An Act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.

(5) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent.

119. *(Removed to Chapter 1-4)*

120. *(Removed to Chapter 1-4)*

Provincial finance and fiscal affairs

121. (1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to execute its powers and functions.

(2) The equitable share of revenue referred to in subsection (1) shall consist of

(a) a percentage, fixed by Act of Parliament, of income tax on individuals which is collected within its boundaries; and

(b) a percentage, fixed by Act of Parliament, of value added tax or other sales tax which is collected within its boundaries; and

(c) other conditional or unconditional allocations of national revenue made in terms of this section.

(3) The percentages referred to in subsection (2)(a) and (b) shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission.

(4) Allocations made in terms of subsection 2(c) shall be determined by Act of Parliament, with due regard to the national interest and after taking into account -

- (a) the provision that has to be made for interest and other payments in respect of the national debt; and
 - (b) the different fiscal capacities including the revenues derived under subsection (2)(a) and (h), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and
 - (c) the legitimate needs and interests of the national government; and
 - (d) the recommendations of the Financial and Fiscal Commission.
- (5) Provincial legislatures may raise other taxes, surcharges or levies, provided that:
- (a) they are authorised to do so by Act of Parliament, passed after taking into account the recommendations of the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.
- (6) A provincial government shall not be entitled to raise taxes detrimentally affecting national policies, inter-provincial commerce, or the national mobility of goods, services, capital and labour.
- (7) Provincial legislatures shall be competent to enact legislation authorising the imposition of user charges: provided that -
- (a) the criteria to be taken into account in raising such charges may be regulated by Act of Parliament in accordance with recommendations made by the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.

(8) A provincial government -

(a) shall not be competent to raise loans for current expenditure: provided that loans may be raised for bridging finance during the current fiscal year, subject to such conditions as may be prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission;

(b) shall be competent to raise loans for capital expenditure: provided that it does so within the framework of norms and conditions prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission.

(9) A provincial government may not guarantee loans, unless:

(a) the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given; and

(b) the giving of the guarantee has been approved by a resolution of Parliament.

(10) Revenue allocations made by the national government to local governments shall ordinarily be made via the provincial government within whose jurisdiction the local government falls.

(11) Allocations from national revenue to provincial governments and local governments shall be made through appropriation acts passed in accordance with the provisions of this section.

(12) There shall be established in each province a Provincial Revenue Fund into which shall be paid all revenue raised by or accruing to the provincial government.

(13) No money may be withdrawn from a Provincial Revenue Fund otherwise than by an appropriation made in accordance with the provisions of law.

122. *To be filled when the text is finally edited. (Removed to Chapter 14)*

Recommendations to Parliament

123. A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

Provincial Constitutions

124. (1) A provincial legislature may, subject to the provisions of this Constitution, adopt a constitution for the province by a two thirds majority of all its members.

(2) A provincial legislature may make such arrangements as it deems appropriate for the negotiation and drafting of a provincial constitution.

(3) A provincial constitution adopted by a provincial legislature shall not be inconsistent with the Constitutional Principles enumerated in Schedule 4 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) A provincial constitution shall be developed in consultation with the Commission on Provincial Government established in terms of section 127.

(5) A provincial constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the Constitutional Assembly passed by two thirds of its members.

(6) A provincial constitution adopted by a provincial legislature may be referred to the Constitutional Court by the chairperson of the Constitutional Assembly after being petitioned by one third of the members of the Constitutional Assembly in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.

(7) A provincial constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding provincial Government

125. (1) The development of a system of provincial government shall receive the priority attention of the Constitutional Assembly and in this regard it shall take into consideration the recommendations of the Commission on Provincial Government referred to in section 127 and the views expressed thereon by the executives of the various provinces.

(2) The Commission's recommendations to the Constitutional Assembly regarding any matter that falls within the ambit of its objects in terms of section 128 shall include draft provisions for the national Constitution.

(3) The Constitutional Assembly shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the Constitutional Assembly, shall lapse, except if a majority of the members of the Constitutional Assembly present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the Constitutional Assembly, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

Election of new provincial Governments

126. A provincial government may at any time after the coming into force of a provincial constitution contemplated in section 124 or of the constitutional dispensation contemplated in section 125, petition the Constitutional Assembly to determine by resolution that an election for the establishment of a new provincial legislature and executive in that province, or in a province incorporating that province in whole or in part, shall be held.