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CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

1993

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ACT

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

PREAMBLE

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

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

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

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

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

CHAPTER I

Formal and Constituent Provisions

The Republic of South Africa

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

National symbols

2. (1) The national anthem and the design of the flag of the Republic shall be as set out in a proclamation by the State President in the *Government Gazette* acting in terms of an Act of Parliament.
- (2) The coat of arms and the seal of the Republic existing on the date of the coming into operation of this Constitution, shall continue to be the coat of arms and the seal of the Republic.

Languages

3. (1) Afrikaans, English, siNdebele, sePedi, seSotho, siSwati, xiTsonga, seTswana, luVenda, siXhosa and siZulu shall be the official South African languages at national level and conditions shall be created for their development and for the promotion of their equal use and enjoyment.
- (2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and Parliament shall make provision for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).
- (3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with all public administrations at the national level in any official South African language of his or her choice.

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

(5) A provincial legislature may, by a two thirds majority, determine any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language existing in any area or in relation to any function at the time of the coming into operation of this Constitution, may be diminished.

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

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

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

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

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

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

(10) Legislation shall provide for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.

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

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

The supremacy of the Constitution

4. (1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, subject to section 88(5) and (6) and section 91(4) be of no force or effect, to the extent of its inconsistency.

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

CHAPTER 2

Citizenship and the Franchise

Citizenship

5. (1) There shall be a South African citizenship, and the acquisition, loss and restoration of South African citizenship shall be regulated by Act of Parliament.

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

The franchise

6. Every person who is -

- (a) a South African citizen or a person who in terms of the *Electoral Act*, 1993 is qualified to vote;
- (b) of or over the age of 18 years; and
- (c) not subject to any disqualification as may be prescribed by law,

shall be entitled to vote in elections of members of the National Assembly, the legislature of a province or a local government in accordance with the laws governing that particular election.

CHAPTER 3

Fundamental Rights

Application

7. (1) This Chapter shall bind the legislative and executive organs of the State at all levels of government including all statutory bodies and functionaries.
- 2) This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Chapter.
- 3) Juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of the rights permits.
- (4) (a) When an infringement of or threat to any right entrenched in this Chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights.
- (b) An application referred to in paragraph (a) may be brought by -
- (i) a person acting in his or her own interest;
 - (ii) an association acting in the interest of its members;
 - (iii) a person acting on behalf of another person who is not in a position to bring such application in his or her own name;
 - (iv) a person acting as a member of or in the interest of a group or class of persons; or
 - (v) a person acting in the public interest.

Equality

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

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

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

(b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with the provisions of subsection (2) shall be entitled to claim restitution of such rights subject to and in accordance with Chapter

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

Life

9. Every person shall have the right to life.

Human dignity

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

Freedom and security of the person

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

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

Servitude and forced labour

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

Privacy

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

Religion, belief and opinion

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

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

Freedom of expression

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

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

Assembly, demonstration and petition

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

Freedom of association

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

Freedom of movement

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

Residence

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

Citizens' rights

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

Political rights

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

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

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

Access to court

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

Access to information

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

Administrative justice

24. Every person shall have the right to -

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

Detained, arrested and accused persons

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

- (a) to be informed promptly in a language which he or she understands of the reason for his or her detention;
 - (b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;
 - (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state;
 - (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice; and
 - (e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.
- (2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -
- (a) in a language which he or she understands, to be informed promptly that he or she has the right to remain silent and to be warned of the consequences of making any statement;
 - (b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, to be brought before an ordinary court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released;
 - (c) not to be compelled to make a confession or admission which could be used in evidence against him or her; and
 - (d) to be released from detention with or without bail, unless the interests of justice require otherwise.

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

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

Economic activity

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

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

Labour Relations

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

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

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

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

(5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired subject to section 34(1).

Property rights

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

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

(3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2) such expropriation shall be permissible for public purposes only and

shall be subject to the payment of agreed compensation or, failing agreement, the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

Environment

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

Children

30. (1) Every child shall have the right -
- (a) to a name and nationality as from birth;
 - (b) to parental care;
 - (c) to security, basic nutrition and basic health and social services;
 - (d) not to be subject to neglect or abuse; and
 - (e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.
- (2) Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.
- (3) For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interests shall be paramount.

Language and culture

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

Customary law

32. (1) Every person who -

- (a) in pursuance of the right entrenched in section 17 belongs to a community which observes a system of customary law; or
- (b) of free and informed choice observes the rules and practices of a system of customary law and associates with other persons observing the same rules and practices,

shall, subject to sections 7(2) and 34(2), have the right to the recognition of such customary law as the legal dispensation governing the internal affairs of the community mentioned in paragraph (a) or regulating his or her interpersonal relationships with the persons mentioned in paragraph (b), as the case may be.

(2) It shall be competent for any court of law applying a system of customary law as contemplated in subsection (1) and finding certain of its rules and practices to be in conflict with section 8, to determine, to the extent that its jurisdiction allows, conditions on and a time within which such rules and practices shall be brought in conformity with section 8.

(3) This section shall not preclude legislation designed to assist the development of customary law in accordance with the values embodied in the other provisions of this Chapter.

Education

33. Every person shall have the right -

- (a) to basic education and to equal access to educational institutions;

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

Limitation

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

- (a) shall be permissible only to the extent that it is -
 - (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and
 - (b) shall not negate the essential content of the right in question,
- and provided further that any limitation to -
- (aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or
 - (bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,

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

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

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

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

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

(b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 24 of the Labour Relations Act 1956, or any other similar body which may replace the Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto."

State of emergency and suspension

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

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

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

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

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

- (a) the creation of retrospective crimes;
- (b) the indemnification of the State or of persons acting under its authority for unlawful actions taken during the state of emergency; or
- (c) the suspension of this section, and sections 7, 8(2), 9, 10, 11(2), 12, 14, 27(1) and (2), 30(1)(d) and (e) and (2) and 34(1) and (2).

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

- (a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;
- (b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Gazette within five days of their detention;
- (c) when rights entrenched in sections 11 or 25 have been suspended -
 - (i) the detention of a detainee shall, as soon as it is reasonably possible but not later than 10 days after his or her detention, be reviewed by a court of law, and the court shall order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;

- (ii) the detainee shall at any stage after the expiry of 10 days of a review in terms of subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;
- (d) the detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;
- (e) the detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;
- (f) the detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and
- (g) the state shall for the purpose of a review referred to in paragraph (c)(i) or (ii) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.

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

Interpretation

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

(2) No law which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used *prima facie*

exceeds the limits imposed in this Chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event the law shall be construed as having the said more restricted meaning.

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

CHAPTER 4

Parliament

Constitution of Parliament

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

Legislative authority of the Republic

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

Duration of Parliament

39. (1) Parliament shall continue until it is dissolved under Chapter 5 or until a new Parliament is constituted in terms of the new constitutional text adopted in accordance with the provisions of Chapter 5, or until it is dissolved as a result of a vote of no-confidence in the national executive.

(2) If Parliament is dissolved in terms of Chapter 5 or in terms of subsection (1), an election for a new Parliament shall be called by the President, and such election shall take place within 90 days from the date of such dissolution.

(3) Notwithstanding the dissolution of Parliament in terms of this Constitution, every person who at the date of the dissolution is a member of the National Assembly or the Senate shall remain a member thereof and the National Assembly and

the Senate shall remain competent to perform their functions until a new National Assembly and a new Senate have been elected.

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

Composition of the National Assembly

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

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

Speaker and Deputy Speaker of the National Assembly

41. (1) At its first sitting, and after the election of the President, the newly elected National Assembly, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker.

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

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

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

(5) The Speaker, or in his or her absence the Deputy Speaker or any other person designated for that purpose in terms of the rules and orders of the National Assembly, shall preside over meetings of the National Assembly.

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

(7) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly shall in like manner elect a member to fill the vacancy: provided that the Speaker shall in such event preside at the election of a new Deputy Speaker.

(8) Where neither the Speaker nor the Deputy Speaker is available, the duties and functions of the Speaker shall be discharged in a manner provided for and by a person designated in terms of the rules and orders of the National Assembly.

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

Qualification of Members of the National Assembly

42. (1) No person may become a member of the National Assembly if he or she -
- (a) at the date of the election is serving a sentence of imprisonment of more than twelve months without the option of a fine; or
 - (b) at any time after the adoption of this Constitution, is convicted of an offence in South Africa or outside of South Africa if such conduct would have constituted an offence within South Africa, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon; or
 - (c) is an unrehabilitated insolvent; or
 - (d) is unsound mind and has been so declared by a competent court; or

(c) holds any office of profit under the Republic: provided that the following persons shall be deemed not to hold an office of profit for the purposes of this paragraph:

- (i) a Minister or Deputy Minister;
- (ii) a person in receipt of a pension paid from the national revenue fund or the revenue fund of a province;
- (iii) a part-time or pensioned member of an existing or dissolved South African security force, or a member of such force;
- (iv) a lawfully appointed justice of the peace or appraiser;
- (v) a member of any council, board, committee, commission of enquiry or similar body established under law or a select committee of the National Assembly, who receives remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.

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

Vacation of Seats

43. (1) A member of the National Assembly shall vacate his or her seat if he or she:

- (a) ceases to qualify for membership of the National Assembly; or
- (b) ceases to be a member of the political party which nominated him or her to sit in the National Assembly; or
- (c) resigns his or her seat in writing addressed to the Speaker; or

- (d) absent himself or herself voluntarily from the National Assembly for 15 consecutive sitting days, without having obtained leave in the manner and on grounds specified in the rules and standing orders of the National Assembly; or
- (e) becomes a member of the Senate, a provincial legislature or of a local government.

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

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

Quorum

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

Oath or Affirmation by Members of the National Assembly

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

Sessions of the National Assembly

46. (1) The National Assembly shall sit:

- (a) at the Houses of Parliament in Cape Town, unless the Speaker, in accordance with the rules and orders of the National Assembly, directs otherwise on the grounds of public interest, security or convenience;
 - (b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the National Assembly and not later than 10 days after such election, and such session shall terminate on such date as the National Assembly may determine by resolution;
 - (c) in ordinary session on such dates as the National Assembly may determine by resolution, and such session shall terminate on such date as the National Assembly may determine by resolution;
 - (d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.
- (2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as its rules and standing orders may provide.
- (3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.
- (4) There shall be a session of the National Assembly at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Composition of the Senate

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

(2) Candidates for the election of the Senate shall be nominated by a party represented in the provincial legislature and the election shall be conducted according to the principle of proportional representation as provided for in the *Electoral Act, 1993*.

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

President and Deputy President of the Senate

48. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected Senate, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the President of the Senate, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the Senate.
- (2) The Senate shall thereafter elect a Deputy President of the Senate from amongst its members, and the Deputy President of the Senate shall act as President of the Senate whenever the President of the Senate is not available, and for that purpose shall have all the powers vested in the President of the Senate.
- (3) The President of the Senate, or in his or her absence the Deputy President of the Senate, shall preside over meetings of the Senate and at joint sessions of the National Assembly and the Senate.
- (4) The President of the Senate or Deputy President of the Senate shall vacate his or her office if he or she ceases to be a member of the Senate, may be removed from office by a resolution of the Senate, and may resign by lodging his or her resignation in writing with the Secretary of Parliament.
- (5) If the office of President of the Senate or Deputy President of the Senate becomes vacant, the Senate shall in like manner elect a member to fill the vacancy.
- (6) Where neither the President of the Senate nor the Deputy President of the Senate is available, the Senate, with the Secretary of Parliament acting as Chairperson, shall elect a member to act as President of the Senate during such absence.
- (7) The President of the Senate or the Deputy President of the Senate or the acting President of the Senate presiding at a meeting of the Senate shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

49. *[To be filled when the text is finally edited]*

Qualification of members of the Senate

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

Quorum

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

Oath or affirmation by Senators

52. Every Senator, before taking his or her seat, shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Vacation of Seats by Senators

53. (1) A senator shall vacate his or her seat if he or she:
- (a) ceases to qualify for membership of the Senate; or
 - (b) resigns his or her seat in writing addressed to the President of the Senate;
or
 - (c) absent himself or herself voluntarily from the Senate for 15 consecutive sitting days, without having obtained the leave of the Senate on grounds specified in its rules and standing orders; or

- (d) becomes a member of the National Assembly, a provincial legislature or a local government.
- (2) If a seat of a member of the Senate is vacated in terms of subsection (1), the political party which nominated that Senator shall nominate a person to fill the vacancy.

Sessions of the Senate

54. (1) The Senate shall sit:
- (a) at the Houses of Parliament in Cape Town, unless the President of the Senate, in accordance with the rule and orders of the Senate, directs otherwise on the grounds of public interest, security or convenience;
 - (b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the Senate and not later than 10 days after such election, and such session shall terminate on such date as the Senate may determine by resolution;
 - (c) in ordinary session on such dates as the Senate may determine by resolution, and such session shall terminate on such date as the Senate may determine by resolution;
 - (d) in such special sessions as may be directed by proclamation in the *Government Gazette* by the President from time to time.
- (2) During such sessions the Senate shall sit on such days and during such times of the day or night as its rules and standing orders may provide.
- (3) The President may alter the date of commencement of any session directed in terms of subsections (1)(c) or (1)(d) if he or she is requested to do so by the President of the Senate on the grounds of public interest or convenience.
- (4) There shall be a session of the Senate at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

Privileges and immunities of members of Parliament

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

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

Public access to Parliament

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

Rights and duties of President, the Deputy President and Ministers in Parliament

56A. (1) The President, an Executive Deputy President and a Minister shall be entitled to sit and to speak in the National Assembly and the Senate, and in a joint session of both Houses, but may only vote in a House of which he or she is a member.

(2) If requested to do so by resolution of the National Assembly or the Senate, the President, an Executive Deputy President and any Minister shall attend a sitting of such House and reply to questions at such sitting.

Parliamentary procedure

Rules and orders and committees

57. (1) The National Assembly and the Senate may each make rules of procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate standing orders, including restrictions on access to such committees.

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

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

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

Ordinary legislation

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

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

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

Finance Bills

59. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly and after they have been considered and reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

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

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

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

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

Bills concerning specified provincial matters

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

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

Amendment of the Constitution

61. (1) Save for the provisions of subsections (2) and (3) and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 4.

(3) An amendment of section 118 shall be passed by a two thirds majority of the total number of members of the National Assembly and of the total number of members of the Senate: provided that the legislative and executive competences of a province shall not be amended without the consent of its legislature.

Requisite Majorities

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

Assent to Bills

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

Signature and enrolment of Acts

64. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the *Government Gazette* shall be 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 copies shall be conclusive evidence of the provisions of the Act.

(2) In case of conflict between the copies of an Act enrolled in terms of subsection (1), the copy signed by the President shall prevail.

(3) The public shall have the right of access to the copies of Acts of Parliament 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.

CHAPTER 5

The Adoption of the new Constitution

The Constitution-making Body

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

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

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

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

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

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

Constitutional Principles

66. (1) In undertaking its task of drafting a new constitutional text, the Constitutional Assembly shall comply with the Constitutional Principles contained in Schedule 4.

(2) During the course of the drafting of the new constitutional text, any constitutional proposal pertaining to such drafting shall be referred to the Constitutional

Court by the Chairperson after being petitioned by one third of the members of the Constitutional Assembly to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would comply with the Constitutional Principles.

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

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

Appointment of commissions, committees and advisory bodies

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

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

(3) If the Constitutional Assembly fails to reach agreement upon the panel of constitutional experts in accordance with the requirements of subsection (2), a panel with the qualifications referred to in subsection (2) shall be appointed consisting of a nominee of each party holding at least 40 seats in the Constitutional Assembly.

Adoption of a new constitutional text

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

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

(3) Should the Constitutional Assembly fail to adopt a new constitutional text by the required two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for its advice, to be given within 30 days of such referral, on amendments within the framework of the Constitutional Principles which might secure a majority necessary for the approval of the constitutional text.

(4) Should a draft prepared in accordance with the unanimous advice of the panel of constitutional experts in terms of subsection (3) not be submitted to the Constitutional Assembly within 30 days, or, should such draft, after being so submitted, not be supported by the required two-thirds majority in the Constitutional Assembly, a constitutional text may be accepted by a majority of the members of the Constitutional Assembly.

(5) The President shall refer a constitutional text accepted in terms of subsection (4) after it has been certified by the Constitutional Court to be in compliance with the Constitutional Principles set out in Schedule 4, to a national referendum.

(6) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft constitutional text.

(7) The constitutional text presented to the electorate in the referendum shall, if approved by a majority of sixty per cent of the votes cast in the referendum, become the Constitution of South Africa.

(8) If the new constitutional text is not approved in the referendum contemplated in subsection (7), or if a new constitutional text is not adopted in terms of this Constitution within two years, Parliament shall be dissolved by the President and a general election shall be held for a new Parliament in accordance with the provisions of this Constitution.

(9) A Constitutional Assembly, composed of the newly elected National Assembly, and the Senate, shall within a period of one year after its first session, approve and pass the new constitutional text by an ordinary majority.

(10) The newly elected Parliament shall be convened in accordance with the provisions of sections 46(1) and 54(1), and shall conduct its proceedings in accordance with the provisions of this Constitution other than the provisions of subsections (1) to (8) hereof.

Amendment of this Chapter

69. (1) No amendments to the provisions of this Chapter shall be permitted in so far as they relate to -

- (a) the Constitutional Principles set out in Schedule 4;
- (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

(2) All other provisions of Chapter 5 shall be capable of being amended by a two thirds majority of the total number of members of the Constitutional Assembly.

CHAPTER 6

The Executive Power

Executive power

70. The executive power of the Republic regarding all matters falling within the legislative power of Parliament shall vest in the President who shall exercise his or her powers and functions subject to the provisions of this Constitution.

Head of State

71. The President shall be the Head of State.

Election of the President

72. (1) The first President under this Constitution shall be elected by the National Assembly at its first sitting.

(2) The election of a President other than the first President referred to in subsection (1) shall be held within 30 days after the vacation of the office of President, within 7 days after a vote of no confidence as contemplated in section 83, or in the event of a general election held in terms of this Constitution, within 30 days after the commencement of the first sitting of the Senate after such general election.

(3) The election referred to in subsection (2) shall take place at a joint sitting of the National Assembly and the Senate.

(4) The Chief Justice or a Judge of the Appellate Division designated by him or her for this purpose shall preside over the elections referred to in subsections (1) and (2).

(5) The election of the President in terms of this section shall be conducted in the manner provided for in Schedule 5.

(6) No person may be elected as President unless he or she has been elected to the National Assembly.

(7) On being elected the President shall vacate his or her seat in the National Assembly, and the political 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.

Oath or affirmation

73. The President-elect shall, before formally assuming office, make an affirmation or take an oath in the form contained in Schedule 3, which shall be administered by the Chief Justice or a judge designated by the Chief Justice for this purpose.

Tenure of office

74. The President 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 the new constitutional text contemplated in Chapter 5 of this Constitution.

Responsibility of the President

75. (1) The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall as head of state defend the Constitution as the supreme law of the land.

(2) The President shall with dignity provide executive leadership in the interests of national unity in accordance with the provisions of this Constitution and all the laws of the Republic.

Powers and functions of the President

76. (1) The President shall be competent to exercise the following powers and functions -

- (a) to assent to, sign and promulgate bills duly passed by Parliament;
- (b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by Parliament back for further consideration by Parliament;
- (c) to convene meetings of the Cabinet, including extraordinary meetings for the resolution of disputes among the members of the Cabinet;
- (d) to refer disputes of a constitutional nature between political parties represented in Parliament or between organs of the State at any level of government to the Constitutional Court or other appropriate institution, commission or body for resolution, whether such institution, commission or body was appointed by himself or herself or constituted under this Constitution or other law;
- (e) to confer honours;
- (f) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

- (g) to appoint commissions of enquiry;
- (h) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any law;
- (i) to negotiate and sign international agreements;
- (j) to proclaim referenda and plebiscites in terms of this Constitution or an Act of Parliament; and
- (k) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit and to remit any fines, penalties or forfeitures.

(2) The President shall consult the Executive Deputy Presidents -

- (a) in the development and execution of the policies of the government;
- (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
- (c) in the assignment and allocation of the functions contemplated in section 79(4) to an Executive Deputy President;
- (d) regarding appointments made under subsection (1)(f); and
- (e) before exercising any of the competences referred to in subsection (1)(g)-(k).

(3) The President shall exercise all other powers and perform all other 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 Cabinet.

(4) (a) The President shall be the Commander-in-Chief of the National Defence Force.

(b) The President may -