

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 CMB within 30 days, or, should such draft, after being so submitted, not be supported by the required two-thirds majority in the CMB, a constitutional text may be accepted by a majority of the members of the CMB.

(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 7, 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 CMB, 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 7;
- (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 CMB.

## **CHAPTER 6**

### **The Executive Power**

[Sections 70 - 85]

## **CHAPTER 7**

### **The Judicial Power**

[Sections 86 - 91]

## **CHAPTER 8**

### **The Ombudsman and the Human Rights Commission**

[Sections 92 - 99]



## CHAPTER 9

### SPRs

#### Establishment of SPRs

100. The SPRs of South Africa shall be ... LISTED BY NAME ..., the boundaries of which are defined in Schedule 1.

#### SPR legislatures

101. (1) There shall be a legislature for each SPR.

(2) The legislature of each SPR shall consist of the members elected at the time of the election of Parliament according to a system of proportional representation on SPR party lists as provided for in Schedule 5.

(3) The number of seats in an SPR legislature shall be determined by dividing the total number of votes cast in the SPR in the election held in terms of subsection (2) by 50 000, approximated to the nearest complement: provided that no SPR legislature shall have less than 30 nor more than 100 seats.

#### Sessions of SPR Legislatures

102. (1) An SPR legislature shall sit:

- (a) At a place fixed by the Provisional Secretary of such SPR appointed by the Transitional Executive Council under the provisions of the *Transitional Executive Council Act, 1993*, unless and until the legislature of the SPR directs that the sessions shall be held at a different place;
- (b) In a session convened and presided over by the Provisional Secretary referred to in subparagraph (a) and commencing as soon as reasonably possible after the election of the SPR legislature, but not later than 7 days after such election, and such session shall terminate on such date as the SPR legislature may determine;

- (c) In such special sessions as may be directed by proclamation by the Premier from time to time.

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

(3) The Premier may alter the date of commencement of any session directed in terms of subsection (1)(c) if he or she considers it desirable to do so on the grounds of public interest or convenience.

### **Qualifications for Election to SPR Legislatures**

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

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

### **Vacation of Seats by Members of SPR Legislatures**

104. (1) Members of SPR legislatures shall vacate their seats if they -

- (a) cease to be eligible to be members of the SPR legislature; or
- (b) cease to be members of the party which nominated them for election to the SPR legislature; or
- (c) resign their seats in writing addressed to the Premier of the SPR; or
- (d) absent themselves voluntarily from the SPR legislature for 30 consecutive sitting days, without having obtained the leave of the SPR legislature on grounds specified in its rules and standing orders.

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

### **Quorum of meetings of SPR legislature**

105. The presence of at least one third of the number of members of the SPR legislature other than the Chairperson or the presiding member thereof shall be necessary to constitute a meeting of the SPR legislature for the exercise of its powers and for the performance of its functions.

### **Requisite Majorities**

106. (1) 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 an SPR legislature.

(2) The Chairperson of the SPR legislature or the person presiding at a meeting of the SPR 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) An SPR 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 their powers and performing their functions any committee of an SPR 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 SPR legislatures**

108. (1) Notwithstanding the provisions of any other law, no member of an SPR legislature 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 the SPR legislature or any committee thereof.

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

### **Signature and Enrolment of SPR Legislation**

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

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

### **Public access to SPR legislature**

110. All sessions of an SPR 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.

### **Assent to Bills passed by the SPR legislatures**

111. A Bill passed by an SPR legislature in terms of this Constitution shall require the assent of the Premier and a member of the SPR executive to be signified by the signing of the bill, and the publication of the Act in the *SPR Gazette* in order to acquire the status of a valid SPR Act.



### **Duration of the SPR legislature**

112. The SPR legislature shall continue until Parliament is dissolved under Chapter 5.

### **SPR executives**

113. (1) The executive of an SPR shall be elected by the SPR legislature according to the principle of proportional representation, each voter having one transferable vote, and shall consist of ten members.

(2) The executive of an SPR shall from among its own number elect a Premier.

(3) Each member of the executive shall be responsible for the administration of one or more of the departments of the SPR to be established by the Premier.

(4) The Premier shall determine how responsibility for the administration of departments shall be allocated to members of the executive.

(5) Every member of an SPR executive shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

(6) There shall be paid to the Premiers, members of an SPR executive and legislature out of and as a charge on the SPR Revenue Fund such salary and allowances and pensions, as may be determined from time to time by resolutions of the SPR legislature.

(7) After consultation with the Commission on SPR Government an SPR executive shall appoint a Secretary of the SPR legislature and other officers of the SPR Legislature.

### **Functioning of SPR executives**

114 to 117. *[The details of the functioning of SPR executives will be dealt with in conjunction with Chapter 6.]*

### **Areas of competence of SPR Governments**

118. (1) Subject to the provisions of subsection (2) an SPR government shall have exclusive legislative competences, including all necessary ancillary powers pertaining thereto, in the following functional areas:

- (a) The appropriation of SPR revenue and moneys for financing the government and services of the SPR
- (b) SPR planning and development
- (c) Town planning
- (d) Firefighting, ambulance services and other civil protection services
- (e) Language policy and language(s) for official use in the SPR
- (f) SPR cultural affairs
- (g) Traditional authorities and indigenous law.
- (h) Markets and pounds
- (i) Road traffic
- (j) Delivery of water, electricity and other essential services
- (k) SPR tourism and recreation
- (l) SPR public media
- (m) SPR roads
- (n) SPR public transport



(o) Casinos, racing and gambling

(2) An SPR legislature may by resolution decline to accept any of the exclusive competences referred to in subsection (1) if it is unable to exercise such competences by reason of lack of administrative, infrastructural or related capacities, but may at any time thereafter require Parliament to transfer any such competence to it.

(3) Parliament shall not legislate on matters falling within the functional areas specified in subsection (1) unless -

- (a) it is necessary for the setting of minimum standards or effective exercise of control over the quality and delivery of services; or
- (b) it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole; or
- (c) uniformity of minimum standards across the nation is required regarding a matter falling within such functional area; or
- (d) it may be necessary for the determination of national economic policies, the promotion of inter-SPR commerce and the protection of the common market in respect of the mobility of goods, services, capital and labour.

(4) An SPR government shall, subject to the provisions of subsection (5), have full legislative competence for SPR purposes, and Parliament shall, subject to the provisions of subsection (7), have concurrent legislative competence in the following functional areas:

- (a) Subject to the provisions of section 121, taxation for SPR purposes
- (b) Local government
- (c) Housing

- (d) Education
- (e) Health services
- (f) Welfare services
- (g) Agriculture
- (h) Fish and game preservation
- (i) The environment
- (j) Public works
- (k) SPR and local policing
- (l) SPR correctional services.

(5) If Parliament exercises its concurrent legislative competence in terms of subsection (4), the legislative competence of an SPR government shall be constrained only to the extent that the relevant parliamentary legislation deals with such matters and expressly or by necessary implication limits the legislative competence of SPR governments.

(6) Whilst this Constitution remains in force, and subject to its provisions, the legislative competences of an SPR referred to in subsections (1) and (4) shall not be amended or diminished without the consent of such SPR legislature.

(7) Parliament shall not exercise its powers under subsection (3) or subsection (4) so as to encroach upon the geographical, functional or institutional integrity of an SPR or in a manner which would deprive an SPR government substantially of any of its competences in terms of subsection (4).

(8) Executive power relating to all functional areas in which an SPR government has legislative competence, shall vest in the SPR executive.



## Continuation, transfer and consolidation of existing administrative responsibility

119. Until the rationalisation and consolidation of administrative institutions and structures has taken place as contemplated in subparagraph (h) or until changes are otherwise made in terms of this constitution or any other law -

- (a) Administrative institutions and structures of Provincial Governments, selfgoverning territories, and Transkei, Bophuthatswana, Venda and Ciskei, if reincorporated, which immediately before the coming into force of this Constitution were established within the boundaries of an SPR, and performed functions within such boundaries, shall continue to perform such functions;
- (b) Personnel of the administrative institutions and structures referred to in subparagraph (a) shall continue in the posts they occupied immediately before the coming into operation of this Constitution, and shall continue to perform the functions which they previously performed;
- (c) The Government of the SPR concerned shall be responsible for and shall exercise control over the performance of those functions which fall within the scope of the functional areas referred to in sections 118(1) and 118(4), and the National Government shall be responsible for and exercise control over the performance of all other functions referred to in subparagraph (b);
- (d) Administrative structures and institutions which immediately before the coming into force of this Constitution formed part of a department of state of the Republic of South Africa referred to in section 24(1) of the *Republic of South Africa Constitution Act*, 1983, and which were at such time responsible for the performance of functions within the boundaries of an SPR, shall continue to be responsible for the performance of such functions;
- (e) The National Government shall be responsible for the performance of and shall exercise control over the functions referred to in subparagraph (d);



- (f) The personnel referred to in subparagraph (b), who perform functions in terms of that paragraph on the instructions of an SPR government, shall be deemed to be in the employ of, and shall be entitled to be remunerated by it on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of that SPR government;
- (g) The personnel referred to in subparagraph (b) who perform functions in terms of that subparagraph on the instructions of the National Government, shall be deemed to be in the employ of and shall be entitled to be remunerated by the National Government, on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of the National Government;
- (h) The National Government and SPR governments shall co-operate with each other, and shall, each within their respective areas of competence, rationalise the administrations and institutions referred to in subparagraph (b), and establish administrative structures and institutions, and employ the personnel needed for the performance of functions undertaken by them, within their areas of competence;
- (i) The National Government and SPR governments in rationalising and/or consolidating administrations and institutions as contemplated in subparagraph (h) shall, in the event of any disagreement between them, have regard to the advice and recommendations of the Commission on SPR Government established in terms of section 127 of this Constitution.

#### Administration of existing laws

120. (1) Existing laws applicable in an SPR governing the operation of the institutions for which the SPR government assumes responsibility and control in terms of section 119, shall continue to govern those matters until they are amended or repealed by the competent legislature, and references in such laws to any government or organ of government shall be deemed to be references *mutatis mutandis* to the government or relevant organ of government of the SPR.



(2) The powers, functions and obligations relating to the legislative and executive competence of the SPR arising from the provisions of the laws referred to in subsection (1), shall vest *mutatis mutandis* in the legislature and executive of the SPR.

(3) Parliament and the legislatures of the SPRs shall, each within their respective areas of competence, undertake the consolidation and unification of the laws referred to in subsection (1) as expeditiously as possible.

#### **SPR finance and fiscal affairs**

121. (1) An SPR shall be entitled to an equitable share of revenue collected nationally in order to enable it and the local governments within its boundaries to provide basic services and to execute their functions and powers.

(2) The Financial and Fiscal Commission established in terms of Chapter 11 shall make recommendations to the National Assembly regarding equitable fiscal and financial allocations to the SPRs from revenue collected nationally, taking into account the national interest, the provisions of subsection (1), economic disparities between the SPRs, as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each SPR.

(3) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.

(4) An SPR government shall not be competent to raise loans for current expenditure.

(5) An SPR government shall be competent to raise loans for capital expenditure with the consent of the national executive given on the advice of the Financial and Fiscal Commission.

(6) An SPR government shall be competent to levy such taxes and surcharges as may be recommended by the Financial and Fiscal Commission and approved by the National Assembly, which approval shall not unreasonably be withheld.

(7) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.

(8) Allocations by the national government to local governments shall ordinarily be made only via an SPR government.

### **Effect of laws of SPR legislature**

122. (1) A law made by an SPR legislature shall have effect in and for the SPR as long and as far only as it is not repugnant to any Act of Parliament duly passed within the competence of Parliament in terms of this Constitution.

(2) The provisions of a law made by an SPR legislature shall be construed as being repugnant to an Act of Parliament only if such provisions are expressly or by necessary implication inconsistent with an Act of Parliament.

### **Recommendations to Parliament**

123. An SPR 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.

### **SPR Constitutions**

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

(2) An SPR legislature may make such arrangements as it deems appropriate for the negotiation and drafting of an SPR constitution.

(3) An SPR constitution adopted by an SPR legislature shall not be inconsistent with the Constitutional Principles enumerated in Schedule 7 or the provisions of the new constitutional text adopted in terms of Chapter 5.

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



(5) An SPR 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 CMB passed by two thirds of its members.

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

(7) An SPR 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 SPR Government**

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

(2) The Commission's recommendations to the CMB 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 CMB 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 CMB, shall lapse, except if a majority of the members of the CMB 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 CMB, 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 SPR Governments**

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

### ***Commission on SPR Government***

#### **Establishment of Commission on SPR Government**

127. A Commission on SPR Government shall be appointed by the President in terms of this Constitution within 30 days of its coming into operation.

#### **Objects and functions of the Commission**

128. (1) The objects and functions of the Commission regarding the establishment of SPR government in terms of this Chapter are to -

- (a) advise the National Government and SPR governments on the establishment and consolidation of administrative institutions and structures in the SPRs and on any matter arising out of the provisions of section 118; and
- (b) make recommendations to the National Government and SPR governments on the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of SPR government.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the CMB in the form of draft constitutional provisions regarding -



- (a) the finalisation of the number and the boundaries of the SPR's of the Republic of South Africa;
- (b) the constitutional dispensations of such SPRs, including the constitutional structures within such SPRs as well as the method of their election and their authority, functions and procedures;
- (c) measures, including transitional measures, that provide for the phasing in of new SPR constitutional dispensations;
- (d) the final delimitation of powers and functions between national and SPR institutions of government with due regard to the criteria that are set out in subsection (3);
- (e) fiscal arrangements between the institutions of national government and those of SPR government;
- (f) the powers and functions of local governments; and
- (g) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -

- (a) The provisions of this Constitution;
- (b) The Constitutional Principles enumerated in Schedule 7;
- (c) Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;

- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;
- (j) Developmental potential;
- (k) Cultural and language realities.

#### **Constitution and impartiality of the Commission**

129. (1) The Commission shall consist of not less than 10, nor more than 15 full-time members, as the President may determine, appointed for the period during which this Constitution is in force.

(2) At least one member of the Commission shall be appointed from each SPR with the approval of the Premier of the SPR.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission shall not hold office in any political party or political organisation.



(6) It shall be an offence subject to penalties prescribed by law to attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

### **Chairperson and deputy chairperson**

130. (1) The President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

(2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

(b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

### **Vacation of office and filling of vacancies**

131. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) Any person who has ceased to be a member of the Commission by reason of the effluxion of time may be reappointed.

(3) If a member of the Commission ceases to hold office, the President may, subject to section 129 appoint a person to fill the vacancy.

### **Meetings of the Commission**

132. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent

meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

### Committees

133. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time-

(i) delegate any power granted to it by or under section 128 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 128 may be performed by such a committee.

(b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.



### **Co-option of persons to serve on or advise committees**

134. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

### **Remuneration and allowances of members of the Commission and other persons**

135. Members of the Commission and persons referred in section 134 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

### **Appointment of Staff**

136. The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with the Commission for Administration, determine the remuneration and conditions of service of such staff.

### **Regulations**

137. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

## **CHAPTER 10**

### **Local Government**

- General provisions regarding the powers, functions and structures of local government;
- The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

## **CHAPTER 11**

### **Finance**

- Provisions relating to existing debts and liabilities of the state;
- the national and SPR revenue funds, taxation, appropriation and financial procedures and legislation;
- the Auditor-General;
- the Reserve Bank;
- the Financial and Fiscal Commission representative of the SPRs.



## CHAPTER 12

### General and transitional provisions

Provisions relating to:

- The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);
- the status of international law;
- the independence and impartiality of the Commission for Administration and the security forces;
- civil society;
- method of publication of notices, etc.;
- affirmation in lieu of oath;
- construction of certain references;
- definitions and terminology;
- short title, commencement and duration of the Constitution.

**SCHEDULE 1**

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



**SCHEDULE 2**  
**Design of the National Flag**

**SCHEDULE 3**  
**The National Coat of Arms**



**SCHEDULE 4**  
**The National Seal**

**SCHEDULE 5**

**System for the Election of the National Assembly and SPR Legislatures**



**SCHEDULE 6**  
**Oaths and Affirmations of Office**

## SCHEDULE 7

### Constitutional Principles

#### I

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

#### II

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

#### III

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

#### IV

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

#### V

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

#### VI

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

#### VII

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



## VIII

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

## IX

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

## X

All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justiciable provisions in the Constitution.

## XI

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

## XII

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

## XIII

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

## XIV

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

## XV

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



## XVI

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

## XVII

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

## XVIII

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of Parliament composed of SPR representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

## XIX

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

## XX

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

## XXI

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle



XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

## XXII

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

## XXIII

A Financial and Fiscal Commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs.

## XXIV

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

1. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.
3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.



4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.
5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.
8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
9. SPR governments shall have powers, either exclusively or concurrently with the national government, inter alia -
  - 9.1 for the purposes of SPR planning and development and the delivery of services; and
  - 9.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the SPR.
10. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be



resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

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

## XXV

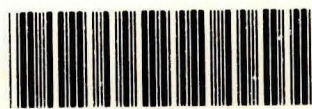
Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

## XXVI

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

## XXVII

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



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