

JUDICIAL REGULATORY INSTRUMENTS

SECOND EDITION

JUDICIAL REGULATORY INSTRUMENTS

This publication is a product of the Office of Chief Justice

ISBN 978-0-620-79143-4

CONTENTS

1.	Constitution of the Republic of South Africa, 1996	6.
2.	Norms and Standards for Judicial Officers	171.
3.	Superior Courts Act 10 of 2013	181.
4.	Regulations on the Criteria for the Determination of the Judicial Establishment of the Supreme Court of Appeal And Divisions of the High Court of South Africa, 2015	229.
5.	Judges Remuneration and Conditions of Employment Act 47, 2001	233.
6.	Judges Remuneration and Conditions of Employment Regulations, 2001	255.
7.	Judicial Service Commission Act 9 of 1994	267.
8.	Code of Judicial Conduct adopted in terms of section 12 of the JSC Act, 1994	299.
9.	Rules to Regulate Procedures Before Judicial Conduct Tribunal (Made in terms of section 25(1) of the JSC Act, 1994	317.
10.	Regulations on Judges Registrable Interest (Made in terms of section 13 (8) of the JSC Act, 1994	331.
11.	Regulations on Non-Judicial Members of Tribunal, 2012	351.
12.	South African Judicial Education Institute Act 14, 2008	357.

1. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

As adopted on 8 May 1996 and amended
on 11 October 1996 by the Constitutional Assembly

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

[DATE OF PROMULGATION: 18 DECEMBER, 1996] [DATE OF COMMENCEMENT: 4 FEBRUARY, 1997]
(unless otherwise indicated)

(Manner of reference to the Act, previously “Constitution of the Republic of South Africa, Act 108 of 1996”, substituted by s. 1 (1) of the Citation of Constitutional Laws, 2005 (Act No. 5 of 2005)
[Assented to 16 December 1996]

(English text signed by the President)

as amended by

Constitution First Amendment Act of 1997
Constitution Second Amendment Act of 1998
Constitution Third Amendment Act of 1998
Constitution Fourth Amendment Act of 1999
Constitution Fifth Amendment Act of 1999
Constitution Sixth Amendment Act of 2001
Constitution Seventh Amendment Act of 2001
Constitution Eighth Amendment Act of 2002
Constitution Ninth Amendment Act of 2002
Constitution Tenth Amendment Act of 2003
Constitution Eleventh Amendment Act of 2003
Constitution Twelfth Amendment Act of 2005
Constitution Thirteenth Amendment Act of 2007
Constitution Fourteenth Amendment Act of 2008
Constitution Fifteen Amendment Act of 2008
Constitution Sixteenth Amendment Act of 2009
Constitution Seventeenth Amendment Act of 2012

In terms of Proclamation No. 26 of 26 April, 2001, the administration of this Act has been assigned to the Minister for Justice and Constitutional Development.

ACT

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

CONTENTS

Preamble	10.
<i>Chapter 1</i>	
Founding Provisions	11.
<i>Chapter 2</i>	12.
Bill of Rights	
<i>Chapter 3</i>	27.
Co-operative Government	
<i>Chapter 4</i>	28.
Parliament	
<i>Chapter 5</i>	49.
The President and National Executive	
<i>Chapter 6</i>	55.
Provinces	
<i>Chapter 7</i>	74.
Local Government	
<i>Chapter 8</i>	81.
Courts and Administration of Justice	
<i>Chapter 9</i>	90.
State Institutions Supporting Constitutional Democracy	
<i>Chapter 10</i>	96.
Public Administration	
<i>Chapter 11</i>	100.
Security Services	
<i>Chapter 12</i>	105.
Traditional Leaders	
<i>Chapter 13</i>	106.
Finance	
<i>Chapter 14</i>	115.
General Provisions	
Schedule 1 - National Flag	119.

Schedule 1A - Geographical Areas of Provinces	120.
Schedule 2 - Oaths and Solemn Affirmation	123.
Schedule 3 - Election Procedures	126.
Schedule 4 - Functional Areas of Concurrent National and Provincial Legislative Competence	129.
Schedule 5 - Functional Areas of Exclusive Provincial Legislative Competence	131.
Schedule 6 - Transitional Arrangements	133.
Annexure A - Amendments to Schedule 2 to the previous Constitution	148.
Annexure B - Government of National Unity: National Sphere	152.
Annexure C - Government of National Unity: Provincial Sphere	158.
Annexure D - Public Administration and Security Services: Amendments to Sections of the Previous Constitution	161.
Schedule 6A - [Schedule 6A inserted by s. 6 of the Constitution Tenth Amendment Act of 2003 and repealed by s. 6 of the Constitution Fourteenth Amendment Act of 2008.]	164.
Schedule 6B - [Schedule 6B, previously Schedule 6A, inserted by s. 2 of the Constitution Eighth Amendment Act of 2002, renumbered by s. 6 of the Constitution Tenth Amendment Act of 2003 and repealed by s. 5 of the Constitution Fifteenth Amendment Act of 2008.]	165.
Schedule 7 Laws Repealed	166.
Index	167.

PREAMBLE

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.
We therefore, through our freely elected representatives, adopt this Constitution
as the supreme law of the Republic so as to -
Heal the divisions of the past and establish a society based on democratic values,
social justice and fundamental human rights;
Lay the foundations for a democratic and open society in which government is
based on the will of the people and every citizen is equally protected by law;
Improve the quality of life of all citizens and free the potential of each person;
and Build a united and democratic South Africa able to take its rightful place as a
sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

Chapter 1

FOUNDING PROVISIONS

1. Republic of South Africa

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

2. Supremacy of Constitution

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

3. Citizenship

- (1) There is a common South African citizenship.
- (2) All citizens are-
 - (a) equally entitled to the rights, privileges and benefits of citizenship; and
 - (b) equally subject to the duties and responsibilities of citizenship.
- (3) National legislation must provide for the acquisition, loss and restoration of citizenship.

4. National Anthem

The national anthem of the Republic is determined by the President by proclamation.

5. National Flag

The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.

6. Languages

- (1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
- (2) Recognising the historically diminished use and status of the

indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

- (3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.
- (b) Municipalities must take into account the language usage and preferences of their residents.
- (4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.
- (5) A Pan South African Language Board established by national legislation must-
 - (a) promote, and create conditions for, the development and use of-
 - (i) all official languages;
 - (ii) the Khoi, Nama and San languages; and
 - (iii) sign language; and
 - (b) promote and ensure respect for-
 - (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
 - (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

Chapter 2

BILL OF RIGHTS

7. Rights

- (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

8. Application

- (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court-
- (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

9. Equality

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. Life

Everyone has the right to life.

12. Freedom and security of the person

- (1) Everyone has the right to freedom and security of the person, which includes the right-
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right-
 - (a) to make decisions concerning reproduction;
 - (b) to security in and control over their body; and
 - (c) not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

14. Privacy

Everyone has the right to privacy, which includes the right not to have-

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that-
 - (a) those observances follow rules made by the appropriate public

- authorities;
- (b) they are conducted on an equitable basis; and
- (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising-
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes-
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

19. Political rights

- (1) Every citizen is free to make political choices, which includes the right-
 - (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right-
 - (a) to vote in elections for any legislative body established in terms of

the Constitution, and to do so in secret; and
(b) to stand for public office and, if elected, to hold office.

20. Citizenship

No citizen may be deprived of citizenship.

21. Freedom of movement and residence

- (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- (4) Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right-
 - (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union;and
 - (c) to strike.
- (3) Every employer has the right-
 - (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right-
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

24. Environment

Everyone has the right-

- (a) to an environment that is not harmful to their health or wellbeing; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application-
 - (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section-
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to

the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

- (1) Everyone has the right to have access to-
 - (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

28. Children

- (1) Every child has the right-
 - (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;

- (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that-
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

29. Education

- (1) Everyone has the right-
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-
- (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own

- expense, independent educational institutions that-
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-
 - (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information

- (1) Everyone has the right of access to-
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

33. Just administrative action

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must-
 - (a) provide for the review of administrative action by a court or, where

- appropriate, an independent and impartial tribunal;
- (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
- (c) promote an efficient administration.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

- (1) Everyone who is arrested for allegedly committing an offence has the right-
 - (a) to remain silent;
 - (b) to be informed promptly-
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
 - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
 - (d) to be brought before a court as soon as reasonably possible, but not later than-
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right-
 - (a) to be informed promptly of the reason for being detained;
 - (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - (f) to communicate with, and be visited by, that person's-
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner.
- (3) Every accused person has a right to a fair trial, which includes the right-
- (a) to be informed of the charge with sufficient detail to answer it;
 - (b) to have adequate time and facilities to prepare a defence;
 - (c) to a public trial before an ordinary court;
 - (d) to have their trial begin and conclude without unreasonable delay;
 - (e) to be present when being tried;
 - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (i) to adduce and challenge evidence;
 - (j) not to be compelled to give self-incriminating evidence;
 - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person

understands.

- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

36. Limitation of rights

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

37. States of emergency

- (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when-
 - (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
 - (b) the declaration is necessary to restore peace and order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-
 - (a) prospectively; and
 - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be

- adopted only following a public debate in the Assembly.
- (3) Any competent court may decide on the validity of-
- (a) a declaration of a state of emergency;
 - (b) any extension of a declaration of a state of emergency; or
 - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that-
- (a) the derogation is strictly required by the emergency; and
 - (b) the legislation-
 - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
 - (ii) conforms to subsection (5); and
 - (iii) is published in the national *Government Gazette* as soon as reasonably possible after being enacted.
- (5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise-
- (a) indemnifying the state, or any person, in respect of any unlawful act;
 - (b) any derogation from this section; or
 - (c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 Section number	2 Section title	3 Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language.
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).

13	Children	With respect to: – subsection (1) (d) and (e); – the rights in subparagraphs (i) and (ii) of subsection (1) (g); and – subsection 1(i) in respect of children of 15 years and younger.
35	Arrested, detained and accused persons	With respect to: – subsections (1)(a),(b) and (c) and (2)(d); – the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) – subsection (4); and – subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

- (6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
- (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
 - (b) A notice must be published in the national *Government Gazette* within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
 - (c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
 - (d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
 - (e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
 - (f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
 - (g) The detainee must be allowed to appear in person before any

court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.

- (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
- (8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

38. Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

39. Interpretation of Bill of Rights

- (1) When interpreting the Bill of Rights, a court, tribunal or forum-
 - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law,

customary law or legislation, to the extent that they are consistent with the Bill.

Chapter 3

CO-OPERATIVE GOVERNMENT

40. Government of the Republic

- (1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- (2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.

41. Principles of co-operative government and intergovernmental relations

- (1) All spheres of government and all organs of state within each sphere must-
 - (a) preserve the peace, national unity and the indivisibility of the Republic;
 - (b) secure the well-being of the people of the Republic;
 - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
 - (d) be loyal to the Constitution, the Republic and its people;
 - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
 - (f) not assume any power or function except those conferred on them in terms of the Constitution;
 - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
 - (h) co-operate with one another in mutual trust and good faith by-
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.
- (2) An Act of Parliament must-
 - (a) establish or provide for structures and institutions to promote and

- facilitate intergovernmental relations; and
 - (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.

Chapter 4

PARLIAMENT

42. Composition of Parliament

- (1) Parliament consists of-
- (a) the National Assembly; and
 - (b) the National Council of Provinces.
- (2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
- (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.
- (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.
- (5) The President may summon Parliament to an extraordinary sitting at any time to conduct special business.
- (6) The seat of Parliament is Cape Town, but an Act of Parliament enacted in accordance with section 76 (1) and (5) may determine that the seat of Parliament is elsewhere.

43. Legislative authority of the Republic

In the Republic, the legislative authority-

- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
- (b) of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104; and
- (c) of the local sphere of government is vested in the Municipal Councils, as set out in section 156.

44. National legislative authority

(1) The national legislative authority as vested in Parliament-

- (a) confers on the National Assembly the power-
 - (i) to amend the Constitution;
 - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5; and
 - (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and
- (b) confers on the National Council of Provinces the power-
 - (i) to participate in amending the Constitution in accordance with section 74;
 - (ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and
 - (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.

(2) Parliament may intervene, by passing legislation in accordance with section 76 (1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary-

- (a) to maintain national security;
- (b) to maintain economic unity;
- (c) to maintain essential national standards;
- (d) to establish minimum standards required for the rendering of services; or
- (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

- (3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.
- (4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

45. Joint rules and orders and joint committees

- (1) The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders-
 - (a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
 - (b) to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee;
 - (c) to establish a joint committee to review the Constitution at least annually; and
 - (d) to regulate the business of-
 - (i) the joint rules committee;
 - (ii) the Mediation Committee;
 - (iii) the constitutional review committee; and
 - (iv) any joint committees established in terms of paragraph (b).
- (2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a joint committee of the Assembly and the Council as they have before the Assembly or the Council.

The National Assembly

46. Composition and election

- (1) The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that-
 - (a) is prescribed by national legislation;
 - (b) is based on the national common voters roll;

- (c) provides for a minimum voting age of 18 years; and
 - (d) results, in general, in proportional representation.
- (2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly.
- [Sub-s.(1) amended by s.1 of the Constitution Tenth Amendment Act of 2003 and by s.1 of the Constitution Fifteenth Amendment Act of 2008.]

47. Membership

- (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except-
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than-
 - (i) the President, Deputy President, Ministers and Deputy Ministers; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;
 - (b) permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council;
 - (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic; or
 - (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of the National Assembly in terms of subsection (1)(a) or (b) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of the National Assembly if that person-
- (a) ceases to be eligible; or
 - (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or

(c) ceases to be a member of the party that nominated that person as a member of the Assembly.

[Sub-s. (3) substituted by s. 2 of the Constitution Tenth Amendment Act of 2003 and by s. 2 of the Constitution Fifteenth Amendment Act of 2008.]

(4) Vacancies in the National Assembly must be filled in terms of national legislation.

48. Oath or affirmation

Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

49. Duration of National Assembly

(1) The National Assembly is elected for a term of five years.

(2) If the National Assembly is dissolved in terms of section 50, or when its term expires, the President, by proclamation must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved or its term expired. A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the National Assembly.

[Sub-s. (2) substituted by s. 1 of the Constitution Fifth Amendment Act of 1999.]

(3) If the result of an election of the National Assembly is not declared within the period established in terms of section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.

(4) The National Assembly remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next Assembly.

50. Dissolution of National Assembly before expiry of its term

(1) The President must dissolve the National Assembly if-

(a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members; and

(b) three years have passed since the Assembly was elected.

(2) The Acting President must dissolve the National Assembly if-

(a) there is a vacancy in the office of President; and

(b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

51. **Sittings and recess periods**

- (1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the Chief Justice, but not more than 14 days after the election result has been declared. The Assembly may determine the time and duration of its other sittings and its recess periods.

[Sub-s. (1) substituted by s. 1 of the Constitution Sixth Amendment Act of 2001.]

- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.

52. **Speaker and Deputy Speaker**

- (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.
- (2) The Chief Justice must preside over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.

[Sub-s. (2) substituted by s. 2 of the Constitution Sixth Amendment Act of 2001.]

- (3) The procedure set out in Part A of Schedule 3 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.
- (5) In terms of its rules and orders, the National Assembly may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

53. **Decisions**

- (1) Except where the Constitution provides otherwise-
 - (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
 - (b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly; and

- (c) all questions before the Assembly are decided by a majority of the votes cast.
- (2) The member of the National Assembly presiding at a meeting of the Assembly has no deliberative vote, but-
 - (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
 - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Assembly.

54. Rights of certain Cabinet members and Deputy Ministers in the National Assembly

The President, and any member of the Cabinet or any Deputy Minister who is not a member of the National Assembly, may, subject to the rules and orders of the Assembly, attend and speak in the Assembly, but may not vote.

[S. 54 substituted by s. 3 of the Constitution Sixth Amendment Act of 2001.]

55. Powers of National Assembly

- (1) In exercising its legislative power, the National Assembly may-
 - (a) consider, pass, amend or reject any legislation before the Assembly; and
 - (b) initiate or prepare legislation, except money Bills.
- (2) The National Assembly must provide for mechanisms-
 - (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
 - (b) to maintain oversight of-
 - (i) the exercise of national executive authority, including the implementation of legislation; and
 - (ii) any organ of state.

56. Evidence or information before National Assembly

The National Assembly or any of its committees may-

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) require any person or institution to report to it;
- (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

57. Internal arrangements, proceedings and procedures of National Assembly

- (1) The National Assembly may-
 - (a) determine and control its internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of the National Assembly must provide for-
 - (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy;
 - (c) financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively; and
 - (d) the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition.

58. Privilege

- (1) Cabinet members, Deputy Ministers and members of the National Assembly-
 - (a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
 - (i) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees.
- (2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund.

[S. 58 amended by s. 4 of the Constitution Sixth Amendment Act of 2001.]

59. Public access to and involvement in National Assembly

- (1) The National Assembly must-
 - (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
 - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
 - (i) to regulate public access, including access of the media, to the Assembly and its committees; and
 - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

60. National Council of Provinces Composition of National Council

- (1) The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.
- (2) The ten delegates are-
 - (a) four special delegates consisting of-
 - (i) the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces; and
 - (ii) three other special delegates; and
 - (b) six permanent delegates appointed in terms of section 61(2).
- (3) The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the Premier, heads the delegation.

61. Allocation of delegates

- (1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3.
- (2) (a) A provincial legislature must, within 30 days after the result of an election of that legislature is declared-
 - (i) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
 - (ii) appoint the permanent delegates in accordance with the nominations of the parties.

(b)

[Para.(b) omitted by s. 1 of the Constitution Fourteenth Amendment Act of 2008.]

[Sub-s. (2) substituted by s. 1 of the Constitution Ninth Amendment Act of 2002 and by s. 1 of the Constitution Fourteenth Amendment Act of 2008.]

- (3) The national legislation envisaged in subsection (2)(a) must ensure the participation of minority parties in both the permanent and special delegates' components of the delegation in a manner consistent with democracy.
- (4) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the province's delegation, must designate special delegates, as required from time to time, from among the members of the legislature.

62. Permanent delegates

- (1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.
- (2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.
- (3) Permanent delegates are appointed for a term that expires-
 - (a) immediately before the first sitting of the provincial legislature after its next election.
 - (b)

[Para.(b) omitted by s. 2 of the Constitution Fourteenth Amendment Act of 2008.]

[Sub-s. (3) substituted by s. 2 of the Constitution Ninth Amendment Act of 2002 and substituted by s. 2 of the Constitution Fourteenth Amendment Act of 2008.]

- (4) A person ceases to be a permanent delegate if that person-
 - (a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate;
 - (b) becomes a member of the Cabinet;
 - (c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person;
 - (d) ceases to be a member of the party that nominated that person and is recalled by that party; or
 - (e) is absent from the National Council of Provinces without permission incircumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate.
- (5) Vacancies among the permanent delegates must be filled in terms of

national legislation.

- (6) Before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

63. Sittings of National Council

- (1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods.
- (2) The President may summon the National Council of Provinces to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.

64. Chairperson and Deputy Chairpersons

- (1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.
- (2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their terms as delegates expire earlier.
- (3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.
- (4) The Chief Justice must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.

[Sub-s. (4) substituted by s. 5 of the Constitution Sixth Amendment Act of 2001.]

- (5) The procedure set out in Part A of Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.
- (6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.
- (7) In terms of its rules and orders, the National Council of Provinces may elect from among the delegates other presiding officers to assist the Chairperson and Deputy Chairpersons.

65. Decisions

- (1) Except where the Constitution provides otherwise-

- (a) each province has one vote, which is cast on behalf of the province by the head of its delegation; and
 - (b) all questions before the National Council of Provinces are agreed when at least five provinces vote in favour of the question.
- (2) An Act of Parliament, enacted in accordance with the procedure established by either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

66. Participation by members of national executive

- (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
- (2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.

67. Participation by local government representatives

Not more than ten part-time representatives designated by organised local government in terms of section 163, to represent the different categories of municipalities, may participate when necessary in the proceedings of the National Council of Provinces, but may not vote.

68. Powers of National Council

In exercising its legislative power, the National Council of Provinces may-

- (a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this Chapter; and
- (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76 (3), but may not initiate or prepare money Bills.

69. Evidence or information before National Council

The National Council of Provinces or any of its committees may-

- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
- (b) require any institution or person to report to it;
- (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and

- (d) receive petitions, representations or submissions from any interested persons or institutions.

70. Internal arrangements, proceedings and procedures of National Council

- (1) The National Council of Provinces may-
 - (a) determine and control its internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of the National Council of Provinces must provide for-
 - (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation of all the provinces in its proceedings in a manner consistent with democracy; and
 - (c) the participation in the proceedings of the Council and its committees of minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

71. Privilege

- (1) Delegates to the National Council of Provinces and the persons referred to in sections 66 and 67-
 - (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
 - (i) anything that they have said in, produced before or submitted to the Council or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees.
- (2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67 may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to permanent members of the National Council of Provinces are a direct charge against the National Revenue Fund.

72. Public access to and involvement in National Council

- (1) The National Council of Provinces must-
 - (a) facilitate public involvement in the legislative and other processes of the Council and its committees; and
 - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
 - (i) to regulate public access, including access of the media, to the Council and its committees; and
 - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

National Legislative Process

73. All Bills

- (1) Any Bill may be introduced in the National Assembly.
- (2) Only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly, but only the Cabinet member responsible for national financial matters may introduce the following Bills in the Assembly:
 - (a) a money Bill; or
 - (b) a Bill which provides for legislation envisaged in section 214.

[Sub-s. (2) substituted by s. 1(a) of the Constitution Seventh Amendment Act of 2001.]

- (3) A Bill referred to in section 76 (3), except a Bill referred to in subsection (2)(a) or (b) of this section, may be introduced in the National Council of Provinces.

[Sub-s. (3) substituted by s. 1(b) of the Constitution Seventh Amendment Act of 2001.]

- (4) Only a member or committee of the National Council of Provinces may introduce a Bill in the Council.
- (5) A Bill passed by the National Assembly must be referred to the National Council of Provinces if it must be considered by the Council. A Bill passed by the Council must be referred to the Assembly.

74. Bills amending the Constitution

- (1) Section 1 and this subsection may be amended by a Bill passed by-
 - (a) the National Assembly, with a supporting vote of at least 75 per cent of its members; and
 - (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (2) Chapter 2 may be amended by a Bill passed by-
 - (a) the National Assembly, with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (3) Any other provision of the Constitution may be amended by a Bill passed-
 - (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and
 - (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment-
 - (i) relates to a matter that affects the Council;
 - (ii) alters provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.
- (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments.
- (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must-
 - (a) publish in the national *Government Gazette*, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment;
 - (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and
 - (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.
- (6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures-
 - (a) to the Speaker for tabling in the National Assembly; and

- (b) in respect of amendments referred to in subsection (1), (2) or (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council.
- (7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of-
 - (a) its introduction, if the Assembly is sitting when the Bill is introduced; or
 - (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced.
- (8) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

75. Ordinary Bills not affecting provinces

- (1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
 - (a) The Council must-
 - (i) pass the Bill;
 - (ii) pass the Bill subject to amendments proposed by it; or
 - (iii) reject the Bill.
 - (b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.
 - (c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may-
 - (i) pass the Bill again, either with or without amendments; or
 - (ii) decide not to proceed with the Bill.
 - (d) A Bill passed by the Assembly in terms of paragraph (c) must be submitted to the President for assent.
- (2) When the National Council of Provinces votes on a question in terms of this section, section 65 does not apply; instead-
 - (a) each delegate in a provincial delegation has one vote;
 - (b) at least one third of the delegates must be present before a vote may be taken on the question; and

- (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

76. Ordinary Bills affecting provinces

- (1) When the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
 - (a) The Council must-
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
 - (b) If the Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
 - (c) If the Council passes an amended Bill, the amended Bill must be referred to the Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent.
 - (d) If the Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on-
 - (i) the Bill as passed by the Assembly;
 - (ii) the amended Bill as passed by the Council; or
 - (iii) another version of the Bill.
 - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members.
 - (f) If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if passes the Bill, the Bill must be submitted to the President for assent.
 - (g) If the Mediation Committee agrees on the amended Bill as passed by the Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.
 - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Assembly and the Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.
 - (i) If a Bill referred to the Council in terms of paragraph (f) or (h) is not

- passed by the Council, the Bill lapses unless the Assembly passes the Bill with a supporting vote of at least two thirds of its members.
- (j) If a Bill referred to the Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but with a supporting vote of at least two thirds of its members.
 - (k) A Bill passed by the Assembly in terms of paragraph (e), (i) or (j) must be submitted to the President for assent.
- (2) When the National Council of Provinces passes a Bill referred to in subsection (3), the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:
- (a) The Assembly must-
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
 - (b) A Bill passed by the Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.
 - (c) If the Assembly passes an amended Bill, the amended Bill must be referred to the Council, and if the Council passes the amended Bill, it must be submitted to the President for assent.
 - (d) If the Assembly rejects the Bill, or if the Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill must be referred to the Mediation Committee, which may agree on-
 - (i) the Bill as passed by the Council;
 - (ii) the amended Bill as passed by the Assembly; or
 - (iii) another version of the Bill.
 - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.
 - (f) If the Mediation Committee agrees on the Bill as passed by the Council, the Bill must be referred to the Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.
 - (g) If the Mediation Committee agrees on the amended Bill as passed by the Assembly, the Bill must be referred to the Council, and if it is passed by the Council, it must be submitted to the President for assent.
 - (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Council and

the Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.

- (i) If a Bill referred to the Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.
- (3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:
 - (a) Section 65(2);
 - (b) section 163;
 - (c) section 182;
 - (d) section 195(3) and (4);
 - (e) section 196; and
 - (f) section 197.
- (4) A Bill must be dealt with in accordance with the procedure established by subsection (1) if it provides for legislation-
 - (a) envisaged in section 44(2) or 220(3); or
 - (b) envisaged in Chapter 13, and which includes any provision affecting the financial interests of the provincial sphere of government.

[Para.(b) substituted by s. 1 of the Constitution Eleventh Amendment Act of 2003.]

- (5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established by subsection (1), except that-
 - (a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it; and
 - (b) if the Bill is referred to the Mediation Committee, the following rules apply:
 - (i) If the National Assembly considers a Bill envisaged in subsection (1)(g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.
 - (ii) If the National Assembly considers or reconsiders a Bill envisaged in subsection (1)(e),(i) or (j), that Bill may be passed only if at least two thirds of the members of the Assembly vote in favour of it.
- (6) This section does not apply to money Bills.

77. Money Bills

- (1) A Bill is a money Bill if it-

- (a) appropriates money;
 - (b) imposes national taxes, levies, duties or surcharges;
 - (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.
- (2) A money Bill may not deal with any other matter except-
- (a) a subordinate matter incidental to the appropriation of money;
 - (b) the imposition, abolition or reduction of national taxes, levies, duties or surcharges;
 - (c) the granting of exemption from national taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against the National Revenue Fund.
- (3) All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.
- [S. 77 substituted by s. 2 of the Constitution Seventh Amendment Act 2001.]

78. Mediation Committee

- (1) The Mediation Committee consists of-
- (a) nine members of the National Assembly elected by the Assembly in accordance with a procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly; and
 - (b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation.
- (2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of the question, is supported by-
- (a) at least five of the representatives of the National Assembly; and
 - (b) at least five of the representatives of the National Council of Provinces.

79. Assent to Bills

- (1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.

- (2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.
- (3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if-
 - (a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or
 - (b) section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill.
- (4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either-
 - (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

80. Application by members of National Assembly to Constitutional Court

- (1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.
- (2) An application-
 - (a) must be supported by at least one third of the members of the National Assembly; and
 - (b) must be made within 30 days of the date on which the President assented to and signed the Act.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if-
 - (a) the interests of justice require this; and
 - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

81. Publication of Acts

A Bill assented to and signed by the President becomes an Act of Parliament, must be published promptly, and takes effect when published or on a date determined in terms of the Act.

82. Safekeeping of Acts of Parliament

The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.

Chapter 5

THE PRESIDENT AND NATIONAL EXECUTIVE

83. The President

The President-

- (a) is the Head of State and head of the national executive;
- (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
- (c) promotes the unity of the nation and that which will advance the Republic.

84. Powers and functions of President

- (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for-
 - (a) assenting to and signing Bills;
 - (b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality;
 - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
 - (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
 - (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
 - (f) appointing commissions of inquiry;
 - (g) calling a national referendum in terms of an Act of Parliament;
 - (h) receiving and recognising foreign diplomatic and consular representatives;
 - (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;
 - (j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures; and

(k) conferring honours.

[General Note: Honourable tributes instituted in Government *Gazette* 24155 of 6 December, 2002 and Government *Gazette* 25213 of 25 July, 2003.]

85. Executive authority of the Republic

- (1) The executive authority of the Republic is vested in the President.
- (2) The President exercises the executive authority, together with the other members of the Cabinet, by-
 - (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
 - (b) developing and implementing national policy;
 - (c) co-ordinating the functions of state departments and administrations;
 - (d) preparing and initiating legislation; and
 - (e) performing any other executive function provided for in the Constitution or in national legislation.

86. Election of President

- (1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.
- (2) The Chief Justice must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President.

[Sub-s. (2) substituted by s. 6 of the Constitution Sixth Amendment Act of 2001.]

- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the Chief Justice, but not more than 30 days after the vacancy occurs.

[Sub-s. (3) substituted by s. 6 of the Constitution Sixth Amendment Act of 2001.]

87. Assumption of office by President

When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

88. Term of office of President

- (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.
- (2) No person may hold office as President for more than two terms, but

when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

89. Removal of President

- (1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of-
 - (a) a serious violation of the Constitution or the law;
 - (b) serious misconduct; or
 - (c) inability to perform the functions of office.
- (2) Anyone who has been removed from the office of President in terms of subsection (1)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

90. Acting President

- (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President:
 - (a) The Deputy President.
 - (b) A Minister designated by the President.
 - (c) A Minister designated by the other members of the Cabinet.
 - (d) The Speaker, until the National Assembly designates one of its other members.
- (2) An Acting President has the responsibilities, powers and functions of the President.
- (3) Before assuming the responsibilities, powers and functions of the President, the Acting President must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.
- (4) A person who as Acting President has sworn or affirmed faithfulness to the Republic need not repeat the swearing or affirming procedure for any subsequent term as Acting President during the period ending when the person next elected President assumes office.

[Sub-s. (4) added by s. 1 of the Constitution First Amendment Act of 1997]

91. Cabinet

- (1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.
- (2) The President appoints the Deputy President and Ministers, assigns

their powers and functions, and may dismiss them.

(3) The President-

(a) must select the Deputy President from among the members of the National Assembly;

(b) may select any number of Ministers from among the members of the Assembly; and

(c) may select no more than two Ministers from outside the Assembly.

(4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.

(5) The Deputy President must assist the President in the execution of the functions of government.

92. Accountability and responsibilities

(1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.

(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.

(3) Members of the Cabinet must-

(a) act in accordance with the Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.

93. Deputy Ministers

(1) The President may appoint-

(a) any number of Deputy Ministers from among the members of the National Assembly; and

(b) no more than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet, and may dismiss them.

(2) Deputy Ministers appointed in terms of subsection (1)(b) are accountable to Parliament for the exercise of their powers and the performance of their functions.

[S. 93 substituted by s. 7 of the Constitution Sixth Amendment Act of 2001.]

94. Continuation of Cabinet after elections

When an election of the National Assembly is held, the Cabinet, the Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

95. Oath or affirmation

Before the Deputy President, Ministers and any Deputy Ministers begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

96. Conduct of Cabinet members and Deputy Ministers

- (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not-
 - (a) undertake any other paid work;
 - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
 - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

97. Transfer of functions

The President by proclamation may transfer to a member of the Cabinet-

- (a) the administration of any legislation entrusted to another member; or
- (b) any power or function entrusted by legislation to another member.

98. Temporary assignment of functions

The President may assign to a Cabinet member any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

99. Assignment of functions

A Cabinet member may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. An assignment-

- (a) must be in terms of an agreement between the relevant Cabinet member and the Executive Council member or Municipal Council;
- (b) must be consistent with the Act of Parliament in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the President.

100. National intervention in provincial administration

[Heading amended by s. 2(a) the Constitution Eleventh Amendment Act of 2003.]

- (1) When a province cannot or does not fulfil an executive obligation in

terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
- (b) assuming responsibility for the relevant obligation in that province to the extent necessary to-
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) maintain economic unity;
 - (iii) maintain national security; or
 - (iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

[Sub-s. (1) amended by s. 2(b) of the Constitution Eleventh Amendment Act of 2003.]

(2) If the national executive intervenes in a province in terms of subsection (1)(b)-

- (a) it must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;
- (b) the intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.

[Sub-s. (2) substituted by s. 2(c) of the Constitution Eleventh Amendment Act of 2003.]

(3) National legislation may regulate the process established by this section.

[S. 100 amended by s. 2 of the Constitution Eleventh Amendment Act of 2003.]

101. Executive decisions

- (1) A decision by the President must be in writing if it-
 - (a) is taken in terms of legislation; or
 - (b) has legal consequences.
- (2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member.

- (3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be-
 - (a) tabled in Parliament; and
 - (b) approved by Parliament.

102. Motions of no confidence

- (1) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
- (2) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.

Chapter 6

PROVINCES

103. Provinces

- (1) The Republic has the following provinces:
 - (a) Eastern Cape;
 - (b) Free State;
 - (c) Gauteng;
 - (d) KwaZulu-Natal;
 - (e) Limpopo;
 - (f) Mpumalanga;
 - (g) Northern Cape;
 - (h) North West;
 - (i) Western Cape.

[Sub-s. (1) substituted by s. 3 of the Constitution Eleventh Amendment Act of 2003 and substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005]

- (2) The geographical areas of the respective provinces comprise the sum of the indicated geographical areas reflected in the various maps referred to in the Notice listed in Schedule 1A.

[Sub-s. (2) substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005.]

- (3) (a) Whenever the geographical area of a province is re- determined by an amendment to the Constitution, an Act of Parliament may

provide for measures to regulate, within a reasonable time, the legal, practical and any other consequences of the re-determination.

- (b) An Act of Parliament envisaged in paragraph (a) may be enacted and implemented before such amendment to the Constitution takes effect, but any provincial functions, assets, rights, obligations, duties or liabilities may only be transferred in terms of that Act after that amendment to the Constitution takes effect.

[S.103 substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005.]

Provincial Legislatures

104. Legislative authority of provinces

- (1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power-
 - (a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143;
 - (b) to pass legislation for its province with regard to-
 - (i) any matter within a functional area listed in Schedule 4;
 - (ii) any matter within a functional area listed in Schedule 5;
 - (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
 - (iv) any matter for which a provision of the Constitution envisages the enactment of provincial legislation; and
 - (c) to assign any of its legislative powers to a Municipal Council in that province.
- (2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.
- (3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.
- (4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4.
- (5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

105. Composition and election of provincial legislatures

- (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that-
- (a) is prescribed by national legislation;
 - (b) is based on that province's segment of the national common voters roll;
 - (c) provides for a minimum voting age of 18 years; and
 - (d) results, in general, in proportional representation.

[Sub-s. (1) amended by s. 3 of the Constitution Tenth Amendment Act of 2003 and by s. 3 of the Constitution Fourteenth Amendment Act of 2008.]

- (2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.

106. Membership

- (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except-
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than-
 - (i) the Premier and other members of the Executive Council of a province; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
 - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;
 - (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic; or
 - (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

- (2) A person who is not eligible to be a member of a provincial legislature in terms of subsection (1)(a) or (b) may be a candidate for the legislature, subject to any limits or conditions established by national legislation.
 - (3) A person loses membership of a provincial legislature if that person-
 - (a) ceases to be eligible;
 - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or
 - (c) ceases to be a member of the party that nominated that person as a member of the legislature.
- [Sub-s. (3) substituted by s. 4 of the Constitution Tenth Amendment Act of 2003 and by s. 4 of the Constitution Fourteenth Amendment Act of 2008.]
- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

107. Oath or affirmation

Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

108. Duration of provincial legislatures

- (1) A provincial legislature is elected for a term of five years.
 - (2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved or its term expired. A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of a provincial legislature.
- [Sub-s. (2) substituted by s. 1 of the Constitution Fourth Amendment Act of 1999.]
- (3) If the result of an election of a provincial legislature is not declared within the period referred to in section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
 - (4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature.

109. Dissolution of provincial legislatures before expiry of term

- (1) The Premier of a province must dissolve the provincial legislature if-
 - (a) the legislature has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
 - (b) three years have passed since the legislature was elected.
- (2) An Acting Premier must dissolve the provincial legislature if-
 - (a) there is a vacancy in the office of Premier; and
 - (b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred.

110. Sittings and recess periods

- (1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the Chief Justice, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.
[Sub-s. (1) substituted by s. 8 of the Constitution Sixth Amendment Act of 2001.]
- (2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.
- (3) A provincial legislature may determine where it ordinarily will sit.

111. Speakers and Deputy Speakers

- (1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.
- (2) A judge designated by the Chief Justice must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.
[Sub-s. (2) substituted by s. 9 of the Constitution Sixth Amendment Act of 2001.]
- (3) The procedure set out in Part A of Schedule 3 applies to the election of Speakers and Deputy Speakers.
- (4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.
- (5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

112. Decisions

- (1) Except where the Constitution provides otherwise-

- (a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill;
 - (b) at least one third of the members must be present before a vote may be taken on any other question before the legislature; and
 - (c) all questions before a provincial legislature are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of a provincial legislature has no deliberative vote, but-
 - (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
 - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the legislature.

113. Permanent delegates' rights in provincial legislatures

A province's permanent delegates to the National Council of Provinces may attend, and may speak in, their provincial legislature and its committees, but may not vote. The legislature may require a permanent delegate to attend the legislature or its committees.

114. Powers of provincial legislatures

- (1) In exercising its legislative power, a provincial legislature may-
 - (a) consider, pass, amend or reject any Bill before the legislature; and
 - (b) initiate or prepare legislation, except money Bills.
- (2) A provincial legislature must provide for mechanisms-
 - (a) to ensure that all provincial executive organs of state in the province are accountable to it; and
 - (b) to maintain oversight of-
 - (i) the exercise of provincial executive authority in the province, including the implementation of legislation; and
 - (ii) any provincial organ of state.

115. Evidence or information before provincial legislatures

A provincial legislature or any of its committees may-

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) require any person or provincial institution to report to it;
- (c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or

- requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

116. Internal arrangements, proceedings and procedures of provincial legislatures

- (1) A provincial legislature may-
 - (a) determine and control its internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of a provincial legislature must provide for-
 - (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation in the proceedings of the legislature and its committees of minority parties represented in the legislature, in a manner consistent with democracy;
 - (c) financial and administrative assistance to each party represented in the legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the legislature effectively; and
 - (d) the recognition of the leader of the largest opposition party in the legislature, as the Leader of the Opposition.

117. Privilege

- (1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces-
 - (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
 - (i) anything that they have said in, produced before or submitted to the legislature or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the legislature or any of its committees.
- (2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to members of a provincial

legislature are a direct charge against the Provincial Revenue Fund.

118. Public access to and involvement in provincial legislatures

- (1) A provincial legislature must-
 - (a) facilitate public involvement in the legislative and other processes of the legislature and its committees; and
 - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
 - (i) to regulate public access, including access of the media, to the legislature and its committees; and
 - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

119. Introduction of Bills

Only members of the Executive Council of a province or a committee or member of a provincial legislature may introduce a Bill in the legislature; but only the member of the Executive Council who is responsible for financial matters in the province may introduce a money Bill in the legislature.

120. Money Bills

- (1) A Bill is a money Bill if it-
 - (a) appropriates money;
 - (b) imposes provincial taxes, levies, duties or surcharges;
 - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against a Provincial Revenue Fund.
- (2) A money Bill may not deal with any other matter except-
 - (a) a subordinate matter incidental to the appropriation of money;
 - (b) the imposition, abolition or reduction of provincial taxes, levies, duties or surcharges;
 - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against a Provincial Revenue Fund.
- (3) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.

[S. 120 substituted by s. 3 of the Constitution Seventh Amendment Act of 2001.]

121. Assent to Bills

- (1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature in terms of this Chapter or, if the Premier has reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.
- (2) If, after reconsideration, a Bill fully accommodates the Premier's reservations, the Premier must assent to and sign the Bill; if not, the Premier must either-
 - (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it.

122. Application by members to Constitutional Court

- (1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.
- (2) An application-
 - (a) must be supported by at least 20 per cent of the members of the legislature; and
 - (b) must be made within 30 days of the date on which the Premier assented to and signed the Act.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if-
 - (a) the interests of justice require this; and
 - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

123. Publication of provincial Acts

A Bill assented to and signed by the Premier of a province becomes a provincial Act, must be published promptly and takes effect when published or on a date determined in terms of the Act.

124. Safekeeping of provincial Acts

The signed copy of a provincial Act is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.

Provincial Executives

125. Executive authority of provinces

- (1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by-
 - (a) implementing provincial legislation in the province;
 - (b) implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
 - (c) administering in the province, national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament;
 - (d) developing and implementing provincial policy;
 - (e) co-ordinating the functions of the provincial administration and its departments;
 - (f) preparing and initiating provincial legislation; and
 - (g) performing any other function assigned to the provincial executive in terms of the Constitution or an Act of Parliament.
- (3) A province has executive authority in terms of subsection (2)
 - (b) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2).
- (4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council.
- (5) Subject to section 100, the implementation of provincial legislation in a province is an exclusive provincial executive power.
- (6) The provincial executive must act in accordance with-
 - (a) the Constitution; and
 - (b) the provincial constitution, if a constitution has been passed for the province.

126. Assignment of functions

A member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council. An assignment-

- (a) must be in terms of an agreement between the relevant Executive Council member and the Municipal Council;
- (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the Premier.

127. Powers and functions of Premiers

- (1) The Premier of a province has the powers and functions entrusted to that office by the Constitution and any legislation.
- (2) The Premier of a province is responsible for-
 - (a) assenting to and signing Bills;
 - (b) referring a Bill back to the provincial legislature for reconsideration of the Bill's constitutionality;
 - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
 - (d) summoning the legislature to an extraordinary sitting to conduct special business;
 - (e) appointing commissions of inquiry; and
 - (f) calling a referendum in the province in accordance with national legislation.

128. Election of Premiers

- (1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province.
- (2) A judge designated by the Chief Justice must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier.

[Sub-s. (2) substituted by s. 10 of the Constitution Sixth Amendment Act of 2001.]

- (3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the Chief Justice, but not later than 30 days after the vacancy occurs.

[Sub-s. (3) substituted by s. 10 of the Constitution Sixth Amendment Act of 2001.]

129. Assumption of office by Premiers

A Premier-elect must assume office within five days of being elected, by swearing

or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

130. Term of office and removal of Premiers

- (1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.
- (3) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of-
 - (a) a serious violation of the Constitution or the law;
 - (b) serious misconduct; or
 - (c) inability to perform the functions of office.
- (4) Anyone who has been removed from the office of Premier in terms of subsection (3)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

131. Acting Premiers

- (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier:
 - (a) A member of the Executive Council designated by the Premier.
 - (b) A member of the Executive Council designated by the other members of the Council.
 - (c) The Speaker, until the legislature designates one of its other members.
- (2) An Acting Premier has the responsibilities, powers and functions of the Premier.
- (3) Before assuming the responsibilities, powers and functions of the Premier, the Acting Premier must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

132. Executive Councils

- (1) The Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial

legislature.

(2) The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

133. Accountability and responsibilities

(1) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier.

(2) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions.

(3) Members of the Executive Council of a province must-

(a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution; and

(b) provide the legislature with full and regular reports concerning matters under their control.

134. Continuation of Executive Councils after elections

When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office.

135. Oath or affirmation

Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

136. Conduct of members of Executive Councils

(1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.

(2) Members of the Executive Council of a province may not-

(a) undertake any other paid work;

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

137. Transfer of functions

The Premier by proclamation may transfer to a member of the Executive Council-

(a) the administration of any legislation entrusted to another member;

or

(b) any power or function entrusted by legislation to another member.

138. Temporary assignment of functions

The Premier of a province may assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

139. Provincial intervention in local government

- (1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-
 - (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to -
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)-
 - (a) it must submit a written notice of the intervention to-
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;
 - (b) the intervention must end if-
 - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the Council disapproves the intervention within 180 days

- after the intervention began or by the end of that period has not approved the intervention; and
 - (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)-
- (a) the provincial executive must immediately submit a written notice of the dissolution to-
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces; and
 - (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and-
- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
 - (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must-
- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which-
 - (i) is to be prepared in accordance with national legislation; and
 - (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
 - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery

- plan, and-
 - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
 - (ii) approve a temporary budget or revenue- raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
 - (c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
 - (6) If a provincial executive intervenes in a municipality in terms of subsection (4) or
 - (5), it must submit a written notice of the intervention to-
 - (a) the Cabinet member responsible for local government affairs; and
 - (b) the relevant provincial legislature and the National Council of Provinces, within seven days after the intervention began.
 - (7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive must intervene in terms of subsection (4) or (5) in the stead of the relevant provincial executive.
 - (8) National legislation may regulate the implementation of this section, including the processes established by this section.
- [S. 139 substituted by s. 4 of the Constitution Eleventh Amendment Act of 2003.]

140. Executive decisions

- (1) A decision by the Premier of a province must be in writing if it-
 - (a) is taken in terms of legislation; or
 - (b) has legal consequences.
- (2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member.
- (3) Proclamations, regulations and other instruments of subordinate legislation of a province must be accessible to the public.
- (4) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be-
 - (a) tabled in the provincial legislature; and
 - (b) approved by the provincial legislature.

141. Motions of no confidence

- (1) If a provincial legislature, by a vote supported by a majority of its

members, passes a motion of no confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.

- (2) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Premier, the Premier and the other members of the Executive Council must resign.

Provincial Constitutions

142. Adoption of provincial constitutions

A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill.

143. Contents of provincial constitutions

- (1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for-
 - (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
 - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) or (b) of subsection (1)-
 - (a) must comply with the values in section 1 and with Chapter 3; and
 - (b) may not confer on the province any power or function that falls-
 - (i) outside the area of provincial competence in terms of Schedules 4 and 5; or
 - (ii) outside the powers and functions conferred on the province by other sections of the Constitution.

144. Certification of provincial constitutions

- (1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution or constitutional amendment to the Constitutional Court for certification.
- (2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified-
 - (a) that the text has been passed in accordance with section 142; and
 - (b) that the whole text complies with section 143.

145. Signing, publication and safekeeping of provincial constitutions

- (1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.
- (2) The text assented to and signed by the Premier must be published in the national Government *Gazette* and takes effect on publication or on a later date determined in terms of that constitution or amendment.
- (3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping.

Conflicting Laws

146. Conflicts between national and provincial legislation

- (1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4.
- (2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
 - (a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
 - (b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing-
 - (i) norms and standards;
 - (ii) frameworks; or
 - (iii) national policies.
 - (c) The national legislation is necessary for-
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;
 - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - (iv) the promotion of economic activities across provincial boundaries;
 - (v) the promotion of equal opportunity or equal access to government services; or
 - (vi) the protection of the environment.

- (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that-
 - (a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or
 - (b) impedes the implementation of national economic policy.
- (4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in subsection (2)(c) and that dispute comes before a court for resolution, the court must have due regard to the approval or the rejection of the legislation by the National Council of Provinces.
- (5) Provincial legislation prevails over national legislation if subsection (2) or (3) does not apply.
- (6) A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.
- (7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council.
- (8) If the National Council of Provinces does not approve a law referred to in subsection (6), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it.

147. Other conflicts

- (1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to-
 - (a) a matter concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution;
 - (b) national legislative intervention in terms of section 44 (2), the national legislation prevails over the provision of the provincial constitution; or
 - (c) a matter within a functional area listed in Schedule 4, section 146 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.
- (2) National legislation referred to in section 44(2) prevails over provincial legislation in respect of matters within the functional areas listed in Schedule 5.

148. Conflicts that cannot be resolved

If a dispute concerning a conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution.

149. Status of legislation that does not prevail

A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.

150. Interpretation of conflicts

When considering an apparent conflict between national and provincial legislation, or between national legislation and a provincial constitution, every court must prefer any reasonable interpretation of the legislation or constitution that avoids a conflict, over any alternative interpretation that results in a conflict.

Chapter 7

LOCAL GOVERNMENT

151. Status of municipalities

- (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

152. Objects of local government

- (1) The objects of local government are-
 - (a) to provide democratic and accountable government for local communities;
 - (b) to ensure the provision of services to communities in a sustainable manner;
 - (c) to promote social and economic development;
 - (d) to promote a safe and healthy environment; and
 - (e) to encourage the involvement of communities and community organisations in the matters of local government.

- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

153. Developmental duties of municipalities

A municipality must-

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.

154. Municipalities in co-operative government

- (1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- (2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

155. Establishment of municipalities

- (1) There are the following categories of municipality:
 - (a) Category A: A municipality that has exclusive municipal executive and legislative authority in its area.
 - (b) Category B: A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.
 - (c) Category C: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.
- (2) National legislation must define the different types of municipality that may be established within each category.
- (3) National legislation must-
 - (a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C;
 - (b) establish criteria and procedures for the determination of

- municipal boundaries by an independent authority; and
 - (c) subject to section 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality.
- (4) The legislation referred to in subsection (3) must take into account the need to provide municipal services in an equitable and sustainable manner.
- (5) Provincial legislation must determine the different types of municipality to be established in the province.
- (6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must-
 - (a) provide for the monitoring and support of local government in the province; and
 - (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

(6A)

[Sub-s. (6A) inserted by s. 1 of the Constitution Third Amendment Act of 1998 and deleted by s. 2 of the Constitution Twelfth Amendment Act of 2005.]

- (7) The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

156. Powers and functions of municipalities

- (1) A municipality has executive authority in respect of, and has the right to administer-
 - (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - (b) any other matter assigned to it by national or provincial legislation.
- (2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

- (3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a bylaw and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
- (4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if-
 - (a) that matter would most effectively be administered locally; and
 - (b) the municipality has the capacity to administer it.
- (5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

157. Composition and election of Municipal Councils

- (1) A Municipal Council consists of-
 - (a) members elected in accordance with subsections (2) and (3); or
 - (b) if provided for by national legislation-
 - (i) members appointed by other Municipal Councils to represent those other Councils; or
 - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph.

[Sub-s. (1) substituted by s. 1(a) of the Constitution Eighth Amendment Act of 2002 and by s. 3 of the Constitution Fifteenth Amendment Act of 2008.]

- (2) The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system-
 - (a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
 - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voters roll.
- (3) An electoral system in terms of subsection (2) must result, in general, in proportional representation.

[Sub-s. (3) substituted by s. 1(b) of the Constitution Eighth Amendment Act of 2002.]

- (4) (a) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.

(b)

[Para.(b) deleted by s. 3 of the Constitution Twelfth Amendment Act of 2005.]

[Sub-s. (4) substituted by s. 2 of the Constitution Third Amendment Act of 1998.]

- (5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voters roll.
- (6) The national legislation referred to in subsection (1)(b) must establish a system that allows for parties and interests reflected within the Municipal Council making the appointment, to be fairly represented in the Municipal Council to which the appointment is made.

158. Membership of Municipal Councils

- (1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except-
- (a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
 - (b) anyone who is appointed by, or is in the service of, the state in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of a Municipal Council in terms of national legislation;
 - (c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 47(1)(c),(d) or (e) from being a member of the Assembly;
 - (d) a member of the National Assembly, a delegate to the National Council of Provinces or a member of a provincial legislature; but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council; or
 - (e) a member of another Municipal Council; but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category.
- (2) A person who is not eligible to be a member of a Municipal Council in terms of subsection (1)(a),(b),(d) or (e) may be a candidate for the Council, subject to any limits or conditions established by national

legislation.

- (3) Vacancies in a Municipal Council must be filled in terms of national legislation.

[Sub-s. (3) added by s. 4 of the Constitution Fifteenth Amendment Act of 2008.]

159. Terms of Municipal Councils

- (1) The term of a Municipal Council may be no more than five years, as determined by national legislation.
- (2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired.
- (3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.

[S. 159 substituted by s. 1 of the Constitution Second Amendment Act of 1998.]

160. Internal procedures

- (1) A Municipal Council-
- (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
 - (b) must elect its chairperson;
 - (c) may elect an executive committee and other committees, subject to national legislation; and
 - (d) may employ personnel that are necessary for the effective performance of its functions.
- (2) The following functions may not be delegated by a Municipal Council:
- (a) The passing of by-laws;
 - (b) the approval of budgets;
 - (c) the imposition of rates and other taxes, levies and duties; and
 - (d) the raising of loans.
- (3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.
- (b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.
- (c) All other questions before a Municipal Council are decided by a majority of the votes cast.
- (4) No by-law may be passed by a Municipal Council unless-
- (a) all the members of the Council have been given reasonable notice;

- and
 - (b) the proposed by-law has been published for public comment.
- (5) National legislation may provide criteria for determining-
 - (a) the size of a Municipal Council;
 - (b) whether Municipal Councils may elect an executive committee or any other committee; or
 - (c) the size of the executive committee or any other committee of a Municipal Council.
- (6) A Municipal Council may make by-laws which prescribe rules and orders for-
 - (a) its internal arrangements;
 - (b) its business and proceedings; and
 - (c) the establishment, composition, procedures, powers and functions of its committees.
- (7) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.
- (8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-
 - (a) allows parties and interests reflected within the Council to be fairly represented;
 - (b) is consistent with democracy; and
 - (c) may be regulated by national legislation.

161. Privilege

Provincial legislation within the framework of national legislation may provide for privileges and immunities of Municipal Councils and their members.

162. Publication of municipal by-laws

- (1) A municipal by-law may be enforced only after it has been published in the official *Gazette* of the relevant province.
- (2) A provincial official *Gazette* must publish a municipal by-law upon request by the municipality.
- (3) Municipal by-laws must be accessible to the public.

163. Organised local government

An Act of Parliament enacted in accordance with the procedure established by section 76 must-

- (a) provide for the recognition of national and provincial organisations

- representing municipalities; and
- (b) determine procedures by which local government may-
 - (i) consult with the national or a provincial government;
 - (ii) designate representatives to participate in the National Council of Provinces; and
 - (iii) participate in the process prescribed in the national legislation envisaged in section 221(1)(c).

[S. 163(b) substituted by s. 4 of the Constitution Seventh Amendment Act of 2001.]

164. Other matters

Any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.

Chapter 8

COURTS AND ADMINISTRATION OF JUSTICE

165. Judicial authority

- (1) The judicial authority of the Republic is vested in the courts.
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.
- (6) The Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

[Sub-s (6) added by s. 1 of the Constitution Seventeenth Amendment Act of 2012.]

166. Judicial system

The courts are-

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from

- any court of a status similar to the High Court of South Africa;
[Para. (c) Substituted by s.2 (a) of the Constitution Seventeenth Amendment Act of 2012.]
- (d) the Magistrates' Courts; and
- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Court of South Africa or the Magistrates' Courts.
[Para. (e) substituted by s. 2 (b) of the Constitution Seventeenth Amendment Act of 2012.]

167. Constitutional Court

- (1) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.
[Sub-s. (1) substituted by s. 11 of the Constitution Sixth Amendment Act of 2001.]
- (2) A matter before the Constitutional Court must be heard by at least eight judges.
- (3) The Constitutional Court-
 - (a) is the highest court of the Republic; and
 - (b) may decide-
 - (i) constitutional matters; and
 - (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court, and
 - (c) makes the final decision whether a matter is within its jurisdiction.
[Sub-s (3) substituted by s. 3(a) of the Constitution Seventeenth Amendment Act of 2012.]
- (4) Only the Constitutional Court may-
 - (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
 - (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 or 121;
 - (c) decide applications envisaged in section 80 or 122;
 - (d) decide on the constitutionality of any amendment to the Constitution;
 - (e) decide that Parliament or the President has failed to fulfil a constitutional obligation; or
 - (f) certify a provincial constitution in terms of section 144.
- (5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is

constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force.

[Sub-s (5) substituted by s. 3(b) of the Constitution Seventeenth Amendment Act of 2012.]

- (6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court-
 - (a) to bring a matter directly to the Constitutional Court; or
 - (b) to appeal directly to the Constitutional Court from any other court.
- (7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

168. Supreme Court of Appeal

- (1) The Supreme Court of Appeal consists of a President, a Deputy President and the number of judges of appeal determined in terms of an Act of Parliament.

[Sub-s. (1) substituted by s. 12 of the Constitution Sixth Amendment Act of 2001.]

- (2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined in terms of an Act of Parliament.

[Sub-s. (2) substituted by s. 12 of the Constitution Sixth Amendment Act of 2001.]

- (3) (a) The Supreme Court of Appeal may decide appeals in any matter arising from the High Court of South Africa or a court of a status similar to the High Court of South Africa, except in respect of labour or competition matters to such an extent as may be determined by an Act of Parliament.

- (b) The Supreme Court of Appeal may decide only-

- (i) appeals;
- (ii) issues connected with appeals; and
- (iii) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

[Sub-s (3) substituted by s. 4 of the Constitution Seventeenth Amendment Act of 2012.]

169. High Court of South Africa

- (1) The High Court of South Africa may decide-
 - (a) any constitutional matter except a matter that-
 - (i) the Constitutional Court has agreed to hear directly in terms of section 167(6)(a); or

- (ii) is assigned by an Act of Parliament to another court of a status similar to the High Court of South Africa; and
 - (b) any other matter not assigned to another court by an Act of Parliament.
- (2) The High Court of South Africa consists of the Divisions determined by an Act of Parliament, which Act must provide for-
 - (a) the establishing of Divisions, with one or two more seats in a Division; and
 - (b) the assigning of jurisdiction to a Division or a seat with a Division.
- (3) Each Division of the High Court of South Africa-
 - (a) has a Judge President;
 - (b) may have one or more Deputy Judges President; and
 - (c) has the number of other judges determined in terms of national legislation.

[S. 169 substituted by s. 5 of the Constitution Seventeenth Amendment Act of 2012.]

170. Other courts

All courts other than those referred to in sections 167, 168 and 169 may decide any matter determined by an Act of Parliament, but a court of a status lower than the High Court of South Africa may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

[S. 170 substituted by s. 6 of the Constitution Seventeenth Amendment Act of 2012.]

171. Court procedures

All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation.

172. Powers of courts in constitutional matters

- (1) When deciding a constitutional matter within its power, a court-
 - (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
 - (b) may make any order that is just and equitable, including-
 - (i) an order limiting the retrospective effect of the declaration of invalidity; and
 - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.
- (2) (a) The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or

any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

[Par(a) substituted by s. 7 of the Constitution Seventeenth Amendment Act of 2012.]

- (b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.
- (c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court.
- (d) Any person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

173. Inherent power

The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

[S. 173 substituted by s. 8 of the Constitution Seventeenth Amendment Act of 2012.]

174. Appointment of judicial officers

- (1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.
- (2) The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.
- (3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Supreme Court of Appeal.

[Sub-s. (3) substituted by s. 13 of the Constitution Sixth Amendment Act of 2001.]

- (4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the Chief Justice and the leaders of parties represented in the National

Assembly, in accordance with the following procedure:

- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
- (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.
- (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.

[Sub-s. (4) substituted by s. 13 of the Constitution Sixth Amendment Act of 2001.]

- (5) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court.
- (6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.
- (7) Other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.
- (8) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 2, that they will uphold and protect the Constitution.

175. Appointment of acting judges

- (1) The President may appoint a woman or a man to serve as an acting Deputy Chief Justice or judge of the Constitutional Court if there is a vacancy in any of those offices, or if the person holding such an office is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the Chief Justice, and an appointment as acting Deputy Chief Justice must be made from the ranks of the judges who had been appointed to the Constitutional Court in terms of section 174(4).
- (2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve.

[S. 175 substituted by s. 14 of the Constitution Sixth Amendment Act of 2001 and substituted s.9 of the Constitution Seventeenth Amendment Act of 2012.]

176. Terms of office and remuneration

- (1) A Constitutional Court judge holds office for a non-renewable term of 12 years, or until he or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends the term of office of a Constitutional Court judge.

[Sub-s. (1) substituted by s. 15 of the Constitution Sixth Amendment Act of 2001.]

- (2) Other judges hold office until they are discharged from active service in terms of an Act of Parliament.

- (3) The salaries, allowances and benefits of judges may not be reduced.

177. Removal

- (1) A judge may be removed from office only if-

- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
(b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.

- (2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.

- (3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of subsection (1).

178. Judicial Service Commission

- (1) There is a Judicial Service Commission consisting of-

- (a) the Chief Justice, who presides at meetings of the Commission;
(b) the President of the Supreme Court of Appeal;
[Para.(b) substituted by s. 16(a) of the Constitution Sixth Amendment Act of 2001.]
(c) one Judge President designated by the Judges President;
(d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;
(e) two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President;
(f) two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President;
(g) one teacher of law designated by teachers of law at South African

universities;

- (h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;
- (i) four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces;
- (j) four persons designated by the President as head of the national executive, after consulting the leaders of all the parties in the National Assembly; and
- (k) when considering matters relating to a specific Division of the High Court of South Africa, the Judge President of that Division and the Premier of the province concerned, or an alternate designated by each of them.

[Para. (k) substituted by s. 2(a) of the Constitution Second Amendment Act of 1998, by s. 16(b) of the Constitution Sixth Amendment Act of 2001 and by s. 10 of the Constitution Seventeenth Amendment Act of 2012.]

- (2) If the number of persons nominated from within the advocates' or attorneys' profession in terms of subsection (1) (e) or (f) equals the number of vacancies to be filled, the President must appoint them. If the number of persons nominated exceeds the number of vacancies to be filled, the President, after consulting the relevant profession, must appoint sufficient of the nominees to fill the vacancies, taking into account the need to ensure that those appointed represent the profession as a whole.
- (3) Members of the Commission designated by the National Council of Provinces serve until they are replaced together, or until any vacancy occurs in their number. Other members who were designated or nominated to the Commission serve until they are replaced by those who designated or nominated them.
- (4) The Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation.
- (5) The Judicial Service Commission may advise the national government on any matter relating to the judiciary or the administration of justice, but when it considers any matter except the appointment of a judge, it must sit without the members designated in terms of subsection (1) (h) and (i).
- (6) The Judicial Service Commission may determine its own procedure, but decisions of the Commission must be supported by a majority of

its members.

- (7) If the Chief Justice or the President of the Supreme Court of Appeal is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the Supreme Court of Appeal, as the case may be, acts as his or her alternate on the Commission.
[Sub-s. (7) added by s. 2(b) of the Constitution Second Amendment Act of 1998 and substituted by s. 16(c) of Constitution Sixth Amendment Act of 2001.]
- (8) The President and the persons who appoint, nominate or designate the members of the Commission in terms of subsection (1)(c),(e),(f) and (g), may, in the same manner appoint, nominate or designate an alternate for each of those members, to serve on the Commission whenever the member concerned is temporarily unable to do so by reason of his or her incapacity or absence from the Republic or for any other sufficient reason.
[Sub-s. (8) added by s. 2(b) of the Constitution Second Amendment Act of 1998.]

179. Prosecuting authority

- (1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of-
- (a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President, as head of the national executive; and
 - (b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.
- (2) The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.
- (3) National legislation must ensure that the Directors of Public Prosecutions-
- (a) are appropriately qualified; and
 - (b) are responsible for prosecutions in specific jurisdictions, subject to subsection (5).
- (4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.
- (5) The National Director of Public Prosecutions-
- (a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy, which must be observed in the prosecution process;

- (b) must issue policy directives which must be observed in the prosecution process;
- (c) may intervene in the prosecution process when policy directives are not complied with; and
- (d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:
 - (i) The accused person.
 - (ii) The complainant.
 - (iii) Any other person or party whom the National Director considers to be relevant.
- (6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.
- (7) All other matters concerning the prosecuting authority must be determined by national legislation.

180. Other matters concerning administration of justice

National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including-

- (a) training programmes for judicial officers;
- (b) procedures for dealing with complaints about judicial officers; and
- (c) the participation of people other than judicial officers in court decisions.

Chapter 9

STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

181. Establishment and governing principles

- (1) The following state institutions strengthen constitutional democracy in the Republic:
 - (a) The Public Protector.
 - (b) The South African Human Rights Commission.
 - (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
 - (d) The Commission for Gender Equality.
 - (e) The Auditor-General.
 - (f) The Electoral Commission.

- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of state may interfere with the functioning of these institutions.
- (5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

Public Protector

182. Functions of Public Protector

- (1) The Public Protector has the power, as regulated by national legislation-
 - (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
 - (b) to report on that conduct; and
 - (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

183. Tenure

The Public Protector is appointed for a non-renewable period of seven years.

South African Human Rights Commission

184. Functions of South African Human Rights Commission

- (1) The South African Human Rights Commission must-
 - (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human

- rights; and
- (c) monitor and assess the observance of human rights in the Republic.
- (2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-
 - (a) to investigate and to report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated;
 - (c) to carry out research; and
 - (d) to educate.
- (3) Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

185. Functions of Commission

- (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are-
 - (a) to promote respect for the rights of cultural, religious and linguistic communities;
 - (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
 - (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

- (3) The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation.
- (4) The Commission has the additional powers and functions prescribed by national legislation.

186. Composition of Commission

- (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.
- (2) The composition of the Commission must-
 - (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
 - (b) broadly reflect the gender composition of South Africa.

Commission for Gender Equality

187. Functions of Commission for Gender Equality

- (1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.
- (2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
- (3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.

Auditor-General

188. Functions of Auditor-General

- (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of-
 - (a) all national and provincial state departments and administrations;
 - (b) all municipalities; and
 - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of-
 - (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
 - (b) any institution that is authorised in terms of any law to receive money for a public purpose.
- (3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by national legislation.

189. Tenure

The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

Electoral Commission

190. Functions of Electoral Commission

- (1) The Electoral Commission must-
 - (a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
 - (b) ensure that those elections are free and fair; and
 - (c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

191. Composition of Electoral Commission

The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

Independent Authority to Regulate Broadcasting

192. Broadcasting Authority

National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

General Provisions

193. Appointments

- (1) The Public Protector and the members of any Commission established by this Chapter must be women or men who-
 - (a) are South African citizens;
 - (b) are fit and proper persons to hold the particular office; and
 - (c) comply with any other requirements prescribed by national legislation.
- (2) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.
- (3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.
- (4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of-
 - (a) the South African Human Rights Commission;
 - (b) the Commission for Gender Equality; and
 - (c) the Electoral Commission.
- (5) The National Assembly must recommend persons-
 - (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
 - (b) approved by the Assembly by a resolution adopted with a supporting vote-
 - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or

- (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.
- (6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59 (1)(a).

194. Removal from office

- (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on-
 - (a) the ground of misconduct, incapacity or incompetence;
 - (b) a finding to that effect by a committee of the National Assembly; and
 - (c) the adoption by the Assembly of a resolution calling for that person's removal from office.
- (2) A resolution of the National Assembly concerning the removal from office of-
 - (a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or
 - (b) a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.
- (3) The President-
 - (a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and
 - (b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.

Chapter 10

PUBLIC ADMINISTRATION

195. Basic values and principles governing public administration

- (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
 - (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development-oriented.

- (d) Services must be provided impartially, fairly, equitably and without bias.
 - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career- development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The above principles apply to-
 - (a) administration in every sphere of government;
 - (b) organs of state; and
 - (c) public enterprises.
 - (3) National legislation must ensure the promotion of the values and principles listed in subsection (1).
 - (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
 - (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.
 - (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.

196. Public Service Commission

- (1) There is a single Public Service Commission for the Republic.
- (2) The Commission is independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The Commission must be regulated by national legislation.
- (3) Other organs of state, through legislative and other measures, must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of state may interfere with the functioning of the Commission.

- (4) The powers and functions of the Commission are-
- (a) to promote the values and principles set out in section 195, throughout the public service;
 - (b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
 - (c) to propose measures to ensure effective and efficient performance within the public service;
 - (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;
 - (e) to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with; and
 - (f) either of its own accord or on receipt of any complaint-
 - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
 - (ii) to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
 - (iii) to monitor and investigate adherence to applicable procedures in the public service; and
 - (iv) to advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service; and
 - (g) to exercise or perform the additional powers or functions prescribed by an Act of Parliament.

[Para.(g) added by s. 3 of the Constitution Second Amendment Act of 1998.]

- (5) The Commission is accountable to the National Assembly.
- (6) The Commission must report at least once a year in terms of subsection (4) (e)-
- (a) to the National Assembly; and
 - (b) in respect of its activities in a province, to the legislature of that province.
- (7) The Commission has the following 14 commissioners appointed by

the President:

- (a) Five commissioners approved by the National Assembly in accordance with subsection (8) (a); and
 - (b) one commissioner for each province nominated by the Premier of the province in accordance with subsection (8) (b).
- (8) (a) A commissioner appointed in terms of subsection (7) (a) must be-
- (i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly; and
 - (ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.
- (b) A commissioner nominated by the Premier of a province must be-
- (i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature; and
 - (ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members.
- (9) An Act of Parliament must regulate the procedure for the appointment of commissioners.
- (10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is-
- (a) a South African citizen; and
 - (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.
- (11) A commissioner may be removed from office only on-
- (a) the ground of misconduct, incapacity or incompetence;
 - (b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province; and
 - (c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.
- (12) The President must remove the relevant commissioner from office upon-
- (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
 - (b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal.

- (13) Commissioners referred to in subsection (7) (b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation.

197. Public Service

- (1) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.
- (2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.
- (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.
- (4) Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service.

Chapter 11

SECURITY SERVICES

198. Governing principles

The following principles govern national security in the Republic:

- (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.
- (b) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
- (c) National security must be pursued in compliance with the law, including international law.
- (d) National security is subject to the authority of Parliament and the national executive.

199. Establishment, structuring and conduct of security services

- (1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.

- (2) The defence force is the only lawful military force in the Republic.
- (3) Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.
- (4) The security services must be structured and regulated by national legislation.
- (5) The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.
- (6) No member of any security service may obey a manifestly illegal order.
- (7) Neither the security services, nor any of their members, may, in the performance of their functions-
 - (a) prejudice a political party interest that is legitimate in terms of the Constitution; or
 - (b) further, in a partisan manner, any interest of a political party.
- (8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

Defence

200. Defence force

- (1) The defence force must be structured and managed as a disciplined military force.
- (2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.

201. Political responsibility

- (1) A member of the Cabinet must be responsible for defence.
- (2) Only the President, as head of the national executive, may authorise the employment of the defence force-
 - (a) in co-operation with the police service;
 - (b) in defence of the Republic; or
 - (c) in fulfilment of an international obligation.
- (3) When the defence force is employed for any purpose mentioned in subsection (2), the President must inform Parliament, promptly and in

- appropriate detail, of-
- (a) the reasons for the employment of the defence force;
 - (b) any place where the force is being employed;
 - (c) the number of people involved; and
 - (d) the period for which the force is expected to be employed.
- (4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in subsection (2), the President must provide the information required in subsection (3) to the appropriate oversight committee.

202. Command of defence force

- (1) The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint the Military Command of the defence force.
- (2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence, under the authority of the President.

203. State of national defence

- (1) The President as head of the national executive may declare a state of national defence, and must inform Parliament promptly and in appropriate detail of-
 - (a) the reasons for the declaration;
 - (b) any place where the defence force is being employed; and
 - (c) the number of people involved.
- (2) If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration.
- (3) A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.

204. Defence civilian secretariat

A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence.

Police

205. Police service

- (1) The national police service must be structured to function in the

national, provincial and, where appropriate, local spheres of government.

- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

206. Political responsibility

- (1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.
- (2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.
- (3) Each province is entitled-
 - (a) to monitor police conduct;
 - (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
 - (c) to promote good relations between the police and the community;
 - (d) to assess the effectiveness of visible policing; and
 - (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.
- (4) A provincial executive is responsible for policing functions-
 - (a) vested in it by this Chapter;
 - (b) assigned to it in terms of national legislation; and
 - (c) allocated to it in the national policing policy.
- (5) In order to perform the functions set out in subsection (3), a province-
 - (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
 - (b) must make recommendations to the Cabinet member responsible for policing.
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or

- offence committed by, a member of the police service in the province.
- (7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
 - (8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective coordination of the police service and effective co-operation among the spheres of government.
 - (9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.

207. Control of police service

- (1) The President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service.
- (2) The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.
- (3) The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.
- (4) The provincial commissioners are responsible for policing in their respective provinces-
 - (a) as prescribed by national legislation; and
 - (b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).
- (5) The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.
- (6) If the provincial commissioner has lost the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with national legislation.

208. Police civilian secretariat

A civilian secretariat for the police service must be established by national

legislation to function under the direction of the Cabinet member responsible for policing.

Intelligence

209. Establishment and control of intelligence services

- (1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.
- (2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

210. Powers, functions and monitoring

National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for-

- (a) the co-ordination of all intelligence services; and
- (b) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.

Chapter 12

TRADITIONAL LEADERS

211. Recognition

- (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
- (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

212. Role of traditional leaders

- (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law-
 - (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and
 - (b) national legislation may establish a council of traditional leaders.

Chapter 13

FINANCE

General Financial Matters

213. National Revenue Fund

- (1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the National Revenue Fund only-
 - (a) in terms of an appropriation by an Act of Parliament; or
 - (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.
- (3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

[Date of commencement of s. 213: 1 January 1998]

214. Equitable shares and allocations of revenue

- (1) An Act of Parliament must provide for-
 - (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
 - (b) the determination of each province's equitable share of the provincial share of that revenue; and
 - (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.
- (2) The Act referred to in subsection (1) may be enacted only after

the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account-

- (a) the national interest;
- (b) any provision that must be made in respect of the national debt and other national obligations;
- (c) the needs and interests of the national government, determined by objective criteria;
- (d) the need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of the provinces and municipalities;
- (f) developmental and other needs of provinces, local government and municipalities;
- (g) economic disparities within and among the provinces;
- (h) obligations of the provinces and municipalities in terms of national legislation;
- (i) the desirability of stable and predictable allocations of revenue shares; and
- (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

[Date of commencement of s. 214: 1 January 1998]

215. National, provincial and municipal budgets

- (1) National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.
- (2) National legislation must prescribe-
 - (a) the form of national, provincial and municipal budgets;
 - (b) when national and provincial budgets must be tabled; and
 - (c) that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.
- (3) Budgets in each sphere of government must contain-
 - (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
 - (b) proposals for financing any anticipated deficit for the period to which they apply; and

- (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

[Date of commencement of s. 215: 1 January 1998.]

216. Treasury control

- (1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-
 - (a) generally recognised accounting practice;
 - (b) uniform expenditure classifications; and
 - (c) uniform treasury norms and standards.
- (2) The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

[Sub-s. (2) substituted by s. 5(a) of the Constitution Seventh Amendment Act of 2001.]

- (3) A decision to stop the transfer of funds due to a province in terms of section 214 (1) (b) may be taken only in the circumstances mentioned in subsection (2) and-
 - (a) may not stop the transfer of funds for more than 120 days; and
 - (b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 76(1) and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the national treasury.

[Sub-s. (3) amended by s. 5(b) of the Constitution Seventh Amendment Act of 2001.]

- (4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of subsection (3).
- (5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province-
 - (a) the Auditor-General must report to Parliament; and
 - (b) the province must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

217. Procurement

- (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation,

contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-

- (a) categories of preference in the allocation of contracts; and
- (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

[Sub-s. (3) substituted by s. 6 of the Constitution Seventh Amendment Act of 2001.]

218. Government guarantees

(1) The national government, a provincial government or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.

(2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

(3) Each year, every government must publish a report on the guarantees it has granted.

[Date of commencement of S. 218: 1 January 1998.]

219. Remuneration of persons holding public office

(1) An Act of Parliament must establish a framework for determining-

- (a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders; and
- (b) the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of Municipal Councils of the different categories.

(2) National legislation must establish an independent commission to make recommendations concerning the salaries, allowances and benefits referred to in subsection (1).

(3) Parliament may pass the legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).

(4) The national executive, a provincial executive, a municipality or any

other relevant authority may implement the national legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).

- (5) National legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General, and members of any commission provided for in the Constitution, including the broadcasting authority referred to in section 192.

Financial and Fiscal Commission

220. Establishment and functions

- (1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.
- (2) The Commission is independent and subject only to the Constitution and the law, and must be impartial.
- (3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in section 214 (2).

221. Appointment and tenure of members

- (1) The Commission consists of the following women and men appointed by the President, as head of the national executive:
- (a) A chairperson and a deputy chairperson;
- (b) three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;
- (c) two persons selected, after consulting organised local government, from a list compiled in accordance with a process prescribed by national legislation; and
- (d) two other persons.

[Sub-s (1) substituted by s. 2 of the Constitution Fifth Amendment Act of 1999] and substituted by s. 7(a) of the Constitution Seventh Amendment Act of 2001.]

- (1A) National legislation referred to in subsection (1) must provide for the participation of-
- (a) the Premiers in the compilation of a list envisaged in subsection (1)
- (b); and

(b) organised local government in the compilation of a list envisaged in subsection

(1)(c).

[Sub-s. (1A) inserted by s. 7(b) of the Constitution Seventh Amendment Act of 2001.]

(2) Members of the Commission must have appropriate expertise.

(3) Members serve for a term established in terms of national legislation.

The President may remove a member from office on the ground of misconduct, incapacity or incompetence.

222. Reports

The Commission must report regularly both to Parliament and to the provincial legislatures.

Central Bank

223. Establishment

The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.

224. Primary object

(1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

225. Powers and functions

The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.

Provincial and Local Financial Matters

226. Provincial Revenue Funds

(1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except

- money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from a Provincial Revenue Fund only-
 - (a) in terms of an appropriation by a provincial Act; or
 - (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in the Constitution or a provincial Act.
 - (3) Revenue allocated through a province to local government in that province in terms of section 214(1), is a direct charge against that province's Revenue Fund.
 - (4) National legislation may determine a framework within which-
 - (a) a provincial Act may in terms of subsection (2)(b) authorise the withdrawal of money as a direct charge against a Provincial Revenue Fund; and
 - (b) revenue allocated through a province to local government in that province in terms of subsection (3) must be paid to municipalities in the province.

[Sub-s. (4) added by s. 8 of the Constitution Seventh Amendment Act of 2001.]

[Date of commencement of s. 226: 1 January 1998]

227. National sources of provincial and local government funding

- (1) Local government and each province-
 - (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and
 - (b) may receive other allocations from national government revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.
- (3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 216.
- (4) A province must provide for itself any resources that it requires, in terms of a provision of its provincial constitution, that are additional to its requirements envisaged in the Constitution.

[Date of commencement of s. 227: 1 January 1998]

228. Provincial taxes

(1) A provincial legislature may impose-

- (a) taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties; and
- (b) flat-rate surcharges on any tax, levy or duty that is imposed by national legislation, other than on corporate income tax, value-added tax, rates on property or customs duties.

[Para.(b) substituted by s. 9 of the Constitution Seventh Amendment Act of 2001.]

(2) The power of a provincial legislature to impose taxes, levies, duties and surcharges-

- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour; and
- (b) must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[Date of commencement of s. 228: 1 January 1998]

229. Municipal fiscal powers and functions

(1) Subject to subsections (2), (3) and (4), a municipality may impose-

- (a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
- (b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.

(2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties-

- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
- (b) may be regulated by national legislation.

(3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The

division may be made only after taking into account at least the following criteria:

- (a) The need to comply with sound principles of taxation.
 - (b) The powers and functions performed by each municipality.
 - (c) The fiscal capacity of each municipality.
 - (d) The effectiveness and efficiency of raising taxes, levies and duties.
 - (e) Equity.
- (4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.
- (5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

[Date of commencement of s. 229: 1 January 1998]

230. Provincial loans

- (1) A province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[S. 230 substituted by s. 10 of the Constitution Seventh Amendment Act of 2001.]

230A. Municipal loans

- (1) A Municipal Council may, in accordance with national legislation-
- (a) raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and
 - (b) bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[S. 230A inserted by s. 17 of the Constitution Sixth Amendment Act of 2001.]

Chapter 14

GENERAL PROVISIONS

International Law

231. International agreements

- (1) The negotiating and signing of all international agreements is the responsibility of the national executive.
- (2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).
- (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
- (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.
- (5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

232. Customary international law

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

233. Application of international law

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

Other Matters

234. Charters of Rights

In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.

235. Self-determination

The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

236. Funding for political parties

To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.

237. Diligent performance of obligations

All constitutional obligations must be performed diligently and without delay.

238. Agency and delegation

An executive organ of state in any sphere of government may-

- (a) delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of state, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed; or
- (b) exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.

239. Definitions

In the Constitution, unless the context indicates otherwise- **“national legislation”** includes-

- (a) subordinate legislation made in terms of an Act of Parliament; and
- (b) legislation that was in force when the Constitution took effect and that is administered by the national government;

“organ of state” means-

- (a) any department of state or administration in the national,

- provincial or local sphere of government; or
- (b) any other functionary or institution-
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

“provincial legislation” includes-

- (a) subordinate legislation made in terms of a provincial Act; and
- (b) legislation that was in force when the Constitution took effect and that is administered by a provincial government.

240. Inconsistencies between different texts

In the event of an inconsistency between different texts of the Constitution, the English text prevails.

241. Transitional arrangements

Schedule 6 applies to the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition.

242. Repeal of laws

The laws mentioned in Schedule 7 are repealed, subject to section 243 and Schedule 6.

243. Short title and commencement

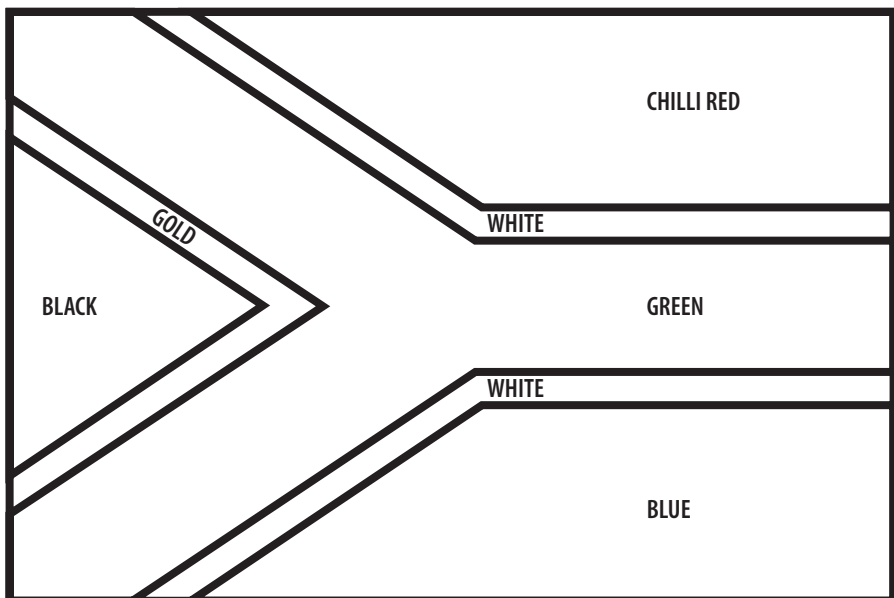
- (1) This Act is called the Constitution of the Republic of South Africa, 1996, and comes into effect as soon as possible on a date set by the President by proclamation, which may not be a date later than 1 July 1997.
- (2) The President may set different dates before the date mentioned in subsection (1) in respect of different provisions of the Constitution.
- (3) Unless the context otherwise indicates, a reference in a provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect.
- (4) If a different date is set for any particular provision of the Constitution in terms of subsection (2), any corresponding provision of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), mentioned in the proclamation, is repealed with effect from the same date.
- (5) Sections 213, 214, 215, 216, 218, 226, 227, 228, 229 and 230 come into

effect on 1 January 1998, but this does not preclude the enactment in terms of this Constitution of legislation envisaged in any of these provisions before that date. Until that date any corresponding and incidental provisions of the Constitution of the Republic of South Africa, 1993, remain in force.

SCHEDULE 1

National Flag

- (1) The national flag is rectangular; it is one and a half times longer than it is wide.
- (2) It is black, gold, green, white, chilli red and blue.
- (3) It has a green Y-shaped band that is one fifth as wide as the flag. The centre lines of the band start in the top and bottom corners next to the flag post, converge in the centre of the flag, and continue horizontally to the middle of the free edge.
- (4) The green band is edged, above and below in white, and towards the flag post end, in gold. Each edging is one fifteenth as wide as the flag.
- (5) The triangle next to the flag post is black.
- (6) The upper horizontal band is chilli red and the lower horizontal band is blue. These bands are each one third as wide as the flag.



SCHEDULE 1A

Geographical Areas of Provinces

[Schedule 1A inserted by s. 4 of the Constitution Twelfth Amendment Act of 2005 and amended by s. 1 of the Constitution Thirteenth Amendment Act of 2007 and by the Constitution Sixteenth Amendment Act of 2009.]

The Province of the Eastern Cape

[Demarcation of the Province of the Eastern Cape substituted by the Constitution Thirteenth Amendment Act of 2007.]

Map No. 3 of Schedule 1 to Notice 1998 of 2005
Map No. 6 of Schedule 2 to Notice 1998 of 2005
Map No. 7 of Schedule 2 to Notice 1998 of 2005
Map No. 8 of Schedule 2 to Notice 1998 of 2005
Map No. 9 of Schedule 2 to Notice 1998 of 2005
Map No. 10 of Schedule 2 to Notice 1998 of 2005
Map No. 11 of Schedule 2 to Notice 1998 of 2005

The Province of the Free State

Map No. 12 of Schedule 2 to Notice 1998 of 2005
Map No. 13 of Schedule 2 to Notice 1998 of 2005
Map No. 14 of Schedule 2 to Notice 1998 of 2005
Map No. 15 of Schedule 2 to Notice 1998 of 2005
Map No. 16 of Schedule 2 to Notice 1998 of 2005

The Province of Gauteng

[Demarcation of the Province of Gauteng amended by the Constitution Sixteenth Amendment Act of 2009.]
Map No. 4 in Notice 1490 of 2008

[Reference to Map No. 4 substituted by s. 1(a) of the Constitution Sixteenth Amendment Act of 2009.]

Map No. 17 of Schedule 2 to Notice 1998 of 2005
Map No. 18 of Schedule 2 to Notice 1998 of 2005
Map No. 19 of Schedule 2 to Notice 1998 of 2005
Map No. 20 of Schedule 2 to Notice 1998 of 2005
Map No. 21 of Schedule 2 to Notice 1998 of 2005

The Province of KwaZulu-Natal

[Demarcation of the Province of KwaZulu-Natal substituted by the Constitution Thirteenth Amendment Act of 2007.]

Map No. 22 of Schedule 2 to Notice 1998 of 2005
Map No. 23 of Schedule 2 to Notice 1998 of 2005
Map No. 24 of Schedule 2 to Notice 1998 of 2005
Map No. 25 of Schedule 2 to Notice 1998 of 2005
Map No. 26 of Schedule 2 to Notice 1998 of 2005
Map No. 27 of Schedule 2 to Notice 1998 of 2005
Map No. 28 of Schedule 2 to Notice 1998 of 2005
Map No. 29 of Schedule 2 to Notice 1998 of 2005
Map No. 30 of Schedule 2 to Notice 1998 of 2005
Map No. 31 of Schedule 2 to Notice 1998 of 2005
Map No. 32 of Schedule 2 to Notice 1998 of 2005

The Province of Limpopo

Map No. 33 of Schedule 2 to Notice 1998 of 2005
Map No. 34 of Schedule 2 to Notice 1998 of 2005
Map No. 35 of Schedule 2 to Notice 1998 of 2005
Map No. 36 of Schedule 2 to Notice 1998 of 2005
Map No. 37 of Schedule 2 to Notice 1998 of 2005

The Province of Mpumalanga

Map No. 38 of Schedule 2 to Notice 1998 of 2005
Map No. 39 of Schedule 2 to Notice 1998 of 2005
Map No. 40 of Schedule 2 to Notice 1998 of 2005

The Province of the Northern Cape

Map No. 41 of Schedule 2 to Notice 1998 of 2005
Map No. 42 of Schedule 2 to Notice 1998 of 2005
Map No. 43 of Schedule 2 to Notice 1998 of 2005
Map No. 44 of Schedule 2 to Notice 1998 of 2005
Map No. 45 of Schedule 2 to Notice 1998 of 2005

The Province of North West

[Demarcation of the Province of North West amended by the Constitution Sixteenth Amendment Act of 2009.]

Map No. 5 in Notice 1490 of 2008

[Reference to Map No. 5 substituted by s. 1(b) of the Constitution Sixteenth Amendment Act of 2009.]

Map No. 46 of Schedule 2 to Notice 1998 of 2005

Map No. 47 of Schedule 2 to Notice 1998 of 2005

Map No. 48 of Schedule 2 to Notice 1998 of 2005

The Province of the Western Cape

Map No. 49 of Schedule 2 to Notice 1998 of 2005

Map No. 50 of Schedule 2 to Notice 1998 of 2005

Map No. 51 of Schedule 2 to Notice 1998 of 2005

Map No. 52 of Schedule 2 to Notice 1998 of 2005

Map No. 53 of Schedule 2 to Notice 1998 of 2005

Map No. 54 of Schedule 2 to Notice 1998 of 2005

SCHEDULE 2

Oaths and Solemn Affirmations

[Schedule 2 amended by s. 2 of Constitution First Amendment Act of 1997 (Eng text only) and substituted by s. 18 of Constitution Sixth Amendment Act of 2001.]

1. Oath or solemn affirmation of President and Acting President

The President or Acting President, before the Chief Justice, or another judge designated by the Chief Justice, must swear/ affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as President/Acting President of the Republic of South Africa, I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always-

- promote all that will advance the Republic, and oppose all that may harm it;
- protect and promote the rights of all South Africans;
- discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- do justice to all; and
- devote myself to the well-being of the Republic and all of its people.
(In the case of an oath: So help me God.)

2. Oath or solemn affirmation of Deputy President

The Deputy President, before the Chief Justice or another judge designated by the Chief Justice, must swear/affirm as follows:

In the presence of everyone assembled here, and in full realisation of the high calling I assume as Deputy President of the Republic of South Africa, I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always-

- promote all that will advance the Republic, and oppose all that may harm it;
- be a true and faithful counsellor;
- discharge my duties with all my strength and talents to the best of my

- knowledge and ability and true to the dictates of my conscience;
- do justice to all; and
- devote myself to the well-being of the Republic and all of its people.
(In the case of an oath: So help me God.)

3. Oath or solemn affirmation of Ministers and Deputy Ministers

Each Minister and Deputy Minister, before the Chief Justice or another judge designated by the Chief Justice, must swear/ affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister/Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability.
(In the case of an oath: So help me God.)

4. Oath or solemn affirmation of members of the National Assembly, permanent delegates to the National Council of Provinces and members of the provincial legislatures

(1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the: Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a member of the National Assembly/permanent delegate to the National Council of Provinces/member of the legislature of the province of C.D. to the best of my ability.

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

(2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of subitem (1) before the presiding officer of the Assembly, Council or legislature, as the case may be.

5. Oath or solemn affirmation of Premiers, Acting Premiers and members of provincial Executive Councils

The Premier or Acting Premier of a province, and each member of the Executive Council of a province, before the Chief Justice or a judge designated by the Chief Justice, must swear/affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Premier/ Acting Premier/member of the Executive Council of the province of C.D. with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability.

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

6. Oath or solemn affirmation of Judicial Officers

(1) Each judge or acting judge, before the Chief Justice or another judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that, as a Judge of the Constitutional Court/Supreme Court of Appeal/High Court/ E.F. Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.

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

(2) A person appointed to the office of Chief Justice who is not already a judge at the time of that appointment must swear or affirm before the Deputy Chief Justice, or failing that judge, the next most senior available judge of the Constitutional Court.

(3) Judicial officers, and acting judicial officers, other than judges, must swear/affirm in terms of national legislation.

SCHEDULE 3

Election Procedures

[Schedule 3 amended by s. 2 of the Constitution Fourth Amendment Act of 1999, by s. 19 of the Constitution Sixth Amendment Act of 2001, by s. 3 of the Constitution Ninth Amendment Act of 2002 and by s. 5 of the Constitution Fourteenth Amendment Act of 2008.]

Part A

Election Procedures for Constitutional Office-Bearers

1. Application

The procedure set out in this Schedule applies whenever-

- (a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly;
- (b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or
- (c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

2. Nominations

The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

3. Formal requirements

- (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.
- (2) The form on which a nomination is made must be signed-
 - (a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected;
 - (b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected; or
 - (c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected.
- (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4. Announcement of names of candidates

At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

5. Single candidate

If only one candidate is nominated, the person presiding must declare that candidate elected.

6. Election procedure

If more than one candidate is nominated-

- (a) a vote must be taken at the meeting by secret ballot;
- (b) each member present, or if it is a meeting of the National Council of Provinces, each province represented, at the meeting may cast one vote; and
- (c) the person presiding must declare elected the candidate who receives a majority of the votes.

7. Elimination procedure

- (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.
- (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8. Further meetings

- (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
- (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

9. Rules

- (1) The Chief Justice must make rules prescribing-
 - (a) the procedure for meetings to which this Schedule applies;
 - (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
 - (c) the form on which nominations must be submitted; and
 - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the Chief Justice determines.

Part B

Formula to Determine Party Participation in Provincial Delegations to the National Council of Provinces

1. The number of delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.

2. If a calculation in terms of item 1 yields a surplus not absorbed by the delegates allocated to a party in terms of that item, the surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.

3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties with the same surplus in the sequence from the highest to the lowest number of votes that have been recorded for those parties during the last election for the provincial legislature concerned.

[Item 3 added by s. 2 of the Constitution Fourth Amendment Act of 1999 and substituted by s. 3 of the Constitution Ninth Amendment Act of 2002 and by s. 5(a) of the Constitution Fourteenth Amendment Act of 2008.]

4. If more than one party with the same surplus recorded the same number of votes during the last election for the provincial legislature concerned, the legislature concerned must allocate the undistributed delegates in the delegation to the party with the same surplus in a manner which is consistent with democracy.

[Item 4 added by s. 5(b) of the Constitution Fourteenth Amendment Act of 2008.]

SCHEDULE 4

Functional Areas of Concurrent National and Provincial Legislative Competence

Part A

- Administration of indigenous forests
- Agriculture
- Airports other than international and national airports
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excluding tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law, subject to Chapter 12 of the Constitution
- Industrial promotion
- Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
- Media services directly controlled or provided by the provincial government, subject to section 192
- Nature conservation, excluding national parks, national botanical gardens and marine resources
- Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
- Pollution control
- Population development
- Property transfer fees
- Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
- Public transport

- Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership, subject to Chapter 12 of the Constitution
- Urban and rural development
- Vehicle licensing
- Welfare services

Part B

The following local government matters to the extent set out in section 155(6) (a) and (7):

- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems

SCHEDULE 5

Functional Areas of Exclusive Provincial Legislative Competence

Part A

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licences
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and amenities
- Provincial sport
- Provincial roads and traffic
- Veterinary services, excluding regulation of the profession

Part B

The following local government matters to the extent set out for provinces in section 155 (6) (a) and (7):

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads

- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

SCHEDULE 6

Transitional Arrangements

[Schedule 6 amended by s. 3 of Constitution First Amendment Act of 1997, by s. 5 of Constitution Second Amendment Act of 1998 and by s. 20 of Constitution Sixth Amendment Act of 2001.]

1. Definitions

In this Schedule, unless inconsistent with the context-

“homeland” means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory;

“new Constitution” means the Constitution of the Republic of South Africa, 1996;

“old order legislation” means legislation enacted before the previous Constitution took effect;

“previous Constitution” means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

2. Continuation of existing law

- (1) All law that was in force when the new Constitution took effect, continues in force, subject to-
 - (a) any amendment or repeal; and
 - (b) consistency with the new Constitution.
- (2) Old order legislation that continues in force in terms of subitem (1)-
 - (a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
 - (b) continues to be administered by the authorities that administered it when the new Constitution took effect, subject to the new Constitution.

3. Interpretation of existing legislation

- (1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when the new Constitution

took effect-

- (a) to the Republic of South Africa or a homeland (except when it refers to a territorial area), must be construed as a reference to the Republic of South Africa under the new Constitution;
 - (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
 - (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to item 9 of this Schedule;
 - (d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces;
 - (e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to item 12 of this Schedule; or
 - (f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution.
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation-
- (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or of a homeland, must be construed as a reference to-
 - (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
 - (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive; or
 - (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or of a homeland, must be construed as a reference to-
 - (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or

- (ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive.

4. National Assembly

- (1) Anyone who was a member or office-bearer of the National Assembly when the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.
- (2) The National Assembly as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) The National Assembly consists of 400 members for the duration of its term that expires on 30 April 1999, subject to section 49 (4) of the new Constitution.
- (4) The rules and orders of the National Assembly in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

5. Unfinished business before Parliament

- (1) Any unfinished business before the National Assembly when the new Constitution takes effect must be proceeded with in terms of the new Constitution.
- (2) Any unfinished business before the Senate when the new Constitution takes effect must be referred to the National Council of Provinces, and the Council must proceed with that business in terms of the new Constitution.

6. Elections of National Assembly

- (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 50 (2) after a motion of no confidence in the President in terms of section 102 (2) of the new Constitution.
- (2) Section 50 (1) of the new Constitution is suspended until 30 April 1999.
- (3) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies-
 - (a) to the first election of the National Assembly under the new Constitution;

- (b) to the loss of membership of the Assembly in circumstances other than those provided for in section 47 (3) of the new Constitution; and
 - (c) to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution.
- (4) Section 47 (4) of the new Constitution is suspended until the second election of the National Assembly under the new Constitution.

7. National Council of Provinces

- (1) For the period which ends immediately before the first sitting of a provincial legislature held after its first election under the new Constitution-
- (a) the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution; and
 - (b) the allocation of permanent delegates and special delegates to the parties represented in the provincial legislature, is as follows:

Province Permanent Delegates Special Delegates

Province	Permanent Delegates	Special Delegates
1. Eastern Cape	ANC 5 NP 1	ANC 4
2. Free State	ANC 4 FF 1 NP 1	ANC 4
3. Gauteng	ANC 3 DP 1 FF 1 NP 1	ANC 3 NP 1
4. KwaZulu-Natal	ANC 1 DP 1 IFP 3 NP 1	ANC 2 IFP 2
5. Mpumalanga	ANC 4 FF 1 NP 1	ANC 4

Province	Permanent Delegates	Special Delegates
6. Northern Cape	ANC 3 FF 1 NP 2	ANC 2 NP 2
7. Northern Province	ANC 6	ANC 4
8. North West	ANC 4 FF 1 NP 1	ANC 4
9. Western Cape	ANC 2 DP 1 NP 3	ANC 1 NP 3

- (2) A party represented in a provincial legislature-
 - (a) must nominate its permanent delegates from among the persons who were senators when the new Constitution took effect and are available to serve as permanent delegates; and
 - (b) may nominate other persons as permanent delegates only if none or an insufficient number of its former senators are available.
- (3) A provincial legislature must appoint its permanent delegates in accordance with the nominations of the parties.
- (4) Subitems (2) and (3) apply only to the first appointment of permanent delegates to the National Council of Provinces.
- (5) Section 62(1) of the new Constitution does not apply to the nomination and appointment of former senators as permanent delegates in terms of this item.
- (6) The rules and orders of the Senate in force when the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal.

8. Former senators

- (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces is entitled to become a full voting member of the legislature of the province from which that person was nominated as a senator in terms of section 48 of the previous Constitution.
- (2) If a former senator elects not to become a member of a provincial legislature that person is regarded as having resigned as a senator the

day before the new Constitution took effect.

- (3) The salary, allowances and benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

9. National executive

- (1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister under the previous Constitution when the new Constitution took effect, continues in and holds that office in terms of the new Constitution, but subject to subitem (2).
- (2) Until 30 April 1999, sections 84, 89, 90, 91, 93 and 96 of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.
- (3) Subitem (2) does not prevent a Minister who was a senator when the new Constitution took effect, from continuing as a Minister referred to in section 91(1)(a) of the new Constitution, as that section reads in Annexure B.

10. Provincial legislatures

- (1) Anyone who was a member or office-bearer of a province's legislature when the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.
- (2) A provincial legislature as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) For the duration of its term that expires on 30 April 1999, and subject to section 108(4), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of item 8 of this Schedule.
- (4) The rules and orders of a provincial legislature in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

11. Elections of provincial legislatures

- (1) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies-
(a) to the first election of a provincial legislature under the new

- Constitution;
 - (b) to the loss of membership of a legislature in circumstances other than those provided for in section 106(3) of the new Constitution; and
 - (c) to the filling of vacancies in a legislature, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the legislature under the new Constitution.
- (2) Section 106(4) of the new Constitution is suspended in respect of a provincial legislature until the second election of the legislature under the new Constitution.

12. Provincial executives

- (1) Anyone who was the Premier or a member of the Executive Council of a province when the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subitem (2).
- (2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever occurs first, sections 132 and 136 of the new Constitution must be regarded to read as set out in Annexure C to this Schedule.

13. Provincial constitutions

A provincial constitution passed before the new Constitution took effect must comply with section 143 of the new Constitution.

14. Assignment of legislation to provinces

- (1) Legislation with regard to a matter within a functional area listed in Schedule 4 or 5 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Executive Council of the province.
- (2) To the extent that it is necessary for an assignment of legislation under subitem (1) to be effectively carried out, the President, by proclamation, may-
 - (a) amend or adapt the legislation to regulate its interpretation or application;
 - (b) where the assignment does not apply to the whole of any piece of legislation, repeal and re-enact, with or without any amendments

- or adaptations referred to in paragraph (a), those provisions to which the assignment applies or to the extent that the assignment applies to them; or
- (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial executive or any department of state, administration, security service or other institution.
- (3) (a) A copy of each proclamation issued in terms of subitem (1) or (2) must be submitted to the National Assembly and the National Council of Provinces within 10 days of the publication of the proclamation.
- (b) If both the National Assembly and the National Council by resolution disapprove the proclamation or any provision of it, the proclamation or provision lapses, but without affecting-
 - (i) the validity of anything done in terms of the proclamation or provision before it lapsed; or
 - (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.
- (4) When legislation is assigned under subitem (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.
- (5) Any assignment of legislation under section 235(8) of the previous Constitution, including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is regarded as having been done under this item.

15. Existing legislation outside Parliament's legislative power

- (1) An authority within the national executive that administers any legislation falling outside Parliament's legislative power when the new Constitution takes effect, remains competent to administer that legislation until it is assigned to an authority within a provincial executive in terms of item 14 of this Schedule.
- (2) Subitem (1) lapses two years after the new Constitution took effect.

16. Courts

- (1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of

the legislation applicable to that office, subject to-

- (a) any amendment or repeal of that legislation; and
- (b) consistency with the new Constitution.

- (2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.

(b).....

[Subitem(b) deleted by s. 20(a) of the Constitution Sixth Amendment Act of 2001.]

- (3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.

(b).....

[Subitem(b) deleted by s. 20(a) of the Constitution Sixth Amendment Act of 2001.]

- (4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in subitem (6).

(b) Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) when the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subitem (6).

- (5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to-

(a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution;

(b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and

(c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.

- (6) (a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.

(b) The Cabinet member responsible for the administration of justice,

- acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).
- (7) (a) Anyone holding office, when the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, as-
- (i) the President of the Constitutional Court, becomes the Chief Justice as contemplated in section 167(1) of the new Constitution;
 - (ii) the Deputy President of the Constitutional Court, becomes the Deputy Chief Justice as contemplated in section 167(1) of the new Constitution;
 - (iii) the Chief Justice, becomes the President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution; and
 - (iv) the Deputy Chief Justice, becomes the Deputy President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution.
- (b) All rules, regulations or directions made by the President of the Constitutional Court or the Chief Justice in force immediately before the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, continue in force until repealed or amended.
- (c) Unless inconsistent with the context or clearly inappropriate, a reference in any law or process to the Chief Justice or to the President of the Constitutional Court, must be construed as a reference to the Chief Justice as contemplated in section 167(1) of the new Constitution.

[Subitem (7) added by s. 20(b) of the Constitution Sixth Amendment Act of 2001.]

17. Cases pending before courts

All proceedings which were pending before a court when the new Constitution took effect, must be disposed of as if the new Constitution had not been enacted, unless the interests of justice require otherwise.

18. Prosecuting authority

- (1) Section 108 of the previous Constitution continues in force until the Act of Parliament envisaged in section 179 of the new Constitution takes effect. This subitem does not affect the appointment of the National Director of Public Prosecutions in terms of section 179.
- (2) An attorney-general holding office when the new Constitution takes effect, continues to function in terms of the legislation applicable to that office, subject to subitem (1).

19. Oaths and affirmations

A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the previous Constitution, is not obliged to repeat the oath of office or solemn affirmation under the new Constitution.

20. Other constitutional institutions

(1) In this section “constitutional institution” means-

- (a) the Public Protector;
- (b) the South African Human Rights Commission;

[Para(b) amended by s. 4 of the Constitution Second Amendment Act of 1998.]

- (c) the Commission on Gender Equality;
- (d) the Auditor-General;
- (e) the South African Reserve Bank;
- (f) the Financial and Fiscal Commission;
- (g) the Judicial Service Commission; or
- (h) the Pan South African Language Board.

(2) A constitutional institution established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank or the Pan South African Language Board, the Public Protector or the Auditor-General when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to-

- (a) any amendment or repeal of that legislation; and
- (b) consistency with the new Constitution.

(3) Sections 199(1), 200(1), (3) and (5) to (11) and 201 to 206 of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.

(4) The members of the Judicial Service Commission referred to in section 105 (1) (h) of the previous Constitution cease to be members of the Commission when the members referred to in section 178 (1) (i) of the new Constitution are appointed.

(5) (a) The Volkstaat Council established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a member of the Council when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to-

- (i) any amendment or repeal of that legislation; and
- (ii) consistency with the new Constitution.

(b) Sections 184A and 184B (1)(a),(b) and(d) of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.

21. Enactment of legislation required by new Constitution

- (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect.
- (2) Section 198(b) of the new Constitution may not be enforced until the legislation envisaged in that section has been enacted.
- (3) Section 199(3)(a) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged in that section has been enacted.
- (4) National legislation envisaged in section 217(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect, but the absence of this legislation during this period does not prevent the implementation of the policy referred to in section 217(2).
- (5) Until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.
- (6) Until the legislation envisaged in section 229(1)(b) of the new Constitution is enacted, a municipality remains competent to impose any tax, levy or duty which it was authorised to impose when the Constitution took effect.

22. National unity and reconciliation

- (1) Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity.
- (2) For the purposes of subitem (1), the date "6 December 1993", where it appears in the provisions of the previous Constitution under the heading "National Unity and Reconciliation", must be read as "11 May 1994".

[Subitem (2) added by s. 3 of the Constitution First Amendment Act of 1997.]

23. Bill of Rights

- (1) National legislation envisaged in sections 9(4), 32(2) and 33(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.
- (2) Until the legislation envisaged in sections 32(2) and 33(3) of the new Constitution is enacted-
 - (a) section 32 (1) must be regarded to read as follows:

“(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights.”; and
 - (b) section 33(1) and (2) must be regarded to read as follows:

“Every person has the right to-

 - (a) lawful administrative action where any of their rights or interests is affected or threatened;
 - (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
 - (c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and
 - (d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened.”
- (3) Sections 32(2) and 33(3) of the new Constitution lapse if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect.

24. Public administration and security services

- (1) Sections 82(4) (b), 215, 218(1), 219(1), 224 to 228, 236(1), (2), (3), (6), (7) (b) and (8), 237(1) and (2) (a) and 239(4) and (5) of the previous Constitution continue in force as if the previous Constitution had not been repealed, subject to-
 - (a) the amendments to those sections as set out in Annexure D;
 - (b) any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the new Constitution; and
 - (c) consistency with the new Constitution.
- (2) The Public Service Commission and the provincial service commissions referred to in Chapter 13 of the previous Constitution continue to function in terms of that Chapter and the legislation applicable to it as if that Chapter had not been repealed, until the

Commission and the provincial service commissions are abolished by an Act of Parliament passed in terms of section 75 of the new Constitution.

- (3) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3) of the previous Constitution, and any such proclamation continues in force, subject to-
- (a) any amendment or repeal; and
 - (b) consistency with the new Constitution.

25. Additional disqualification for legislatures

- (1) Anyone who, when the new Constitution took effect, was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.
- (2) The disqualification of a person in terms of subitem (1)-
- (a) lapses if the conviction is set aside on appeal, or the sentence is reduced on appeal to a sentence that does not disqualify that person; and
 - (b) ends five years after the sentence has been completed.

26. Local government

- (1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the new Constitution-
- (a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until a Municipal Council replacing that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and

[Subitem(a) substituted by s. 5(a) of the Constitution Second Amendment Act of 1998.]

- (b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is ex officio entitled to be a member of that council until a Municipal Council replacing that council has been declared elected as a

result of the first general election of Municipal Councils after the commencement of the new Constitution.

[Subitem (b) substituted by s. 5 (a) of the Constitution Second Amendment Act of 1998.]

- (2) Section 245(4) of the previous Constitution continues in force until the application of that section lapses. Section 16(5) and (6) of the Local Government Transition Act, 1993, may not be repealed before 30 April 2000.

[Sub item (2) amended by s. 5(b) of Constitution Second Amendment Act of 1998.]

27. Safekeeping of Acts of Parliament and Provincial Acts

Sections 82 and 124 of the new Constitution do not affect the safekeeping of Acts of Parliament or provincial Acts passed before the new Constitution took effect.

28. Registration of immovable property owned by the state

- (1) On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.
- (2) No duty, fee or other charge is payable in respect of a registration in terms of subitem (1).

ANNEXURE A

Amendments to Schedule 2 to the previous Constitution

1. The replacement of item 1 with the following item:
"1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation."
2. The replacement of item 2 with the following item:
"2. The seats in the National Assembly as determined in terms of section 46 of the new Constitution, shall be filled as follows:
 - (a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.
 - (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted."
3. The replacement of item 3 with the following item:
"3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine."
4. The amendment of item 5 by replacing the words preceding paragraph (a) with the following words:
"5. The seats referred to in item 2(a) shall be allocated per region to the parties contesting an election, as follows:"
5. The amendment of item 6-
 - (a) by replacing the words preceding paragraph (a) with the following words:
"6. The seats referred to in item 2(b) shall be allocated to the parties contesting an election, as follows:"; and
 - (b) by replacing paragraph (a) with the following paragraph:
"(a) A quota of votes per seat shall be determined by dividing the

total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat.”

6. The amendment of item 7(3) by replacing paragraph (b) with the following paragraph:
“(b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a).”
7. The replacement of item 10 with the following item:
“10. The number of seats in each provincial legislature shall be as determined in terms of section 105 of the new Constitution.”
8. The replacement of item 11 with the following item:
“11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.”
9. The replacement of item 16 with the following item:
“Designation of representatives 16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190 of the new Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.
(2) Following the designation in terms of subitem (1), if a candidate’s name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate’s name shall be deleted from the other lists.

(3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures“..

- 10.** The amendment of item 18 by replacing paragraph (b) with the following paragraph:

“(b) a representative is appointed as a permanent delegate to the National Council of Provinces;”.

- 11.** The replacement of item 19 with the following item:

“19. Lists of candidates of a party referred to in item 16 (1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.”.

- 12.** The replacement of item 23 with the following item:

“Vacancies 23.

(1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person-

(a) whose name appears on the list of candidates from which the vacating member was originally nominated; and

(b) who is the next qualified and available person on the list.

(2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item 23A(1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.”.

- 13.** The insertion of the following item after item 23:

“Additional ground for loss of membership of legislatures 23A.

(1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.

(2) Despite subitem (1) any existing political party may at any time change its name.

(3) An Act of Parliament may, within a reasonable period after the new

Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature.

- (4) An Act of Parliament referred to in subitem (3) may also provide for-
- (a) any existing party to merge with another party; or
 - (b) any party to subdivide into more than one party."

14. The deletion of item 24.

15. The amendment of item 25-

- (a) by replacing the definition of "Commission" with the following definition:

"'Commission' means the Electoral Commission referred to in section 190 of the new Constitution;"; and

- (b) by inserting the following definition after the definition of "national list":

"'new Constitution' means the Constitution of the Republic of South Africa, 1996;".

16. The deletion of item 26.

ANNEXURE B

Government of National Unity: National Sphere

1. Section 84 of the new Constitution is deemed to contain the following additional subsection:
“(3) The President must consult the Executive Deputy Presidents-
 (a) in the development and execution of the policies of the national government;
 (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
 (c) in the assignment of functions to the Executive Deputy Presidents;
 (d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives;
 (e) before appointing commissions of inquiry;
 (f) before calling a referendum; and
 (g) before pardoning or reprieving offenders.”
2. Section 89 of the new Constitution is deemed to contain the following additional subsection:
“(3) Subsections (1) and (2) apply also to an Executive Deputy President.”
3. Paragraph (a) of section 90(1) of the new Constitution is deemed to read as follows:
“(a) an Executive Deputy President designated by the President;”
4. Section 91 of the new Constitution is deemed to read as follows:
“Cabinet 91.
(1) The Cabinet consists of the President, the Executive Deputy Presidents and-
 (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
 (b) not more than one Minister who is not a member of the 175 National Assembly and appointed in terms of subsection (13), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties, deems the appointment of such a Minister expedient.

- (2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.
- (3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.
- (4) On being designated, an Executive Deputy President may elect to remain or cease to be a member of the Assembly.
- (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President.
- (6) An Executive Deputy President holds office—
 - (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of subsections (2) and (3); or
 - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.
- (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
- (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.
- (9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula:
 - (a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, plus one.
 - (b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.
 - (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
 - (d) The result, subject to paragraph (e), indicates the number of

- portfolios to be allocated to that party.
- (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must-
- (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
 - (b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio;
 - (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (9);
 - (d) terminate any appointment under paragraph (b)-
 - (i) if the President is requested to do so by the leader of the party of which the Minister in question is a member; or
 - (ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
 - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on-
- (a) the exercise of a power referred to in paragraph (a), (c) or (d) (ii) of that subsection, the President's decision prevails;
 - (b) the exercise of a power referred to in paragraph (b), (d) (i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and
 - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.

- (12) If any determination of portfolio allocations is varied under subsection (10) (c), the affected Ministers must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President-
 - (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must-
 - (i) determine a specific portfolio for a Minister referred to in subsection (1)
 - (b) should it become necessary pursuant to a decision of the President under that subsection;
 - (ii) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio; and
 - (iii) fill, if necessary, a vacancy in respect of that portfolio; or (b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government.”

5. Section 93 of the new Constitution is deemed to read as follows:

“Appointment of Deputy Ministers 93.

- (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.

- (3) The provisions of section 91(10) to (12) apply, with the necessary changes, in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.
- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister-
 - (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
 - (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
- (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific power or function."

6. Section 96 of the new Constitution is deemed to contain the following additional subsections:

- "(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.
- (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
- (5) If a Minister fails to administer the portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the Minister concerned fails to comply with a requirement of the President under subsection (5), the President may remove the Minister from office-
 - (a) if it is a Minister referred to in section 91(1)(a), after consultation with the Minister and, if the Minister is not a member of the

President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party; or
(b) if it is a Minister referred to in section 91(1)(b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."

ANNEXURE C

Government of National Unity: Provincial Sphere

1. Section 132 of the new Constitution is deemed to read as follows:
“Executive Councils 132.
 - (1) The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.
 - (2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties.
 - (3) Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 91(9), and in applying that formula a reference in that section to-
 - (a) the Cabinet, must be read as a reference to an Executive Council;
 - (b) a Minister, must be read as a reference to a member of an Executive Council; and
 - (c) the National Assembly, must be read as a reference to the provincial legislature.
 - (4) The Premier of a province after consultation with the leaders of the participating parties must-
 - (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);
 - (b) appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;
 - (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (3);
 - (d) terminate any appointment under paragraph (b)-
 - (i) if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member; or
 - (ii) if it becomes necessary for the purposes of the Constitution or

- in the interest of good government; or
- (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council.
- (5) Subsection (4) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on-
 - (a) the exercise of a power referred to in paragraph (a), (c) or (d) (ii) of that subsection, the Premier's decision prevails;
 - (b) the exercise of a power referred to in paragraph (b), (d) (i) or (e) of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails; and
 - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the Premier's party, the Premier's decision prevails.
- (6) If any determination of portfolio allocations is varied under subsection (4) (c), the affected members must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (7) Meetings of an Executive Council must be presided over by the Premier of the province.
- (8) An Executive Council must function in a manner which gives consideration to the consensus seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government."

2. Section 136 of the new Constitution is deemed to contain the following additional subsections:

- "(3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies.
- (4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council.
- (5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio

into conformity with that policy.

- (6) If the member concerned fails to comply with a requirement of the Premier under subsection (5), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party."

ANNEXURE D

Public Administration and Security Services: Amendments to Sections of the Previous Constitution

1. The amendment of section 218 of the previous Constitution-
 - (a) by replacing in subsection (1) the words preceding paragraph (a) with the following words:

“(1) Subject to the directions of the Minister of Safety and Security, the National Commissioner shall be responsible for-”;
 - (b) by replacing paragraph (b) of subsection (1) with the following paragraph:

“(b) the appointment of provincial commissioners;”;
 - (c) by replacing paragraph (d) of subsection (1) with the following paragraph:

“(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills;”;
 - (d) by replacing paragraph (k) of subsection (1) with the following paragraph:

“(k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner;”.
2. The amendment of section 219 of the previous Constitution by replacing in subsection (1) the words preceding paragraph (a) with the following words:

“(1) Subject to section 218(1), a Provincial Commissioner shall be responsible for-”.
3. The amendment of section 224 of the previous Constitution by replacing the proviso to subsection (2) with the following proviso:

“Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose

objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution.”

4. The amendment of section 227 of the previous Constitution by replacing subsection (2) with the following subsection:
“(2) The National Defence Force shall exercise its powers and perform its functions solely in the national interest in terms of Chapter 11 of the Constitution of the Republic of South Africa, 1996.”
5. The amendment of section 236 of the previous Constitution-
 - (a) by replacing subsection (1) with the following subsection-
“(1) A public service, department of state, administration or security service which immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as “the new Constitution”), performed governmental functions, continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution.”;
 - (b) by replacing subsection (6) with the following subsection:
“(6)(a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2) or any class of such persons.
(b) The commission may reverse or alter a contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case.”; and
 - (c) by replacing “this Constitution”, wherever this occurs in section 236, with “the new Constitution”.
6. The amendment of section 237 of the previous Constitution-
 - (a) by replacing paragraph (a) of subsection (1) with the following paragraph:
“(a) The rationalisation of all institutions referred to in section 236 (1), excluding military forces referred to in section 224 (2), shall after the commencement of the Constitution of the Republic of South Africa, 1996, continue, with a view to establishing-

- (i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere; and
 - (ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government.”; and
 - (b) by replacing subparagraph (i) of subsection (2)(a) with the following subparagraph:
“(i) institutions referred to in section 236 (1), excluding military forces, shall rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments;”.
- 7.** The amendment of section 239 of the previous Constitution by replacing subsection (4) with the following subsection:
“(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in section 224 (2) shall devolve upon the National Defence Force in accordance with the directions of the Minister of Defence.”.

SCHEDULE 6A

[Schedule 6A inserted by s. 6 of Constitution Tenth Amendment Act of 2003 and repealed by s. 6 of the Constitution Fourteenth Amendment Act of 2008.]

SCHEDULE 6B

[Schedule 6B, previously Schedule 6A, inserted by s. 2 of the Constitution Eighth Amendment Act of 2002, amended by s. 5 of the Constitution Tenth Amendment Act of 2003, renumbered by s. 6 of the Constitution Tenth Amendment Act of 2003 and repealed by s. 5 of the Constitution Fifteenth Amendment Act of 2008.]

SCHEDULE 7

Laws Repealed

Number and Year of Law	Title
Act No. 200 of 1993	Constitution of the Republic of South Africa, 1993
Act No. 2 of 1994	Constitution of the Republic of South Africa Amendment Act, 1994
Act No. 3 of 1994	Constitution of the Republic of South Africa Second Amendment Act, 1994
Act No. 13 of 1994	Constitution of the Republic of South Africa Third Amendment Act, 1994
Act No. 14 of 1994	Constitution of the Republic of South Africa Fourth Amendment Act, 1994
Act No. 24 of 1994	Constitution of the Republic of South Africa Sixth Amendment Act, 1994
Act No. 29 of 1994	Constitution of the Republic of South Africa Fifth Amendment Act, 1994
Act No. 20 of 1995	Constitution of the Republic of South Africa Amendment Act, 1995
Act No. 44 of 1995	Constitution of the Republic of South Africa Second Amendment Act, 1995
Act No. 7 of 1996	Constitution of the Republic of South Africa Amendment Act, 1996
Act No. 26 of 1996	Constitution of the Republic of South Africa Third Amendment Act, 1996

INDEX

(Please note: the figures after the entries refer to section numbers)

Anthem, 4
Auditor-General, 181, 188
Bill of Rights-
 Access to courts, 34
 Access to information, 32
 Application, 8
 Arrested, detained and accused persons, 35
 Assembly, demonstration, picket and petition, 17
 Children, 28
 Citizenship, 20
 Cultural, religious and linguistic communities, 31
 Education, 29
 Enforcement of rights, 38
 Environment, 24
 Equality, 9
 Freedom and security of the person, 12
 Freedom of association, 18
 Freedom of expression, 16
 Freedom of movement and residence, 21
 Freedom of religion, belief and opinion, 15
 Freedom of trade, occupation and profession, 22
 Health care, food, water and social security, 27
 Housing, 26
 Human Dignity, 10
 Interpretation, 39
 Just administrative action, 33
 Labour relations, 23
 Language and culture, 30
 Life, 11
 Limitation of rights, 36
 Political rights, 19
 Privacy, 14
 Property, 25
 Slavery, servitude and forced labour, 13
 States of emergency, 37
Broadcasting, Independent Authority to Regulate, 181, 192

- Budget, 215
- Central Bank, 223 - 225
- Co-operative Government, 41
- Citizenship, 3
- Cabinet, 91 - 99, 101, 102
- Commission for Gender Equality, 181, 187
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic
- Communities, 181, 185, 186
- Conflicting Laws, 146 - 150
- Courts-
 - Constitutional Court, 167
 - Court procedures, 171
 - High Court of South Africa, 169
 - Inherent power, 173
 - Other courts, 170
 - Powers of courts in constitutional matters, 172
 - Supreme Court of Appeal, 168
- Defence, 200 - 204
- Electoral Commission, 181, 190, 191
- Election procedures for Constitutional office-bearers, Schedule 3, Part A
- Executive authority-
 - The Provinces, 125
 - The Republic, 85
- Executive Councils, Provincial, 132 -141
- Finance, National, 213, 214, 216, 217
- Finance, Provincial and local, 226 - 230
- Financial and Fiscal Commission, 220 - 222
- Flag, 5
- Funding for political parties, 236
- South African Human Rights Commission, 181, 184
- Independent Authority to Regulate Broadcasting, 192
- Intelligence, 209, 210
- International Law, 231 - 233
- Judicial Authority, 165
- Judicial officers, 174 - 177
- Judicial Service Commission, 178
- Judicial system, 166
- Languages, 6
- Law-making, 73 - 82
- Legislative Authority, 43, 44
- Local government, 152, 163

Municipalities, 151 - 164

National Assembly-

Composition and election, 46

Decision, 53

Evidence or information before National Assembly, 56

Powers, 55

Public access, 59

National Council of Provinces-

Allocation of delegates, 61

Composition, 60

Decisions, 65

Evidence or information before National Council, 69

Participation by local government representatives, 67

Party participation in provincial delegations, Schedule 3, Part B

Permanent delegates, 62

Powers, 68

Public access, 72

Parliament, 42

Police, 205 - 208

Premiers, 127 - 130

President, 83 - 89

Prosecuting authority, 179

Provinces, 103

Provincial Constitutions, 142 - 145

Provincial Legislatures, 104 - 121

Application by members to Constitutional Court, 122

Permanent delegates' rights, 113

Public access, 118

Public Administration, 195

Public Service Commission, 196

Public Service, 197

Public Protector, 181, 182

Security Services, 198, 199

Self-determination, 235

Supremacy of the Constitution, 2

Traditional leaders, 211, 212

2. NORMS AND STANDARDS FOR JUDICIAL OFFICERS

ISSUED BY THE CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA IN
TERMS OF SECTION 8 OF THE SUPERIOR COURTS ACT 10 OF 2013 READ
WITH SECTION 165(6) OF THE CONSTITUTION

CONTENTS

Preamble	173.
Objectives	174.
Core Values	174.
Management of Judicial Functions	175.
Norms and Standards	176.
Monitoring and Implementation	180.

PREAMBLE

1. Whereas section 165 (1) of the Constitution provides that the judicial authority of the Republic is vested in the courts; AND Whereas the Constitution further provides that -

- (i) the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice [section 165 (2)];
- (ii) no person or organ of state may interfere with the functioning of the courts [section 165 (3)];
- (iii) organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts [section 165 (4)];
- (iv) everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court [section 34]; and
- (v) everyone is equal before the law and has the right to equal protection and benefit of the law [section 9 (1)];

AND Whereas section 165 (6) of the Constitution read with section 8 of the Superior Courts Act, 10 of 2013, provides that the Chief Justice is responsible for the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts, and enjoins the Chief Justice to issue written protocols or directives, to give guidance or advice to Judicial Officers (Judges and Magistrates);

AND Whereas section 12 (5) of the Judicial Service Commission Act, 1994 (Act 9 of 1994) provides for the Code of Judicial Conduct to serve as the prevailing standard of judicial conduct which Judges must adhere to;

AND Whereas Regulation 54A of the Regulations for Judicial Officers in Lower Courts, 1994 promulgated under the Magistrates Act, 1993, (Act 90 of 1993) provides for a Code of Conduct for Magistrates.

Now therefore the Chief Justice hereby issues the norms and standards contained herein for the performance of judicial functions. These norms and standards are

binding on all Judicial Officers and apply to all Courts in the Republic of South Africa, subject to appropriate modifications or adaptations necessitated by the nature of the Court or special circumstances

These norms and standards incorporate the practice directives for all Superior Courts, Regional Courts, District Courts and all other courts, which the Chief Justice will issue from time to time. All protocols and directives currently in operation will remain extant. The various practice directives therefore encapsulate and expand the broad outline contained in these norms and standards and similarly seek to attain the objectives outlined above and as set out in section 8 (3) (b) of the Superior Courts Act. In the event of a conflict between these norms and standards and any practice directives, the former will prevail. Uniform Practice

Directives will as far as practicable be developed for the Superior Courts, Regional Courts, District Courts and all other courts and will be issued by the Chief Justice in consultation with the Heads of Court, the Regional Presidents Forum and the Chief Magistrate's Forum, as the case may be.

OBJECTIVES

2. These norms and standards seek to achieve the enhancement of access to quality justice for all; to affirm the dignity of all users of the court system and to ensure the effective, efficient and expeditious adjudication and resolution of all disputes through the courts, where applicable, These objectives can only be attained through the commitment and co-operation of all Judicial Officers in keeping with their oath or solemn affirmation to uphold and protect the Constitution and the human rights entrenched in it and to deliver justice to all persons alike without fear, favour or prejudice in accordance with the Constitution and the law.

CORE VALUES

3. The norms and standards set out in this document are underpinned by the following core values:

- (i) The independence of the Judiciary and the concomitant imperatives of integrity and impartiality of all Judicial Officers.
- (ii) Equality and fairness.

- (iii) Accessibility.
- (iv) Transparency.
- (v) Responsiveness.
- (vi) Diligence.

MANAGEMENT OF JUDICIAL FUNCTIONS

4. The overall responsibility of managing judicial functions and for overseeing the implementation of these norms and standards vests in the Chief Justice as Head of the Judiciary in terms of section 165 (6) of the Constitution and section 8(2) of the Superior Courts Act.

The co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of the Division of the High Court is the responsibility of the Judge President of that Division. The Heads of the various Courts will manage the judicial functions and ensure that all Judicial Officers perform their judicial functions efficiently. In the case of the Magistrates' Court, the Heads, who are the Regional Court Presidents and the Heads of the Administrative Regions will account for such management to the relevant Judge President.

The President of the Supreme Court of Appeal as well as each Judge President will account to the Chief Justice for the management of his or her court and, in the case of Judges President, the management of the Magistrates' Courts falling within his or her jurisdiction.

The Chief Justice may designate any Judge to assist him or her in his or her judicial or leadership functions.

The list of judicial functions envisaged in section 8(6) of the Superior Courts Act (as well as section 165 of the Constitution), which is not exhaustive, is set out below:

- (i) Determination of sittings of the specific courts;
- (ii) Assignment of Judicial Officers to sittings;
- (iii) Assignment of cases and other judicial duties to Judicial Officers;
- (iv) Determination of sitting schedules and places of sittings for Judicial Officers;
- (v) Management of procedures to be adhered to in respect of:

- (a) Case flow management;
- (b) The finalisation of any matter before a Judicial Officer (including any outstanding judgment, decision or order);
- (c) Recesses of Superior Courts.¹

¹This list of Judicial functions is also contained in section 8 (6) of the Superior Courts Act.

NORMS AND STANDARDS

5.1 Norms

The following norms are hereby established:

- (i) Judicial Officers must at all times act in accordance with the core values stated above.
- (ii) Every Judicial Officer must dispose of his or her cases efficiently, effectively and expeditiously.
- (iii) The Heads of all Courts must take all necessary initiatives to ensure a thriving normative and standardised culture of leadership and must ensure that these core values are adhered to.
- (iv) The Heads of all courts should engender an open and transparent policy of communication both internally and externally. Collegiality amongst Judicial Officers should be fostered and encouraged.
- (v) The Head of each Court should encourage Judicial Officers to ensure that all courts and related services should be open and accessible.
- (vi) Judicial Officers should make optimal use of available resources and time and strive to prevent fruitless and wasteful expenditure at all times.
- (vii) Judicial Officers should at all times be courteous and responsive to the public and accord respect to all with whom they come into contact.
- (viii) Judicial Officers should strive for and adhere to a high level of competence and excellence and to this end are encouraged to participate in regular training under the auspices of the South African Judicial Education Institute.

5.2 Standards

The following standards are hereby established:

5.2.1 Determination of Sittings of the Specific Courts

- (i) Judicial Officers shall at all times strive to deliver quality justice as

expeditiously as possible in all cases.

- (ii) It is noted that there is a significant difference in the manner in which courts and the Constitutional Court, the Supreme Court of Appeal and Specialist Courts (the Labour Courts, Labour Appeal Courts, Land Claims Court and the Competition Appeal Court) perform their work, as well as the case loads they carry, the standards set out herein must be applied within that context. The Head of each Court must ensure that Judicial Officers are always available to handle cases.
- (iii) The Head of each Court will be responsible for determining the sittings of each court, subject to the directives and oversight of the Chief Justice.
- (iv) Trial courts should strive to sit for a minimum of 4.5 hours per day and all Judicial Officers should strictly comply with court hours, save where, for good reason, this cannot be done.
- (v) In the event that a Judicial Officer should become available eg. where the roll collapses, the Judicial Officer should make him or herself available to be allocated other work by the Head of the Court or a designated Judicial Officer.

5.2.2 Assignment of Judicial Officers to Sittings

- (i) The Head of each Court must assign Judicial Officers for the hearing of cases. Such allocation must be done in an equitable, fair and balanced manner and must as far as practicable, be effected in a transparent and open manner. Exchange of cases between Judicial Officers is to be done through, or in consultation with, the Head of Court or a Senior Judicial Officer assigned for that purpose.
- (ii) The Head of each Court must ensure that there are Judicial Officers assigned for all sittings so that cases are disposed of efficiently, effectively and expeditiously.
- (iii) Every effort must therefore be made to ensure that an adequate number of Judicial Officers is available in all courts to conduct the courts' business.
- (iv) The Head of each court must ensure that a written record is kept of vacation and other leave, or extraordinary absence afforded to all Judicial Officers.
- (v) Where applicable, during each recess period the Head of court must ensure that an adequate number of Judicial Officers are available in that court to deal with any judicial functions that need to be dealt with.
- (vi) Recommendations for the appointment of acting Judicial Officers to

a court must be made in instances where a Judicial Officer is not available to conduct the duties of that court for whatever reason, or as the need may arise, for example to address the backlogs.

- (vii) The Head of a Court may from time to time assign other judicial or related duties to another Judicial Officer.
- (viii) A Judicial Officer shall not absent him or herself without the permission of the Head of the Court or a designated Judicial Officer where applicable.

5.2.3 Determination of the Sitting Schedules and Place of Sitting for Judicial Officers

The Head of a Court shall determine the sitting schedules and places of sitting for Judicial Officers without derogating from the above mentioned general standard, presiding Judicial Officers shall retain the discretion to arrange sittings in the cases before them to make efficient use of court time.

5.2.4 Judicial Case Flow Management

- (1) Case flow management shall be directed at enhancing service delivery and access to quality justice through the speedy finalisation of all matters.
 - (ii) The National Efficiency Enhancement Committee, chaired by the Chief Justice, shall co-ordinate case flow management at national level. Each Province shall have only one Provincial Efficiency Enhancement Committee, led by the Judge President; that reports to the Chief Justice.
 - (iii) Every Court must establish a case management forum chaired by the Head of that Court to oversee the implementation of case flow management.
 - (iv) Judicial Officers shall take control of the management of cases at the earliest possible opportunity.
 - (v) Judicial Officers should take active and primary responsibility for the progress of cases from initiation to conclusion to ensure that cases are concluded without unnecessary delay.
 - (vi) The Head of each Court shall ensure that Judicial Officers conduct pre-trial conferences as early and as regularly as may be required to achieve the expeditious finalisation of cases.
 - (vii) No matter may be enrolled for hearing unless it is certified trial ready by a Judicial Officer.
 - (viii) Judicial Officers must ensure that there is compliance with all applicable time limits.

5.2.5 Finalisation of all Matters Before a Judicial Officer

All Judicial Officers must strive to finalise all matters, including outstanding judgments, decisions or orders as expeditiously as possible. It is noted that some cases may, due to the complexity and magnitude thereof, take longer to finalise than the norms set out herein.

(i) Finalisation of civil cases:

- (a) High Court - within 1 year from the date of issue of summons.
- (b) Magistrates' Courts - within 9 months from the date of issue of summons.

(ii) Finalisation of criminal cases:

- (a) In order to give effect to an accused person's right to a speedy trial enshrined in the Constitution, every effort shall be made to bring the accused to trial as soon as possible after the accused's arrest and first appearance in court.
- (b) The Judicial Officer must ensure that every accused person pleads to the charge within 3 months from the date of first appearance in the Magistrates' court. To this end Judicial Officers shall strive to finalise criminal matters within 6 months after the accused has pleaded to the charge.
- (c) All Judicial Officers are enjoined to take a pro-active stance to invoke all relevant legislation to avoid lengthy periods of incarceration of accused persons whilst awaiting trial.

5.2.6 Delivery of Judgments

Judgments, in both civil and criminal matters, should generally not be reserved without a fixed date for handing down. Judicial Officers have a choice to reserve judgments sine die where the circumstances are such that the delivery of a judgment on a fixed date is not possible. Save in exceptional cases where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.

5.2.7 Recesses

Recesses of the Superior Courts shall be regulated as set out in sections 9 (2), (3) and (4) of the Superior Courts Act.

MONITORING AND IMPLEMENTATION

6. (i) The Chief Justice as the Head of the Judiciary shall exercise responsibility over the monitoring and evaluation of the performance of each Judicial Officer as well as the monitoring and implementation of norms and standards for the exercise of leadership and judicial functions of all courts.
- (ii) Everything reasonably possible should be done to ensure that Judicial Officers have all the resources and tools of trade availed to them to enable them to perform their judicial functions efficiently and effectively. Reporting is an essential and integral part of ensuring effective monitoring and implementation of the norms and standards. All Judicial Officers shall submit data on their performance and the workflow of cases for collating and analysis following upon which a comprehensive report by the Head of Court will be compiled.
- (iii) The report must be submitted to the Head of a Court who will, in the case of Regional and District Courts, first submit to the Regional Court President and the Head of the Administrative Region, who in turn will submit it to the Judge President concerned for further submission to the Chief Justice to assess the functioning and the efficiency of the courts. Each Head of Court shall monitor and evaluate performance of the Judicial Officers serving in his or her court on a daily basis to ensure optimal utilisation and productivity.

3. SUPERIOR COURTS ACT 10 OF 2013

It is hereby notified that the President has assented to the following Act,
which is hereby published for general information:
Act No. 10 of 2013: Superior Courts Act, 2013

CONTENTS

Preamble	183.
<i>Chapter 1</i> Introductory Provisions	185.
<i>Chapter 2</i> Constitutional Court, Supreme Court of Appeal and High Court of South Africa	188.
<i>Chapter 3</i> Governance and administration of all courts	191.
<i>Chapter 4</i> Manner of arriving at decisions by Superior Courts	194.
<i>Chapter 5</i> Orders of constitutional invalidity, appeals and settlement of conflicting decisions	197.
<i>Chapter 6</i> Provisions applicable to High Court only	202.
<i>Chapter 7</i> Rules of Court	204.
<i>Chapter 8</i> General provisions applicable to all Superior Courts	205.
<i>Chapter 9</i> Transitional provisions, amendment and repeal of laws, and commencement	216.
Schedule 1 Laws repealed (Section 55(1)(a))	219.
Schedule 2 Laws amended (Section 55(1)(b))	220.

(Commencement date: 23 August 2013 [Proc. No. R36, *Gazette* No. 36774]- with the exception of sections 29, 37 and 45 and Items No. 11 of Schedule 1 No. and 1.1 of Schedule 2)

English text signed by President

Acented to 12 August 2013

ACT

To rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa; to make provision for the administration of the judicial functions of all courts; to make provision for administrative and budgetary matters relating to the Superior Courts; and to provide for matters incidental thereto.

PREAMBLE

NOTING THAT section 1 of the Constitution of the Republic of South Africa, 1996, provides that the supremacy of the Constitution and the rule of law form part of the founding values of the Republic;

AND section 165 of the Constitution provides that-

- (a) the judicial authority of the Republic is vested in the courts;
- (b) the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice;
- (c) no person or organ of state may interfere with the functioning of the courts;
- (d) organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts;
- (e) an order or decision by a court binds all persons to whom and all organs of state to which it applies; and
- (f) the Chief Justice is the head of the judiciary and exercises

responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts;

AND section 166 of the Constitution provides that the courts are-

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Court of South Africa;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Court or the Magistrates' Courts;

AND section 171 of the Constitution provides that all courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation;

AND section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution;

AND item 16 (6) (a) of Schedule 6 to the Constitution provides that as soon as practical after the Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a

view to establishing a judicial system suited to the requirements of the Constitution;

NOTING FURTHER that, with the advent of the democratic constitutional dispensation in 1994, the Republic inherited a fragmented court structure and infrastructure which were largely derived from our colonial history and were subsequently further structured to serve the segregation objectives of the apartheid dispensation;

AND that, before the advent of the democratic constitutional dispensation in 1994, the Magistrates' Courts were not constitutionally recognised as part of the judicial authority and were largely dealt with as an extension of the public service;

AND that, since the Constitution provides that the judicial authority is vested

in all the courts, it is desirable to provide for a uniform framework for judicial management, by the judiciary, of the judicial functions of all courts;

AND RECOGNISING that the rationalisation envisaged by item 16(6)(a) of Schedule 6 to the Constitution is an on-going process that is likely to result in further legislative and other measures in order to establish a judicial system suited to the requirements of the Constitution,

Chapter 1

INTRODUCTORY PROVISIONS

1. Definitions

In this Act, unless the context otherwise indicates-

“appeal” in Chapter 5, does not include an appeal in a matter regulated in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or in terms of any other criminal procedural law;

“business day” means a day that is not a public holiday, Saturday or Sunday;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Department” means the Department responsible for the administration of justice;

“Director-General” means the Director-General of the Department;

“Division” means any Division of the High Court;

“full court”, in relation to any Division, means a Court consisting of three judges;

“head of court”, in relation to-

- (i) the Constitutional Court, means the Chief Justice;
- (ii) the Supreme Court of Appeal, means the President of that Court;
- (iii) any Division of the High Court, means the Judge President of that Division; and

- (iv) any court of a status similar to the High Court, the most senior judge of such court;

“High Court” means the High Court of South Africa referred to in section 6 (1);

“judicial officer” means any person referred to in section 174(1) of the Constitution;

“Judicial Service Commission” means the Judicial Service Commission referred to in section 178 of the Constitution;

“Magistrates’ Court” means any court established in terms of section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“Minister” means the Cabinet member responsible for the administration of justice;

“plaintiff” includes any applicant or other party who seeks relief in civil proceedings;

“prescribed” means prescribed by regulation made in terms of this Act;

“President” means the President of the Republic of South Africa;

“registrar” means the registrar of the Constitutional Court, the Supreme Court of Appeal or any Division of the High Court, as the case may be, and includes an assistant registrar;

“rules” means the applicable rules of court;

“Rules Board” means the Rules Board for Courts of Law, established by the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);

“Secretary-General” means the head of the Office of the Chief Justice, referred to in Column 2 of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Superior Court” means the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court;

“this Act” includes any regulation.

2. **Objects and interpretation of Act**

(1) The objects of this Act are-

- (a) to consolidate and rationalise the laws pertaining to Superior Courts as contemplated in item 16(6) of Schedule 6 to the Constitution;
- (b) to bring the structure of the Superior Courts in line with the provisions of Chapter 8 and the transformation imperatives of the Constitution; and
- (c) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises responsibility.

(2) This Act must be read in conjunction with Chapter 8 of the Constitution, which contains the founding provisions for the structure and jurisdiction of the Superior Courts, the appointment of judges of the Superior Courts and matters related to the Superior Courts.

(3) The provisions of this Act relating to Superior Courts other than the Constitutional Court, the Supreme Court of Appeal or the High Court of South Africa, are complementary to any specific legislation pertaining to such Courts, but in the event of a conflict between this Act and such legislation, such legislation must prevail.

3. **Introduction of legislation dealing with court structures**

The Minister must be consulted prior to the introduction in Parliament, by a person other than the Minister, of any bill-

- (a) providing for the establishment of any court of law;
- (b) providing for the establishment of any tribunal contemplated in section 34 of the Constitution;
- (c) that amends the structure or functions of any court of law or tribunal referred to in paragraph (a) or (b); or
- (d) that assigns functions to judicial officers, other than in terms of this Act.

Chapter 2

CONSTITUTIONAL COURT, SUPREME COURT OF APPEAL AND HIGH COURT OF SOUTH AFRICA

4. Constitution and seat of Constitutional Court

- (1) (a) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice of South Africa and nine other judges of the Constitutional Court.
- (b) The seat of the Constitutional Court is in Johannesburg, but whenever it appears to the Chief Justice that it is expedient or in the interests of justice to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.
- (2) The Deputy Chief Justice must-
 - (a) exercise such powers or perform such functions of the Chief Justice in terms of this or any other law as the Chief Justice may assign to him or her; and
 - (b) in the absence of the Chief Justice, or if the office of Chief Justice is vacant, exercise the powers or perform the functions of the Chief Justice, as Acting Chief Justice.

5. Constitution and seat of Supreme Court of Appeal

- (1) (a) The Supreme Court of Appeal consists of-
 - (i) the President of the Supreme Court of Appeal;
 - (ii) the Deputy President of the Supreme Court of Appeal; and
 - (iii) so many other judges as may be determined in accordance with the prescribed criteria, and approved by the President.
- (b) Subject to section 9(1), the seat of the Supreme Court of Appeal is in Bloemfontein, but whenever it appears to the President of the Supreme Court of Appeal that it is expedient or in the interests of justice to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.
- (2) The Deputy President of the Supreme Court of Appeal must-
 - (a) exercise such powers or perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as the latter may assign to him or her; and

- (b) in the absence of the President of the Supreme Court of Appeal, or if the office of President of the Supreme Court of Appeal is vacant, perform the functions of the President of the Supreme Court of Appeal, as Acting President of the Supreme Court of Appeal.

6. Constitution of High Court of South Africa

- (1) The High Court of South Africa consists of the following Divisions:
 - (a) Eastern Cape Division, with its main seat in Grahamstown.
 - (b) Free State Division, with its main seat in Bloemfontein.
 - (c) Gauteng Division, with its main seat in Pretoria.
 - (d) KwaZulu-Natal Division, with its main seat in Pietermaritzburg.
 - (e) Limpopo Division, with its main seat in Polokwane.
 - (f) Mpumalanga Division, with its main seat in Nelspruit.
 - (g) Northern Cape Division, with its main seat in Kimberley.
 - (h) North West Division, with its main seat in Mahikeng.
 - (i) Western Cape Division, with its main seat in Cape Town.
- (2) Each Division of the High Court consists of-
 - (a) a Judge President and one or more Deputy Judges President, as determined by the President, each with specified headquarters within the area under the jurisdiction of that Division; and
 - (b) so many other judges as may be determined in accordance with the prescribed criteria, and approved by the President.
- (3)
 - (a) The Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette*, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice.
 - (b) The area under the jurisdiction of a Division may comprise any part of one or more provinces.
 - (c) The Minister may, after consultation with the Judicial Service Commission, by notice in the *Gazette* establish one or more local seats for a Division, in addition to the main seats referred to in subsection (1), and determine the area under the jurisdiction of such a local seat, and may in the same manner amend or withdraw such a notice.
 - (d) The publication of a notice referred to in paragraph (a) or (c) does not affect any proceedings which are pending at the time of such publication.
- (4) If a Division has one or more local seats-

- (a) the main seat of that Division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that Division, and the Judge President of the Division may direct that an appeal against a decision of a single judge or of a Magistrates' Court within that area of jurisdiction may be heard at the main seat of the Division;
 - (b) the Judge President of that Division must compile a single court roll for that Division; and
 - (c) the Judge President of that Division may assign all the judges of that Division within the Division as he or she deems fit.
- (5) If a judge of one Division is to be temporarily assigned to another Division, such assignment must take place by way of an acting appointment in terms of section 175 (2) of the Constitution.
- (6) (a) Subject to paragraph (b), a Deputy Judge President of a Division must-
- (i) exercise such powers or perform such functions of the Judge President in terms of this or any other law as the latter may assign to him or her; and
 - (ii) in the absence of the Judge President of that Division, or if the office of the Judge President is vacant, exercise the powers or perform the functions of the Judge President, as the Acting Judge President of that Division.
- (b) If more than one Deputy Judge President is appointed in respect of a Division, the most senior Deputy Judge President of that Division must exercise the powers or perform the functions of the Judge President in the circumstances referred to in paragraph (a)(ii).
- (7) Whenever it appears to the Judge President of a Division that it is expedient or in the interests of justice to hold a sitting for the hearing of any matter at a place elsewhere than at the seat or a local seat of the Division, he or she may, after consultation with the Minister, hold such sitting at that place.

7. Circuit Courts

- (1) The Judge President of a Division may by notice in the *Gazette* within the area under the jurisdiction of that Division establish circuit districts for the adjudication of civil or criminal matters, and may by like notice alter the boundaries of any such district.
- (2) In each circuit district of a Division there must be held, at least twice a year and at such times and places as may be determined by the

Judge President concerned, a court which must be presided over by a judge of that Division.

- (3) A court referred to in subsection (2) is called a circuit court of the Division in question.

Chapter 3

GOVERNANCE AND ADMINISTRATION OF ALL COURTS

8. Judicial management of judicial functions

- (1) For the purpose of any consultation regarding any matter referred to in this section, the Chief Justice may convene any forum of judicial officers that he or she deems appropriate.
- (2) The Chief Justice, as the head of the judiciary as contemplated in section 165(6) of the Constitution, exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.
- (3) The Chief Justice may, subject to subsection (5), issue written protocols or directives, or give guidance or advice, to judicial officers-
 - (a) in respect of norms and standards for the performance of the judicial functions as contemplated in subsection (6); and
 - (b) regarding any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts.
- (4)
 - (a) Any function or any power in terms of this section, vesting in the Chief Justice or any other head of court, may be delegated to any other judicial officer of the court in question.
 - (b) The management of the judicial functions of each court is the responsibility of the head of that court.
 - (c) Subject to subsections (2) and (3), the Judge President of a Division is also responsible for the co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of that Division.
- (5) Any protocol or directive in terms of subsection (3)-
 - (a) may only be issued by the Chief Justice if it enjoys the majority support of the heads of those courts on which it would be applicable; and
 - (b) must be published in the *Gazette*.
- (6) The judicial functions referred to in subsection (2) and subsection (4)
 - (b) include the-
 - (a) determination of sittings of the specific courts;

- (b) assignment of judicial officers to sittings;
 - (c) assignment of cases and other judicial duties to judicial officers;
 - (d) determination of the sitting schedules and places of sittings for judicial officers;
 - (e) management of procedures to be adhered to in respect of-
 - (i) case flow management;
 - (ii) the finalisation of any matter before a judicial officer, including any outstanding judgment, decision or order; and
 - (iii) recesses of Superior Courts.
- (7) The Chief Justice may designate any judge to assist him or her in his or her judicial leadership functions.

9. Access to courts, recess periods and attendance at courts

- (1) All Superior Courts-
 - (a) must be open to the public every business day; and
 - (b) may perform the functions of the court on any Saturday, Sunday or public holiday as may be required from time to time.
- (2) Superior Courts may have such recess periods as may be determined by the Chief Justice in consultation with the heads of court and the Minister in order to enable judges to do research and to attend to outstanding or prospective judicial functions that may be assigned to them.
- (3) During each recess period, the head of each court must ensure that an adequate number of judges are available in that court to deal with any judicial functions that may be required, in the interests of justice, to be dealt with during that recess period.
- (4) Subject to subsections (1) and (2), the head of each Superior Court is responsible to-
 - (a) ensure that sufficient judges of that court are available to conduct the business of the court at all times that the court is open for business;
 - (b) issue directions to the judges of that court with respect to their attendance at the court and absences from the court during recess periods;
 - (c) approve any extraordinary absence of a judge from the court; and
 - (d) keep a register, in the prescribed manner and form, of vacation periods allocated to, or extraordinary absence approved for, a judge of that court.

10. Finances

Expenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament.

11. Appointment of officers and staff

- (1) (a) Subject to paragraph (b), the Minister must appoint for the Constitutional Court, the Supreme Court of Appeal and each Division a court manager, one or more assistant court managers, a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the said court.
- (b) Any appointment by the Minister in terms of paragraph (a) must be made-
 - (i) in consultation with the head of court; and
 - (ii) in accordance with the laws governing the public service.
- (c) A court manager is the senior executive officer of the court where he or she has been appointed, and exercises administrative control over the other persons referred to in paragraph (a), and, under the control and direction of the head of court concerned performs such other functions as may be determined by the Secretary-General and the Chief Justice.
- (2) Whenever by reason of absence or incapacity any court manager, registrar or assistant registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the Minister may, after consultation with the head of court concerned, authorise any other competent officer in the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.
- (3) Any person appointed under subsection (1) may hold more than one of the offices mentioned in that subsection simultaneously.
- (4) The Minister may delegate any of the powers vested in him or her under this section to the Secretary-General.

Chapter 4

MANNER OF ARRIVING AT DECISIONS BY SUPERIOR COURTS

12. Manner of arriving at decisions by Constitutional Court

- (1) In accordance with section 167(2) of the Constitution, any matter before the Constitutional Court must be heard by at least eight judges.
- (2) If, at any stage after a hearing has commenced, any judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and-
 - (a) the remaining members of the court are not less than eight in number-
 - (i) such hearing must continue before the remaining judges of the court; and
 - (ii) the decision of the majority of the remaining judges of the court shall, if that majority is also a majority of the judges of the court before whom the hearing commenced, be the decision of the court; or
 - (b) the remaining members of the court are fewer than eight in number, the proceedings must be stopped and commenced *de novo*.
- (3) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

13. Manner of arriving at decisions by Supreme Court of Appeal

- (1) Proceedings of the Supreme Court of Appeal must ordinarily be presided over by five judges, but the President of the Supreme Court of Appeal may-
 - (a) direct that an appeal in a criminal or civil matter be heard before a court consisting of three judges; or
 - (b) whenever it appears to him or her that any matter should in view of its importance be heard before a court consisting of a larger number of judges, direct that the matter be heard before a court consisting of so many judges as he or she may determine.
- (2) (a) The judgment of the majority of the judges presiding at proceedings before the Supreme Court of Appeal shall be the judgment of the court.
- (b) Where there is no judgment to which a majority of such judges

agree, the hearing must be adjourned and commenced *de novo* before a new court constituted in such manner as the President of the Supreme Court of Appeal may determine.

- (3) If, at any stage after the hearing of an appeal has commenced, a judge of the Supreme Court of Appeal is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises-
 - (a) the hearing must, where the remaining judges constitute a majority of the judges before whom the hearing was commenced, proceed before the remaining judges, and the decision of a majority of the remaining judges who are in agreement shall, if that majority is also a majority of the judges before whom the hearing was commenced, be the decision of the court; or
 - (b) in any other case, the appeal must be heard *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or, if only one judge remains, the decision of that judge as the decision of the court.
- (4) Two or more judges of the Supreme Court of Appeal, designated by the President of the Supreme Court of Appeal, have jurisdiction to hear and determine applications for interlocutory relief, including applications for condonation and for leave to proceed *in forma pauperis*, in chambers.
- (5) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

14. Manner of arriving at decisions by Divisions

- (1) (a) Save as provided for in this Act or any other law, a court of a Division must be constituted before a single judge when sitting as a court of first instance for the hearing of any civil matter, but the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may at any time direct that any matter be heard by a court consisting of not more than three judges, as he or she may determine.
- (b) A single judge of a Division may, in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a).

- (2) For the hearing of any criminal case as a court of first instance, a court of a Division must be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters.
- (3) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a Division must be constituted before two judges for the hearing of any civil or criminal appeal: Provided that the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may in the event of the judges hearing such appeal not being in agreement, at any time before a judgment is handed down in such appeal, direct that a third judge be added to hear that appeal.
- (4) (a) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of a full court of a Division is the decision of the court.
(b) Where the majority of the judges of any such court are not in agreement, the hearing must be adjourned and commenced *de novo* before a court consisting of three other judges.
- (5) If, at any stage during the hearing of any matter by a full court, any judge of such court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, that hearing must-
 - (a) if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges; or
 - (b) if the remaining judges do not constitute such a majority, or if only one judge remains, be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the court.
- (6) The provisions of subsection (4) apply, with the changes required by the context, whenever in the circumstances set out in subsection (5) a hearing proceeds before two or more judges.
- (7) During any recess period, one judge designated by the Judge President shall, notwithstanding anything contained in this Act or any other law, but subject to subsection (3), exercise all the powers, jurisdiction and authority of a Division.
- (8) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Chapter 5

ORDERS OF CONSTITUTIONAL INVALIDITY, APPEALS AND SETTLEMENT OF CONFLICTING DECISIONS

15. Referral of order of constitutional invalidity to Constitutional Court

- (1) (a) Whenever the Supreme Court of Appeal, a Division of the High Court or any competent court declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172 (2) (a) of the Constitution, that court must, in accordance with the rules, refer the order of constitutional invalidity to the Constitutional Court for confirmation.
- (b) Whenever any person or organ of state with a sufficient interest appeals or applies directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court, as contemplated in section 172 (2) (d) of the Constitution, the Court must deal with the matter in accordance with the rules.
- (2) If requested by the Chief Justice to do so, the Minister must appoint counsel to present argument to the Constitutional Court in respect of any matter referred to in subsection (1).

16. Appeals generally

- (1) Subject to section 15 (1), the Constitution and any other law-
 - (a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted-
 - (i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6); or
 - (ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;
 - (b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal; and
 - (c) an appeal against any decision of a court of a status similar to the High Court, lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal, and the provisions of section 17 apply with the changes required by the context.
- (2) (a) (i) When at the hearing of an appeal the issues are of such a nature

that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

- (ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.
- (b) If, at any time prior to the hearing of an appeal, the President of the Supreme Court of Appeal or the Judge President or the judge presiding, as the case may be, is *prima facie* of the view that it would be appropriate to dismiss the appeal on the ground set out in paragraph (a), he or she must call for written representations from the respective parties as to why the appeal should not be so dismissed.
- (c) Upon receipt of the representations or, failing which, at the expiry of the time determined for their lodging, the President of the Supreme Court of Appeal or the Judge President, as the case may be, must refer the matter to three judges for their consideration.
- (d) The judges considering the matter may order that the question whether the appeal should be dismissed on the ground set out in paragraph (a) be argued before them at a place and time appointed, and may, whether or not they have so ordered-
 - (i) order that the appeal be dismissed, with or without an order as to the costs incurred in any of the courts below or in respect of the costs of appeal, including the costs in respect of the preparation and lodging of the written representations; or
 - (ii) order that the appeal proceed in the ordinary course.
- (3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application-
 - (a) by one spouse against the other for maintenance pendente lite;
 - (b) for contribution towards the costs of a pending matrimonial action;
 - (c) for the interim custody of a child when a matrimonial action between his or her parents is pending or is about to be instituted; or
 - (d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or about to be instituted.

17. Leave to appeal

- (1) Leave to appeal may only be given where the judge or judges

concerned are of the opinion that-

- (a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
 - (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and
 - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.
- (2) (a) Leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division.
- (b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.
- (c) An application referred to in paragraph (b) must be considered by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal and, in the case of a difference of opinion, also by the President of the Supreme Court of Appeal or any other judge of the Supreme Court of Appeal likewise designated.
- (d) The judges considering an application referred to in paragraph (b) may dispose of the application without the hearing of oral argument, but may, if they are of the opinion that the circumstances so require, order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration.
- (e) Where an application has been referred to the court in terms of paragraph (d), the court may thereupon grant or refuse it.
- (f) The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her

own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.

- (3) An application for special leave to appeal under section 16 (1) (b) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2) (c) to (f) shall apply with the changes required by the context.
- (4) The power to grant leave to appeal-
 - (a) is not limited by reason only of the fact that the matter in dispute is incapable of being valued in money; and
 - (b) is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal.
- (5) Any leave to appeal may be granted subject to such conditions as the court concerned may determine, including a condition-
 - (a) limiting the issues on appeal; or
 - (b) that the appellant pay the costs of the appeal.
- (6) (a) If leave is granted under subsection (2) (a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider-
 - (i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or
 - (ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.
- (b) Any direction by the court of a Division in terms of paragraph (a), may be set aside by the Supreme Court of Appeal of its own accord, or on application by any interested party filed with the registrar within one month after the direction was given, or such longer period as may on good cause be allowed, and may be replaced by another direction in terms of paragraph (a).
- (7) Subsection (2) (c) to (f) apply with the changes required by the context to any application to the Supreme Court of Appeal relating to an issue connected with an appeal.

18. Suspension of decision pending appeal

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4) If a court orders otherwise, as contemplated in subsection (1)-
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such order will be automatically suspended, pending the outcome of such appeal.
- (5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.

19. Powers of court on hearing of appeals

The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law-

- (a) dispose of an appeal without the hearing of oral argument;
- (b) receive further evidence;
- (c) remit the case to the court of first instance, or to the court whose decision is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the Division deems necessary; or

- (d) confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require.

20. Settlement of conflicting decisions in civil cases

Whenever a decision on a question of law is given by a court of a Division which is in conflict with a decision on the same question of law given by a court of any other Division, the Minister may submit such conflicting decisions to the Chief Justice, who must cause the matter to be argued before the Constitutional Court or the Supreme Court of Appeal, as the case may be, in order to determine the said question of law for guidance.

Chapter 6

PROVISIONS APPLICABLE TO HIGH COURT ONLY

21. Persons over whom and matters in relation to which Divisions have jurisdiction

- (1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power-
 - (a) to hear and determine appeals from all Magistrates' Courts within its area of jurisdiction;
 - (b) to review the proceedings of all such courts;
 - (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.
- (2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.
- (3) Subject to section 28 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any Division may issue an order for attachment of property to confirm jurisdiction.

22. Grounds for review of proceedings of Magistrates' Court

- (1) The grounds upon which the proceedings of any Magistrates' Court

- may be brought under review before a court of a Division are-
- (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.
- (2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts.

23. Judgment by default

A judgment by default may be granted and entered by the registrar of a Division in the manner and in the circumstances prescribed in the rules, and a judgment so entered is deemed to be a judgment of a court of the Division.

24. Time allowed for appearance

The time allowed for entering an appearance to a civil summons served outside the area of jurisdiction of the Division in which it was issued, shall be not less than-

- (a) one month if the summons is to be served at a place more than 150 kilometres from the court out of which it was issued; and
- (b) two weeks in any other case.

25. Circumstances in which security for costs shall not be required

If a plaintiff in civil proceedings in a Division resides within the Republic, but outside the area of jurisdiction of that Division, he or she shall not by reason only of that fact be required to give security for costs in those proceedings.

26. Disposal of records and execution of judgments of Circuit Courts

- (1) Within one month after the termination of the sittings of any Circuit Court, the registrar thereof must, subject to any directions of the presiding judge or judges, transmit all records in connection with the proceedings in that court to the registrar of the Supreme Court of Appeal or the Division concerned, as the case may be, to be filed as records of that Court or Division.
- (2) Any judgment, order or sentence of a Circuit Court may, subject to any applicable rules for the time being in force, be carried into execution by means of process of the Supreme Court of Appeal or the Division concerned, as the case may be.

27. Removal of proceedings from one Division to another or from one seat to another in same Division

- (1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings-
- (a) should have been instituted in another Division or at another seat of that Division; or
 - (b) would be more conveniently or more appropriately heard or determined-
 - (i) at another seat of that Division; or
 - (ii) by another Division,
- that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.
- (2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon the receipt of such order that court may hear and determine the proceedings in question.

28. Prohibition on attachment to found jurisdiction within Republic

No attachment of property to found jurisdiction shall be ordered by a Division against a person who is resident in the Republic.

Chapter 7

RULES OF COURT

29. Rules of Constitutional Court

- (1) The Chief Justice, after consultation with the Minister, makes rules relating to the manner in which the Constitutional Court may be engaged in any matter, including the matters referred to in section 172 of the Constitution, and all matters relating to the proceedings of and before the Court.
- (2) The Minister must table every rule and every amendment or repeal thereof in Parliament at least 30 days before the publication thereof.
- (3) The rules must, when it is in the interests of justice and with the leave of the Court, allow a person-
- (a) to bring a matter directly to the Court; or
 - (b) to appeal directly to the Court from any other court.

(The Commencement date of section 29 is still to be proclaimed)

30. Rules of Supreme Court of Appeal and High Court

- (1) Rules for the Supreme Court of Appeal, the High Court and the Magistrates' Courts are made in accordance with the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).
- (2) The provisions of section 29(2) and (3) also apply to rules referred to in subsection (1).

Chapter 8

GENERAL PROVISIONS APPLICABLE TO ALL SUPERIOR COURTS

Part 1

Nature of courts

31. Nature of courts and seals

- (1) Every Superior Court is a court of record.
- (2) Every Superior Court must have for use, as occasion may require, a seal of such design as may be prescribed by the President by proclamation in the *Gazette*.
- (3) The seal of a Superior Court must be kept in the custody of the Registrar.

32. Proceedings to be carried on in open court

Save as is otherwise provided for in this Act or any other law, all proceedings in any Superior Court must, except in so far as any such court may in special cases otherwise direct, be carried on in open court.

33. More than one court may sit at same time

The Supreme Court of Appeal and any Division may at any time sit in so many courts constituted in the manner provided for in this Act or any other applicable law as the available judges may allow.

Part 2

Adducing of evidence and procedural matters

34. Certified copies of court records admissible as evidence

Whenever a judgment, order or other record of any Superior Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, order or other record duly certified as such by the registrar of that court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such registrar's signature.

35. Manner of securing attendance of witnesses or production of any document or thing in proceedings and penalties for failure

- (1) A party to proceedings before any Superior Court in which the attendance of witnesses or the production of any document or thing is required, may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court.
- (2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing-
 - (a) fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that-
 - (i) the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff framed under section 37(1) have been paid or offered to him or her; or
 - (ii) he or she is evading service; or
 - (b) without leave of the court fails to remain in attendance, the court concerned may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible.
- (3) A person arrested under any such warrant may be detained thereunder in any prison or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her presence as a witness or production of any document or thing at the proceedings concerned: Provided that any judge of the court concerned may release him or her on a recognisance with or without sureties to attend as a witness or to produce any document or thing as required.
- (4) Any person subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding

three months.

- (5) If a person who has entered into any recognisance in terms of subsection (3) to attend such proceedings as a witness or to produce any document or thing fails without reasonable excuse so to attend or to produce such document or thing, he or she forfeits his or her recognisance and is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

36. Manner in which witness may be dealt with on refusal to give evidence or produce documents

- (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 35 or who is present and is verbally required by the Superior Court concerned to give evidence in any proceedings-
 - (a) refuses to take an oath or to make an affirmation;
 - (b) having taken an oath or having made an affirmation, refuses to answer such questions as are put to him or her; or
 - (c) refuses or fails to produce any document or thing which he or she is required to produce,
 without any just excuse for such refusal or failure, the court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless the person consents to do what is required of him or her before he or she is so committed to prison.
- (2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the court may again adjourn the proceedings and commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her.
- (3) Nothing contained in this section prevents the court from giving judgment in any matter or otherwise disposing of the proceedings according to any other sufficient evidence taken.
- (4) No person is bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in court.
- (5) When a subpoena is issued to procure the attendance of any person as a witness or to produce any book, paper or document in any proceedings, and it appears that-
 - (a) he or she is unable to give any evidence or to produce any book,

paper or document which would be relevant to any issue in such proceedings; or

(b) such book, paper or document could properly be produced by some other person; or

(c) to compel him or her to attend would be an abuse of the process of the court,

any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena.

37. Witness fees

(1) The Minister may, in consultation with the Minister of Finance, by notice in the *Gazette* prescribe a tariff of allowances which must be paid to a witness in civil proceedings or to any person who is to accompany any such witness on account of the youth or infirmity due to old age or any disability of such witness.

(2) Such notice may differentiate between persons according to-

(a) the distances which they have to travel to attend the court to which they are summoned or subpoenaed; or

(b) their professions, callings or occupations, and may empower such officers in the service of the State as may be specified therein to order payment of allowances in accordance with a higher tariff than the tariff so prescribed in cases where payment of allowances in accordance with the prescribed tariff may cause undue hardship.

(3) Notwithstanding any other law, a Superior Court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.

38. Reference of particular matters for investigation by referee

(1) The Constitutional Court and, in any civil proceedings, any Division may, with the consent of the parties, refer-

(a) any matter which requires extensive examination of documents or a scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or

(b) any matter which relates wholly or in part to accounts; or

(c) any other matter arising in such proceedings,

for enquiry and report to a referee appointed by the parties, and the

court may adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable.

- (2) Any such report or any part thereof which is adopted by the court, whether with or without modifications, shall have effect as if it were a finding by the court in the proceedings in question.
- (3) Any such referee shall for the purpose of such enquiry have such powers and must conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of the court.
- (4) For the purpose of procuring the attendance of any witness (including any witness detained in custody under any law) and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be civil proceedings.
- (5) (a) Any person summoned to attend as a witness or to produce any document or thing before a referee and who, without sufficient cause-
 - (i) fails to attend at the time and place specified;
 - (ii) fails to remain in attendance until the conclusion of the enquiry or until he or she is excused by the referee from further attendance;
 - (iii) refuses to take an oath or to make an affirmation as a witness; or
 - (iv) having taken an oath or made an affirmation, fails to-
 - (aa) answer fully and satisfactorily any question put to him or her; or
 - (bb) produce any document or thing in his or her possession or custody, or under his or her control, which he or she was summoned to produce,
 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.
- (b) Any person who, after having taken an oath or having made an affirmation, gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.
- (6) Any referee is entitled to such remuneration as may be prescribed by the rules or, if no such remuneration has been so prescribed, as the court may determine and to any reasonable expenditure incurred by him or her for the purposes of the enquiry, and any such

remuneration and expenditure must be taxed by the taxing master of the court and shall be costs in the cause.

39. Examination by interrogatories

- (1) The Constitutional Court and, in connection with any civil proceedings pending before it, any Division, may order that the evidence of a person be taken by means of interrogatories if-
 - (a) in the case of the Constitutional Court, the court deems it in the interests of justice; or
 - (b) in the case of a Division, that person resides or is for the time being outside the area of jurisdiction of the court.
- (2) Whenever an order is made under subsection (1), the registrar of the court must certify that fact and transmit a copy of his or her certificate to a commissioner of the court, together with any interrogatories duly and lawfully framed which it is desired to put to the said person and the fees and the amount of the expenses payable to the said person for his or her appearance as hereinafter provided.
- (3) Upon receipt of the certificate, the interrogatories and the amounts contemplated in subsection (2), the commissioner must, in respect of the person concerned-
 - (a) summon that person to appear before him or her;
 - (b) upon his or her appearance, take that person's evidence as if he or she was a witness in a civil case in the said court;
 - (c) put to him or her the said interrogatories, with any other questions calculated to obtain full and true answers to the said interrogatories;
 - (d) take down or cause to be taken down the evidence so obtained; and
 - (e) transmit the evidence, certified as correct, to the registrar of the court wherein the proceedings in question are pending.
- (4) The commissioner must further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his or her appearance, and the cost of the issue and service of the process for summoning such person before him or her.
- (5) Any person summoned to appear in terms of subsection (3) who without reasonable excuse fails to appear at the time and place mentioned in the summons, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.
- (6) Any interrogatories taken and certified under the provisions of this

section shall, subject to all lawful exceptions, be received as evidence in the proceedings concerned.

40. Manner of dealing with commissions *rogatoire*, letters of request and documents for service originating from foreign countries

- (1) Whenever a commission *rogatoire* or letter of request in connection with any civil proceedings received from any state or territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to such court by the agents, if any, of the parties to the action or matter, the registrar must submit the same to a judge in chambers in order to give effect to such commission *rogatoire* or letter of request.
- (2) Whenever a request for the service on a person in the Republic of any civil process or citation received from any state, territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar must cause service of the said process or citation to be effected in accordance with the rules by the sheriff or a deputy sheriff or any person specially appointed thereto by a judge of the court concerned.
- (3) The registrar concerned must, after effect has been given to any such commission *rogatoire*, letter of request, process or citation, return all relevant documents, duly verified in accordance with the rules of court, to the Director-General of the Department for transmission.
- (4) Except where the Minister directs otherwise, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service referred to in this section has been performed.

41. Court may order removal of certain persons

- (1) Any person who, during the sitting of any Superior Court-
 - (a) wilfully insults any member of the court or any officer of the court present at the sitting, or who wilfully hinders or obstructs any member of any Superior Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties;

- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the place where the sitting of the court is held; or
 - (c) does anything calculated improperly to influence any court in respect of any matter being or to be considered by the court,
- may, by order of the court, be removed and detained in custody until the court adjourns.
- (2) Removal and detention in terms of subsection (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

Part 3

Process of Superior Courts

42. Scope and execution of process

- (1) The process of the Constitutional Court and the Supreme Court of Appeal runs throughout the Republic, and their judgments and orders must, subject to any applicable rules of court, be executed in any area in like manner as if they were judgments or orders of the Division or the Magistrates' Court having jurisdiction in such area.
- (2) The civil process of a Division runs throughout the Republic and may be served or executed within the jurisdiction of any Division.
- (3) Any warrant or other process for the execution of a judgment given or order issued against any juristic person, partnership or firm may be executed by attachment of the property or assets of such juristic person, partnership or firm.

43. Execution of process by sheriff

- (1) The sheriff must, subject to the applicable rules, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court directed to the sheriff and must make return of the manner of execution thereof to the court and to the party at whose instance they were issued.
- (2) The return of the sheriff or a deputy sheriff of what has been done upon any process of a court, shall be *prima facie* evidence of the matters therein stated.
- (3) The sheriff must receive and cause to be detained all persons arrested by order of the court or committed to his or her custody by any

competent authority.

- (4) A refusal by the sheriff or a deputy sheriff to do any act which he or she is by law required to do, is subject to review by the court concerned on application *ex parte* or on notice as the circumstances may require.

44. Transmission of summonses, writs and other process and of notice of issue thereof

- (1) (a) In any civil proceedings before a Superior Court, any summons, writ, warrant, rule, order, notice, document or other process of a Superior Court, or any other communication which by any law, rule or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by fax or by means of any other electronic medium as provided by the rules.
- (b) The document received or printed as a result of the transmission contemplated in paragraph (a) is of the same force and effect as if the original had been shown to or a copy thereof served or executed upon the person concerned, or left as aforesaid, as the case may be.
- (2) A notice sent by fax, or any other electronic medium authorised by the rules-
- (a) from any judicial or police officer, registrar, assistant registrar, sheriff, deputy sheriff or clerk of the court; and
- (b) stating that a warrant or writ has been issued for the arrest or apprehension of any person required to appear in or to answer any civil suit, action or proceeding,
- is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person.
- (3) (a) A person arrested as contemplated in subsection (2) may be detained for the shortest period reasonably necessary, but not exceeding 48 hours, in order to bring the person before a judge of a Superior Court.
- (b) The judge referred to in paragraph (a) must make an order regarding the attendance by the person in question of any further court proceedings and warn the person that any failure to abide by the order is an offence punishable by a fine or by imprisonment not exceeding one year.

- (c) Any person who fails to abide by an order referred to in paragraph (b), is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year.

45. Property not liable to be seized in execution

The sheriff or a deputy-sheriff may not seize in execution of any process such belongings of the debtor as prescribed, but the Court concerned may in exceptional circumstances and on such conditions as it may determine, in its discretion allow a specific deviation from the prescribed provisions.

(The commencement date of section 45 is still to be proclaimed)

46. Offences relating to execution

Any person who-

- (a) obstructs a sheriff or deputy sheriff in the execution of his or her duty;
- (b) being aware that goods are under arrest, interdict or attachment by a Superior Court, destroys or disposes of those goods in a manner not authorised by law, or knowingly permits those goods, if in his or her possession or under his or her control, to be destroyed or disposed of in such a manner;
- (c) being a judgment debtor and being required by a sheriff or deputy sheriff to point out property to satisfy a warrant issued in execution of judgment against that person-
 - (i) falsely declares to the sheriff or deputy sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or
 - (ii) although knowing of such property, neglects or refuses to point out that property or to deliver it to the sheriff or deputy sheriff when requested to do so; or
- (d) being a judgment debtor, refuses or neglects to comply with any requirement of a sheriff or deputy sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of immovable property under execution,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

47. Issuing of summons or subpoena in civil proceedings against judge

- (1) Notwithstanding any other law, no civil proceedings by way of summons or notice of motion may be instituted against any judge of

a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.

- (2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the relevant head of court.

48. Acting judges of Superior Courts

Any person who has been appointed as an acting judge of a Superior Court must be regarded as having been appointed also for any period during which he or she is necessarily engaged in the disposal of any proceedings in which he or she has participated as such a judge, including an application for leave to appeal that has not yet been disposed of at the expiry of his or her period of appointment.

49. Regulations

- (1) The Minister may, on the advice of the Chief Justice, make regulations regarding-
 - (a) any matter that may be necessary or expedient to prescribe regarding the administrative functions of courts and the efficient and effective functioning and administration of the courts, including the furnishing of periodical returns of statistics relating to any aspect of the functioning and administration of courts and the performance of judicial functions;
 - (b) the criteria to be applied for determining the number of judges to be appointed to the Supreme Court of Appeal and to any specific Division;
 - (c) any protocol to be observed in respect of any process of consultation required in terms of this Act;
 - (d) the determination of recess periods of the Superior Courts;
 - (e) property not liable to be seized in execution, as contemplated in section 45;
 - (f) the manner in which representatives of the magistracy must be engaged in the application of section 8.
- (2) Any regulation made under subsection (1) must be submitted to Parliament before publication thereof in the *Gazette*.

Chapter 9

TRANSITIONAL PROVISIONS, AMENDMENT AND REPEAL OF LAWS, AND COMMENCEMENT

50. Existing High Courts

- (1) On the date of the commencement of this Act, but subject to the issuing of any notice referred to in section 6 (3)(a) or(c), the-
 - (a) Eastern Cape High Court, Bhisho, becomes a local seat of the Eastern Cape Division;
 - (b) Eastern Cape High Court, Grahamstown, becomes the main seat of the Eastern Cape Division;
 - (c) Eastern Cape High Court, Mthatha, becomes a local seat of the Eastern Cape Division;
 - (d) Eastern Cape High Court, Port Elizabeth, becomes a local seat of the Eastern Cape Division;
 - (e) Free State High Court, Bloemfontein, becomes the main seat of the Free State Division;
 - (f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu- Natal Division;
 - (g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the main seat of the KwaZulu-Natal Division;
 - (h) Limpopo High Court, Thohoyandou, subject to subsection (2), becomes a local seat of the Limpopo Division;
 - (i) Northern Cape High Court, Kimberley, becomes the main seat of the Northern Cape Division;
 - (j) North Gauteng High Court, Pretoria, becomes the main seat of the Gauteng Division;
 - (k) North West High Court, Mahikeng, becomes the main seat of the North West Division;
 - (l) South Gauteng High Court, Johannesburg, becomes a local seat of the Gauteng Division; and
 - (m) Western Cape High Court, Cape Town, becomes the main seat of the Western Cape Division,of the High Court of South Africa, and the area of jurisdiction of each of those courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question.
- (2) Notwithstanding section 6 (1), the Gauteng Division shall also function

as the Limpopo and Mpumalanga Divisions, respectively, until a notice published in terms of section 6 (3) in respect of those Divisions comes into operation.

- (3) Any circuit court established under any law repealed by this Act and in existence immediately before the commencement of this Act, shall be deemed to have been duly established in terms of this Act as a Circuit Court of the Division concerned.
- (4) Any person holding office as the Judge President, a Deputy Judge President or a judge of a High Court referred to in subsection (1) when this Act takes effect, becomes the Judge President, a Deputy Judge President or a judge of the Division in question, as the case may be.
- (5) The President may, with the view to facilitating and promoting the effective and efficient administration of justice in the Divisions established in terms of this Act, after consultation with the Chief Justice and the Minister, and with the consent of the judge concerned, transfer any judge of a Division to the Limpopo, Mpumalanga or North West Division.

51. Rules in existence immediately before commencement of Act

The rules applicable to the Constitutional Court, Supreme Court of Appeal and the various High Courts immediately before the commencement of this section remain in force to the extent that they are not inconsistent with this Act, until repealed or amended.

52. Pending proceedings when Act commences

- (1) Subject to section 27, proceedings pending in any court at the commencement of this Act, must be continued and concluded as if this Act had not been passed.
- (2) Proceedings must, for the purposes of this section, be deemed to be pending if, at the commencement of this Act, a summons had been issued but judgment had not been passed.
- (3) Subsections (1) and (2) are also applicable, with the changes required by the context, in respect of proceedings pending on the date when a notice contemplated in section 50 (2) comes into operation.

53. References in other laws

Any reference in any law-

- (a) to the Supreme Court Act, 1959, or a provision of the said Act, must be construed as a reference to this Act or a corresponding provision of

this Act;

- (b) to a Supreme Court, a High Court, or a provincial or local division of a Supreme Court, must be construed as a reference to the High Court of South Africa or a Division referred to in this Act, as the context may require; and
- (c) to the Appellate Division of a Supreme Court, must be construed as a reference to the Supreme Court of Appeal.

54. Financial accountability

- (1) The Minister must consider and address requests for funds needed for the administration and functioning of the Superior Courts, as determined by the Chief Justice after consultation with the other heads of Court, in the manner prescribed for the budgetary processes of departments of state.
- (2) The Secretary-General, as accounting officer of the Office of the Chief Justice in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Superior Courts, and must cause the necessary accounting and other related records to be kept, in terms of that Act.

55. Repeal and amendment of laws

- (1) The laws mentioned-
 - (a) in Schedule 1 are hereby repealed to the extent set out in the fourth column of that Schedule;
 - (b) in Schedule 2 are hereby amended to the extent set out in the fourth column of that Schedule.
- (2) Anything done under any provision of a law repealed or amended by subsection (1), shall, in so far as it may be necessary or appropriate, be deemed to have been done under the corresponding provision of this Act.

56. Short title and commencement

This Act is called the Superior Courts Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

Laws repealed (Section 55 (1)(a))

Item No.	No. and year of law	Short title	Extent of repeal
1	Act No. 59 of 1959	Supreme Court Act, 1959	The whole
2	Act No. 59 of 1959 (Venda)	Supreme Court Act, 1959	The whole
3	Act No. 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	The whole
4	Act No. 15 of 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Sections 44 up to and including 53
5	Act No. 18 of 1977 (Bophuthatswana)	Republic of Bophuthatswana Constitution Act, 1977	Sections 59 up to and including 67
6	Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Sections 42 up to and including section 52
7	Act No. 32 of 1982 (Bophuthatswana)	Supreme Court of Bophuthatswana Act, 1982	The whole
8	Act No. 5 of 1983 (Transkei)	Supreme Court Act, 1983	The whole
9	Decree No. 43 of 1990 (Ciskei)	Supreme Court Decree, 1990	The whole
10	Decree No. 45 of 1990 (Ciskei)	Republic of Ciskei Constitution Decree, 1990	Sections 27 and 28
11	Act No. 13 of 1995	Constitutional Court Complementary Act, 1995	The whole
<i>(The commencement date of item 11 of Schedule 1 is still to be proclaimed)</i>			
12	Act No. 41 of 2001	Interim Rationalisation of Jurisdiction of High Courts Act, 2001	The whole
13	Act No. 30 of 2008	Renaming of High Courts Act, 2008	The whole

SCHEDULE 2

Laws amended (Section 55(1)(b))

Item No.	No. and year of law	Short title	Extent of repeal
1	Act No. 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>1. Amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) [a judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, whom the Minister designates] <u>the Chief Justice</u> as the chairperson;”</p> <p><i>(The commencement date of Item No.1.1 of Schedule 2 is still to be proclaimed)</i></p> <p>2. Amendment of section 6-(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:</p> <p>“The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the [High Courts and the lower courts] <u>High Court of South Africa</u> and the Lower Courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the [High Courts and the lower courts] <u>High Court of South Africa</u> and the Lower Courts regulating-”;</p> <p>(b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p>

Item No.	No. and year of law	Short title	Extent of repeal
1	Act No. 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>“(e) the practice and procedure in connection with the reference of any matter to a referee under [section 19 of the Supreme Court Act, 1959 (Act No. 59 of 1959)] <u>section 38 of the Superior Courts Act, 2013</u>, and the remuneration payable to any such referee;”;</p> <p>(c) by the substitution for paragraph (p) of subsection (1) of the following paragraph: “(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the [High Courts] <u>High Court of South Africa;</u>”</p> <p>d) by the substitution for paragraph (t) of subsection (1) of the following paragraph: “(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the [High Courts and the lower courts] <u>High Court of South Africa and the Lower Courts</u> in civil as well as in criminal proceedings.”;</p> <p>(e) by the substitution for paragraph (a) of subsection (2) of the following paragraph: “(a) Different rules may be made in respect of the Supreme Court of Appeal, the [High Courts and the lower courts] <u>High Court of South Africa and the Lower Courts</u> and in respect of different kinds of proceedings.”;</p>

Item No.	No. and year of law	Short title	Extent of repeal
1	Act No. 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>(f) by the deletion of subparagraph (i) of subsection (2)(b); and (g) by the substitution for subparagraph</p> <p>(ii) of subsection (2)(b) of the following subparagraph:</p> <p>“(ii) the different [High Courts] <u>Divisions of the High Court of South Africa</u>; or”.</p>

Item No.	No. and year of law	Short title	Extent of repeal
2	Act No. 66 of 1995	Labour Relations Act, 1995	<p>1. Amendment of section 151 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The Labour Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a [provincial division] <u>Division of the [Supreme Court]</u> <u>High Court of South Africa</u> has in relation to matters under its jurisdiction.”.</p> <p>2. Amendment of section 154- (a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) A judge of the Labour Court [must be appointed for a period determined by the President at the time of appointment] <u>holds office until discharged from active service in terms of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).”;</u> (b) by the substitution for subsection (2) of the following subsection:</p>

Item No.	No. and year of law	Short title	Extent of repeal
2	Act No. 66 of 1995	Labour Relations Act, 1995	<p>“(2) A judge of the Labour Court who is also a judge of the High Court may resign as a judge of the Labour Court by giving written notice to the President.”;</p> <p>(c) by the deletion of subsection (3);</p> <p>(d) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, [1989 (Act No. 88 of 1989)] 2001, is affected by that judge’s appointment and concurrent tenure of office as a judge of the Labour Court.”;</p> <p>(e) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) [(a) The remuneration payable to a judge of the Labour Court who is a person referred to in section 153(6)(a)(ii), must be the same as that payable to a judge of the High Court.</p> <p>(b) The terms and conditions of appointment of a judge of the Labour Court referred to in</p>

Item No.	No. and year of law	Short title	Extent of repeal
2	Act No. 66 of 1995	Labour Relations Act, 1995	<p>paragraph:</p> <p>(a) must be similar to those of a judge of the High Court]</p> <p><u>The Judges' Remuneration and Conditions of Employment Act, 2001, as applicable to a judge of the High Court, apply, read with the changes required by the context, to a judge of the Labour Court who is not a judge of the High Court.";</u></p> <p>(f) by the deletion of subsection (7);</p> <p>(g) by the substitution for subsection (9) of the following subsection:</p> <p>“(9) The provisions of subsections [(2) to (8)] (4), (5), (6) and (8) apply, read with the changes required by the context, to acting judges appointed in terms of section 153 (5).”; and</p> <p>(h) by the addition of the following subsection:</p> <p><u>“(10)(a) Any judge of the Labour Court holding office immediately before the commencement of Schedule 2 of the Superior Courts Act, 2013, who is not a judge of the High Court, may not later than 30 days after such commencement, inform the Minister of Justice in writing that he or she chooses to continue</u></p>

Item No.	No. and year of law	Short title	Extent of repeal
2	Act No. 66 of 1995	Labour Relations Act, 1995	<p><u>in office in terms of this section as it existed prior to such commencement.</u></p> <p><u>(b) Any judge referred to in paragraph</u></p> <p><u>(a) who does not choose to continue in office in terms of this section as it existed prior to such commencement-</u></p> <p><u>(i) shall continue to hold that office in accordance with this section as amended by Schedule 2 to the Superior Courts Act, 2013; and</u></p> <p><u>(ii) his or her period of service as a</u></p> <p><u>Labour Court judge prior to such commencement shall, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001, be deemed to be active service as contemplated in that Act."</u></p> <p>3. Amendment of section 170-</p> <p><u>(a) by the substitution for subsection (2) of the following subsection:</u></p> <p><u>"(2) A judge of the Labour Appeal Court may resign from that office by giving written notice to the President;"</u></p> <p><u>(b) by the substitution for subsection (4) of the following subsection:</u></p>

Item No.	No. and year of law	Short title	Extent of repeal
2	Act No. 66 of 1995	Labour Relations Act, 1995	“(4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, [1989 (Act No. 88 of 1989)] 2001 (<u>Act No. 47 of 2001</u>), is affected by that judge’s appointment and concurrent tenure of office as a judge of the Labour Appeal Court.”; and (c) by the deletion of subsection (5).

4. REGULATIONS ON THE CRITERIA FOR THE DETERMINATION OF THE JUDICIAL ESTABLISHMENT OF THE SUPREME COURT OF APPEAL AND DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA, 2015

The Minister of Justice and Correctional Services has, on the advice of the Chief Justice and under section 49 (1) (*b*) of the Superior Courts Act, 2013 (Act No. 10 of 2013), made the regulations in the Schedule.

CONTENTS

Definitions	231.
Judicial establishment of Supreme Court of Appeal	231.
Judicial establishment of Divisions of High Court of South Africa	231.
Short title	232.

SCHEDULE

1. Definitions

In these regulations, “the Act” means the Superior Courts Act, 2013, and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, unless the context otherwise indicates.

2. Judicial establishment of Supreme Court of Appeal

Any determination of the number of judges of the Supreme Court of Appeal, as envisaged in section 5(1) (a) (iii) of the Act, must be considered with due regard to-

- (a) the number of appeals, petitions and reviews dealt with by that Court;
- (b) any discernible change in the workload of the Court in the three years preceding such determination;
- (c) the need for the Court to hold a sitting for the hearing of any matter at a place elsewhere than at the seat of the Court;
- (d) the resource implications that would arise from any increase in the number of judges of the Court; and
- (e) any other factor that, in the opinion of the President of the Court, might be relevant to consider in order to ensure the accessibility and effectiveness of the Court.

3. Judicial establishment of Divisions of High Court of South Africa

The determination of the number of judges of any Division, as envisaged in section 6(2)(b) of the Act, must be considered with due regard to-

- (a) the number of the local seats established under a Division;
- (b) the caseload of that Division;
- (c) if applicable, any discernible change in the workload of the Division in the three years preceding such determination;
- (d) the number of appeals and reviews emanating from the Magistrates’ Courts within the area of jurisdiction of that Division;
- (e) the population residing within the area of jurisdiction of the Division;
- (f) the scale of economic activity within the area of jurisdiction of the Division;
- (g) the outcome and impact of the rationalisation of areas of jurisdiction of courts aimed at enhancing access to courts;
- (h) the resource implications that would arise from any increase in the

number of judges of a Division;

- (i) the need for the Court to hold a sitting for the hearing of any matter at a place elsewhere than at the seat of the Division; and
- (j) any other factor that, in the opinion of the Judge President of the Division, might be relevant to consider in order to ensure the accessibility and effectiveness of the Division.

4. Short Title

These regulations are called the Regulations on the Criteria for the Determination of the Judicial Establishment of the Supreme Court of Appeal and Divisions of the High Court of South Africa, 2015.

5. JUDGES REMUNERATION AND CONDITIONS OF EMPLOYMENT ACT 47, 2001

It is hereby notified that the President has assented to the following Act,
which is hereby published for general information:
No. 47 of 2001: Judges' Remuneration and conditions of Employment Act, 2001

CONTENTS

Definitions	235.
Remuneration and Conditions of Employment of Constitutional Court Judges and Judges (ss 2-11)	238.
General Provisions (ss 12-18)	248.
Schedule	254.

[ASSENTED TO 20 NOVEMBER 2001] [DATE OF COMMENCEMENT: 22 NOVEMBER 2001]

(Unless otherwise indicated)

(English text signed by the President)

as amended by

Judicial Officers (Amendment of Conditions of Service) Act 28 of 2003

Judicial Matters Second Amendment Act 55 of 2003

Judicial Matters Amendment Act 66 of 2008

Judicial Matters Amendment Act 24 of 2015

Regulations under this Act

REGULATIONS UNDER THE JUDGES' REMUNERATION AND CONDITIONS OF
EMPLOYMENT ACT 47 OF 2001 (GN R894 in GG 23564 of 5 July 2002)

ACT

To provide for the remuneration and conditions of employment of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts; and for matters connected therewith.

DEFINITIONS (S1)

1. Definitions and application of Act

(1) In this Act, unless the context indicates otherwise-

“active service” means any service performed as a Constitutional Court judge or judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the date of commencement of this Act, and includes any continuous period-

(a) of longer than 29 days of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed before the date of commencement of this Act; and

(b) of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed after the date of commencement of this Act;

“annual salary” means the annual salary referred to in section 2 (1)(a) and the allowance referred to in section 2(1)(b) payable to a Constitutional Court judge or judge;

[Definition of ‘annual salary’ substituted by s. 14(a) of Act 28 of 2003]

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Constitutional Court judge” means any person holding the office of-

(a) Chief Justice of South Africa;

(b) Deputy Chief Justice; or

(c) judge of the Constitutional Court,

and includes any person who, since 7 June 1994, held, the office of-

(i) President of the Constitutional Court;

(ii) Deputy President of the Constitutional Court; or

(iii) judge of the Constitutional Court;

“fixed date” is 1 April 1989;

“judge” means any person holding the office of-

(a) President or Deputy President of the Supreme Court of Appeal;

(b) judge of the Supreme Court of Appeal;

(c) Judge President or Deputy Judge President of any High Court; or

(d) judge of any High Court,

and includes any person who, at or since the fixed date, held the office of-

(i) Chief Justice of South Africa or Deputy Chief Justice;

(ii) judge of the Appellate Division of the Supreme Court of South Africa or of the Supreme Court of Appeal;

(iii) Judge President or Deputy Judge President of any provincial or local division of the Supreme Court of South Africa or of any High Court;

(iv) judge of any provincial or local division of the Supreme Court of South Africa or of any High Court; or

(v) judge of any court of a homeland referred to in item 16 of Schedule 6 to the or Constitution, read with Item 1 thereof;

“Minister” means the Cabinet member responsible for the administration of justice;

“partner” means only one person with whom a Constitutional Court judge or judge, who is not legally married, is involved in a permanent heterosexual or same-sex life partnership-

- (a) in which the Constitutional Court judge or judge and the person concerned have undertaken reciprocal duties of support; and
- (b) which is, for the purposes of this Act, registered as such with the Director- General: Justice and Constitutional Development in accordance with the regulations made under section 13;

[Definition of ‘partner’ inserted by s.14(b) of Act 28 2003.]

“salary” means the salary payable to a Constitutional Court judge or judge in terms of section 5;

“service” means-

- (a) service as a judge of the Supreme Court of Appeal or a High Court as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office;
- (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947);
- (c) service as a chairperson or a member of a body or institution established by or under any law; or
- (d) any other service which the Minister may request him or her to perform.

“spouse” means a person to whom a Constitutional Court judge or judge is legally married.

[Definition of ‘spouse’ added by s. 14(c) of Act 28 of 2003.]

(2) This Act applies to all Constitutional Court judges and judges-

- (a) to whom the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989) applied; and
- (b) to whom corresponding legislation in any homeland, as defined in Item 1 of Schedule 6 to the Constitution, which, immediately before the date of commencement of this Act, had not been repealed, applied.

REMUNERATION AND CONDITIONS OF EMPLOYMENT OF CONSTITUTIONAL COURT JUDGES AND JUDGES (SS 2-11)

2. Remuneration of Constitutional Court judges and judges

- (1) Any person who holds office as a Constitutional Court judge or as a judge, whether on an acting or permanent capacity, shall in respect thereof be paid -
 - (a) an annual salary and such allowances or benefits-
 - (i) as determined by the President, from time to time, by notice In the *Gazette*, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers, established under section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act 92 of 1997); and
 - (ii) approved by Parliament in terms of subsection (4); and
 - (b) an allowance at the rate of R3 500 per annum, which allowance shall not be taxable, unless Parliament expressly provides otherwise.
- (2) The Commission referred to in subsection (1) (a) must, when investigating or considering the salaries, allowances or benefits of Constitutional Court judges and judges-
 - (i) consult with the Minister and the Cabinet member responsible for finance; and
 - (ii) the Chief Justice or a person designated by the Chief Justice.
- (3) A notice In terms of subsection (1) (a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (4) (a) A notice issued under subsection (1) (a) must be submitted to Parliament for approval before publication thereof.
 - (b) Parliament must, by resolution-
 - (i) approve the notice, whether in whole or in part; or
 - (ii) disapprove the notice.
- (5) Any remuneration contemplated in subsection (1), shall be paid as a direct charge against the National Revenue Fund.
- (6) No Constitutional Court judge or judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other

remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as such a Constitutional Court judge or judge.

[S. 2 substituted by s. 15 of Act 28 of 2003]

3. Discharge of Constitutional Court judges and judges from active service

(1) A Constitutional Court judge who holds office in terms of section 176 (1) of the Constitution-

(a) must, subject to the provisions of section 4(1) or (2), be discharged from active service as a Constitutional court judge, on the date on which he or she-

(i) attains the age of 70 years; or

(ii) has completed a 12-year term of office as a Constitutional Court judge, whichever occurs first;

(b) may at any time be discharged by the President from active service as a Constitutional Court judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or

(c) may at any time on his or her request and with the approval of the President be discharged from active service as a Constitutional Court judge if there is any reason which the President deems sufficient.

(2) A judge who holds office in a permanent capacity-

(a) shall, subject to the provisions of section 4(4), be discharged from active service as a judge on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service;

(b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service as a judge;

(c) may at any time be discharged by the President from active service as a judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or

- (d) may at any time on his or her request and with the approval of the President be discharged from active service as a judge if there is any reason which the President deems sufficient.

4. Continuation of active service by Constitutional Court judges and judges

- (1) A Constitutional Court judge whose 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service as a Constitutional Court judge.
- (2) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.
- (3) (a) A Constitutional Court judge who is discharged from active service in terms of section 3 (1) or subsection (1) or (2) and who is also a judge contemplated in section 174 (5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if-
 - (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
 - (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3 (2) or subsection (4).
- (b) Nothing in this Act precludes a Constitutional Court judge-
 - (i) who is discharged from active service in terms of section 3(1) or subsection (1) or (2); and
 - (ii) who is not a judge contemplated in section 174(5) of the Constitution,
 from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

- (c) The holding of office by a judge referred to in paragraph (a) or (b)-
 - (i) interrupts that judge's discharge from active service in terms of section 3(1) or subsection (1) or (2); and
 - (ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.
- (d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such a judge to an annual salary which-
 - (i) is payable in terms of section 2; and
 - (ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.
- (4) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a judge.

5. **Salary payable to Constitutional Court judges and judges after discharge from active service**

- (1) Subject to subsection (2), a Constitutional Court judge or a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 shall be paid a salary in accordance with the formula-

$$\frac{A}{B} \times C$$

in which formula the factor-

- (a) A represents the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned in a permanent city during the period of his or her active service: Provided that, subject to section 11(3) (a) and (5) (a), the factor 'A' in the said formula must be adjusted whenever the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned during the period of his or her active service, is increased;
 - (b) B represents 15; and
 - (c) C represents the period in years of active service of such Constitutional Court judge or judge.
- (2) The aggregate of the salary payable in terms of subsection (1) to a Constitutional Court judge or judge who was or is discharged from

active service-

- (a) in terms of section 3(1), 3(2) (a), (c) or (d) or 4(1), (2) or (4) shall not be less than 40 per cent of his or her highest annual salary during the period of his or her active service and shall not exceed such salary;
 - (b) in terms of section 3(1) or 3(2) and has performed active service for a period of not less than 20 years, shall be equivalent to the annual salary applicable to the highest office held by him or her in a permanent capacity during his or her period of active service;
 - (c) in terms of section 3(2) (b), shall, subject to paragraph (b), be 80 per cent of his or her highest annual salary during the period of his or her active service, plus two per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years;
 - (d) in terms of section 3(1) (b) or (c) or 3(2) (c) or (d) before he or she attains the age of 65 years, shall, subject to paragraph (b), be not more than 80 per cent of his or her highest annual salary during the period of his or her active service.
- (3) For the purposes of subsection (1) the period of active service in any particular office shall be calculated by the year and the month, and fractions of a month shall-
- (a) in respect of any active service performed before the date of commencement of this Act, be disregarded; and
 - (b) in respect of any active service performed after the date of commencement of this Act be taken into account.
- (4) If a Constitutional Court judge or a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of the month following the month in which he or she died.

6. **Gratuity payable to Constitutional Court judges and judges after discharge from active service**

- (1) Subject to the provisions of subsections (2), (3) and (4), any Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him or her in terms of section 5, be paid a gratuity which shall in respect of every office held by him or her in a permanent capacity during his or her active service be calculated in accordance with the formula-

$$D \times 2 \times \frac{E}{15}$$

in which formula the factor-

- (a) D represents the annual salary which at the time of the discharge of such Constitutional Court judge or judge from active service was applicable to the office concerned;
 - (b) E represents the period in years of active service, but not exceeding 20 years, of such a Constitutional Court judge or judge in the office concerned.
- (2) After the completion of 15 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1).
 - (3) After the completion of 20 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2).
 - (4) A judge referred to in section 4(4) shall once be entitled, when he or she attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he or she so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).
 - (5) The total amount of any gratuity payable in terms of this section to a Constitutional Court judge or judge shall not exceed three times his or her highest annual salary during the period of his or her active service.
 - (6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be taken into account.
 - (7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to Constitutional Court judges or judges under this section shall not be taxable.

7. Performance of service by Constitutional Court judges and judges discharged from active service

- (1) (a) A Constitutional Court judge or judge who has been discharged

from active service, except a Constitutional Court judge or judge who has been discharged in terms of section 3(1) (b) or (c) or (2) (b), (c) or (d), who-

(i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or

(ii) has already attained the age of 75 years, may voluntarily perform further service,
if his or her services are so requested, if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service.

(b) Service referred to In paragraph (a) of the definition of 'service' in section 1, in a permanent post on the establishment of a particular court, may, subject to paragraph (b A), only be performed if that service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the judge president in question, as the case may be, and the Minister so approves, after consultation with the Judicial Service Commission.

[Para.(b) substituted by s. 34(a) of Act: 66 of 2008.]

(b A) Service referred to In paragraph (a) of the definition of 'service' in section 1 which becomes necessary as a result of the creation of an additional temporary post on the establishment of a particular court, to deal with additcimal workload or backlogs which have developed, may be performed if that service is approved by the Minister after consultation with the head of the court in question, and for the period decided by the Minister, which period may not exceed three months at a time.

[Para. (b A) inserted by s. 34(b) of Act 66 of 2008.]

(c) Service as mentioned in paragraph (b), (c) or (d) of the definition of "service" in section 1 may be performed only with the consent of

the Constitutional Court judge or judge concerned.

- (2) (a) A Constitutional Court judge or judge who performs service in terms of subsection (1), as contemplated in paragraph (a) of the definition of “service” in section 1, shall, subject to paragraph (b)(ii), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period.
- (b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in-
 - (i) paragraphs (b) to (d) of the definition of “service” in section 1 ; and
 - (ii) the proviso to subsection (1) (a) (i) or in subsection (1) (a) (ii), read with paragraph (a) of the definition of “service” in section 1, shall monthly be paid such remuneration as the President may determine.
- (3) The salary of a Constitutional Court judge or judge who contrary to subsection (1) (a) (i) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary.
- (4) The registrar of the Supreme Court of Appeal or a division of the High Court or a local seat thereof where a Constitutional Court judge or judge performs service in terms of subsection (1), shall notify the Secretary-General of the Office of the Chief Justice immediately of the commencement and duration of the service.
- (5) The Secretary-General of the Office of the Chief Justice shall keep a register of all service performed by Constitutional Court judges or judges in terms of subsection (1).

[s.7 substituted by s.12 of Act 24 of 2015]

8. Performance of service as Chief Justice by Chief Justice or as President of Supreme Court of Appeal by President of Supreme Court of Appeal in certain circumstances

- (a) A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such

Chief Justice attains the age of 75 years.

- (b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(4), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as President of the Supreme Court of Appeal for a period determined by the President, which may not extend beyond the date on which such President of the Supreme Court of Appeal attains the age of 75 years.

9. Amount payable to surviving spouse or partner of Constitutional Court judge and judge

- (1) The surviving spouse of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount-
- (a) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or
- (b) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3 (1)(a) or (2)(a) on the date of his or her death:

Provided that if the Constitutional Court judge or judge is survived by more than one spouse the amount envisaged in paragraph (a) or (b) shall be divided equally between the spouse concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13 (1) (c B).

- (2) The amount payable to the surviving spouse or partner of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the 5 month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse or partner.

[s.9 substituted by s.16 of Act 28 of 2003]

10. **Gratuity payable to surviving spouse or partner of Constitutional Court judge and judge**

If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall-

- (a) if such Constitutional Court judge or judge is survived by a surviving spouse or partner, be payable to such surviving spouse or partner, in addition to any amount payable to that spouse or partner in terms of section 9; or
- (b) if such Constitutional Court judge or judge is not survived by a spouse or partner, be payable to the estate of such Constitutional Court judge or judge,

a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid: Provided that if the Constitutional Court judge or judge is survived by more than one spouse or partner, the gratuity calculated in terms of this section shall be divided equally between the spouses or partners concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13 (1) (c B).

[S. 10 substituted by s. 16 of Act 28 of 2003.]

11. **Resignation of Constitutional Court judges and judges from office in certain circumstances**

- (1) Any resignation by a Constitutional Court judge or judge which is not contemplated in this Act precludes the payment of any benefits to such person in terms of this Act to which a Constitutional Court judge or judge would otherwise be entitled on discharge from active service.
- (2) A Constitutional Court judge who is a judge contemplated in section 174 (5) of the Constitution or a judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of such judge, and shall vacate his or her office upon acceptance of such resignation.
- (3) A Constitutional Court judge or a judge referred to in subsection (2) shall be paid-
 - (a) a salary in accordance with the provisions of section 5: Provided

- that the provision section 5 (1) (a) shall not apply in respect of him or her;
- (b) a gratuity in accordance with the formula set out in section 6(1).
- (4) A Constitutional Court judge who is not a judge contemplated in section 174 (5) of the Constitution who has completed a 12 year term of office as a Constitutional Court judge or who has attained the age of 70 years, whichever occurs first, may resign from office by notice in writing to the President and must vacate his or her office upon acceptance by the President of such resignation.
- (5) A Constitutional Court judge referred to in subsection (4) must be paid-
- (a) a salary in accordance with the provisions of section 5: Provided that the provision section 5 (1) (a) does not apply in respect of him or her;
- (b) a gratuity in accordance with the formula set out in section 6(1).
- (6) The provisions of section 6 (7) apply with the necessary changes in respect of any gratuity payable in terms of this section.
- (7) The surviving spouse or partner of a Constitutional Court judge or judge referred to In subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3) (a) or (5) (a) , which amount shall be payable until the death of such spouse or partner: Provided that If the Constitutional Court judge or judge is survived by more than one spouse, the amount concerned shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13 (1) (c B).

[Sub-s. (7) substituted by s. 31 of Act 55 of 2003.]

GENERAL PROVISIONS (SS 12-18)

12. Making available of motor vehicles to Constitutional Court judges and judges

A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport, be made available to any person who holds office as a Constitutional Court judge or judge in a permanent or acting capacity, whether he or she performs active service or service, for use, in accordance with the conditions so determined, in the course of his or her official functions as well as for his or her private purposes.

13. Regulations

- (1) The President may, after consultation by the Minister with the Chief Justice, the President of the Supreme Court of Appeal and the judges president of the respective High Courts, make regulations as to-
- (a) arrangements regarding administrative recesses;
 - (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to Constitutional Court judges or acting Constitutional Court judges, judges or acting judges;
 - (c) the method of transport of such Constitutional Court judges or judges, and of Constitutional Court judges or judges on their discharge from active service or their vacation of office and of Constitutional Court judges or judges in the performance of service in terms of section 7, and of the members of their families and of the effects of Constitutional Court judges or judges or Constitutional Court judges or judges who have been discharged from active service or who have vacated their offices or Constitutional Court judges or judges who perform service in terms of section 7 or deceased Constitutional Court judges or judges, the amounts to be paid to Constitutional Court judges or judges or acting Constitutional Court judges or judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid;
 - (c A) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a Constitutional Court judge or a judge with the Director-General: Justice and Constitutional Development;
- [Para. (c A) inserted by s.17(a) of Act 28 of 2003.]
- (c B) the determination, for the purposes of the proviso to section 9 (1), 10 (1) or 11 (7), by a Constitutional Court judge or judge who has more than one spouse, of the division of the amounts referred to in those sections between those spouse's in the event of his or her death;
- [Para. (c B) inserted by s.17(a) of Act 28 of 2003.]
- (d) the amounts which may be paid to acting Constitutional Court judges or acting judges in connection with the maintenance by them of their practices as advocates or attorneys; or
 - (e)

[Para.(e) deleted by s.17(b) of Act 28 of 2003.]

- (2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter concerned.

14. Administration of Act

The Secretary-General of the Office of the Chief Justice shall, subject to the directions of the Minister, be charged with the general administration of this Act.

[s.14 substituted by 13 of Act 24 of 2015]

15. Method of payment of salaries, allowances and benefits

Salaries, allowances and benefits payable in terms of sections 2, 5, 6, 7, 9, 10 and 11 of this Act shall be paid as a direct charge against the National Revenue Fund and on such dates and in such manner as the Minister may from time to time determine.

16. Transitional provisions

- (1) Notwithstanding the repeal of-

(a) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989);

(b) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana); and

(c) Decree NO. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

by section 17 of this Act, the regulations which were made under the said Acts and were in force immediately before the date of commencement of this Act and which are not inconsistent with this Act, continue in force in respect of those judges to which the regulations applied immediately prior to the commencement of this Act until they are repealed, withdrawn or amended by regulations made under section 13 of this Act.

- (2) (a) Any active service or service referred to in-

(i) section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana); or

(ii) section 1 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

performed by a judge referred to in section 1 prior to the commencement of this Act is, for the purposes of this Act, deemed

- to be active service or service as contemplated in section 1 (1) of this Act.
- (b) For the purposes of section 1 (1) of this Act the word “service” in the definition of “active service” in section 1 (1), preceding paragraph (a) thereof, is construed to include service performed by-
- (i) a judge of the Republic of South Africa, prior to the commencement of the Interim Constitution, who was seconded to serve as a judge in any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof, while he or she was so seconded and so served; or
 - (ii) a judge in the former South West Africa prior to its independence and who, at the commencement of this Act, holds office as a judge of a High Court.
- (c) If a judge who has been seconded for active service or service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, dies or is discharged from active service while holding the office of chief justice of such a High Court or Supreme Court of such a homeland in a permanent capacity, his or her salary shall for the purposes of this Act be deemed to be that of a judge president of a High Court.
- (d) If a judge who has been seconded for service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, holds the office of chief justice of such a High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of section 2(1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a High Court, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president.
- (3) Section 4 of Decree No. 19 (Judges’ Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei) continues to apply to any person to whom it applied at the date of commencement of this Act as if it had not been repealed.
- (4) (a) Any person who retired as a judge in terms of the Judges’ Pensions

Act, 1978 (Act No. 90 of 1978), and who, at the commencement of this section, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this section, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the latter's retirement from office and who has the same number of years' service in an acting or permanent capacity.

- (b) After 3 May 2002, any surviving spouse of a retired judge referred to in paragraph (a) shall be paid with effect from the first day of the month immediately succeeding the day on which the retired judge dies or died, an amount equal to three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

[Para.(b) substituted by s.32(a) of Act 55 of 2003.]

- (c) Any surviving spouse of a judge who retired as a judge in terms of the Judges' Pensions Act, 1978, and who, on or after 3 May 2002, receives a pension in terms of the said Act, is, from 3 May 2002 or any later date from which such surviving spouse is entitled to such a pension, entitled to an amount equal to three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a) .

[Para.(c) substituted by s.32 (a) of Act 55 of 2003.]

- (d) The amounts payable to a surviving spouse contemplated in paragraphs (b) and (c) shall be payable until the death of such spouse.

[Para.(d) added by s.32(b) of Act 55 of 2003.]

- (e) The amounts payable to persons in terms of this subsection shall be adjusted whenever the annual salary payable to a Constitutional Court judge or a judge, as the case may be, is increased.

[Para.(e) added by s.32(b) of Act 55 of 2003.]

- (f) In applying this subsection, no person may be paid an amount which is less than that which he or she received before any adjustment was made under this subsection.

[Para.(f) added by s.32(b) of Act 55 of 2003.]

[Date of commencement of sub-s.(4) : 3 May 2002.]

17. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

18. Short title and commencement

- (1) This Act shall be called the Judges' Remuneration and Conditions of Employment Act, 2001
- (2) Section 16(4) comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

No. and year of law	Title	Extent of repeal
Act 27 of 1989	Judges' Remuneration and Conditions of Employment' Act, 1989 (Bophuthatswana)	The whole
Act 88 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989	The whole
Decree 19 of 1990	Judges' Remuneration and Conditions of Service Decree, 1990 (Transkei)	The whole
Decree 43 of 1990	Supreme Court Decree, 1990 (Ciskei)	Section 5 (1), (2) (3) and (4)
Act 139 of 1992	General Law Amendment Act, 1992	Sections 27 and 28
Act 91 of 1993	Judges' Remuneration and Conditions of Employment Amendment Act, 1993	The whole
Act 129 of 1993	General Law Third Amend ment Act, 1993	Section 71
Act 157 of 1993	General Law Fifth Amend ment Act, 1993	Section 8
Act 204 of 1993	General Law Sixth Amend ment Act, 1993	Section 15
Act 10 of 1994	Judges' Remuneration and Conditions of Employment Amendment Act, 1994	The whole
Act 104 of 1996	Judicial Matters Amendment Act, 1996	Section 14
Act 77 of 1997	Judges' Remuneration and Conditions of Employment Amendment Act, 1997	The whole

6. JUDGES REMUNERATION AND CONDITIONS OF EMPLOYMENT REGULATIONS, 2001

The President has under section 13 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No, 47 of 2001), made the regulations in the Schedule.

CONTENTS

Definitions	257.
Administrative Recesses	258.
Leave	258.
Transport, and Allowances in Respect of Transport, Travelling and Subsistence	260.

SCHEDULE

DEFINITIONS

1. (1) In these regulations any expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates -

“actual service” includes -

- (a) an administrative recess;
- (b) every period of leave granted in terms of regulation 6, but excluding any period of leave referred to in regulation 3;
- (c) service in an acting capacity for any continuous period immediately prior to assuming office as a judge in a permanent capacity;
- (d) uninterrupted service after discharge from active service; and
- (e) service by a Constitutional Court judge;

“administrative recess” means every period during which a court is in recess;

“division” means a division as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959);

“effects” means household or personal effects;

“headquarters” means, with regard to -

- (a) a judge of the Constitutional Court, the seat of the Constitutional court;
- (b) a judge of the Supreme Court of Appeal, the seat of the Supreme Court of Appeal; and
- (c) a judge of a High Court, the seat of the division in which he or she is appointed permanently or in an acting capacity or, in the case of the Transvaal Provincial Division, the Natal Provincial Division and the Eastern Division and of a judge discharged from active service, such place as may be assigned by the Minister to a particular judge as his or her headquarters;

“judge president” includes an acting judge president;

“leave” means leave on full pay unless expressly otherwise indicated;

“Minister” includes, for the purposes of regulation 17, an officer acting on the authority of the Minister for Justice;

“official duties” means active service and service for the purposes of section 7 of the Act and service as a Constitutional Court judge;

“High Court” means the High Courts of South Africa;

“term” means a term determined for the sessions of court;

“the Act” means the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

- (2) For the purposes of these regulations, unless the context otherwise indicates, a judge shall be deemed to be resident at his or her headquarters.

ADMINISTRATIVE RECESSES

2. (1) Administrative recesses in any provincial or local division shall not exceed a total of 14 weeks per year.
- (2) The judge president concerned, shall, prior to the commencement of an administrative recess, determine how many and which judges are to perform the functions in his or her division during the recess.

LEAVE

3. **Vacation leave**

- (1) The Minister may, on the recommendation of the Chief Justice, the President of the Supreme Court of Appeal or the judge president concerned, as the case may be, grant leave to a Constitutional Court judge or a judge for a period of three and a half months for

every period of four years' actual service completed by the Constitutional Court judge or judge or for a shorter period and subject to such conditions as the Minister may in any particular case deem fit.

- (2) Leave referred to in subregulation (1) shall, in the case of a judge of a provincial or local division, be taken in such a way that it does not extend over more than one term of that division, except with the consent of the Minister granted on the recommendation of the judge president concerned.

4. Additional Leave

If a Constitutional Court judge or judge waives in writing his or her right to unreduced remuneration in terms of section 176(3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Minister may in terms of regulation 3 and on the recommendation of the Chief Justice, the President of the Supreme Court of Appeal or the judge president concerned, grant such Constitutional Court judge or judge additional leave on half pay for a period not exceeding one and a half months.

5. Special Leave

If in exceptional circumstances the Minister is satisfied that leave for which no provision has been made in these regulations should be granted in a specific case, he or she may, on the recommendation of the Chief Justice, the President of the Supreme Court of Appeal or the judge president concerned, grant such leave on such conditions as he or she may deem necessary, whether it be leave with full remuneration or leave with reduced or no remuneration, provided that the Constitutional Court judge or judge concerned has, in the case of leave with reduced remuneration or leave without remuneration, in writing waived his or her right to unreduced remuneration in terms of section 176(3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

6. Sick leave

If, according to a certificate of a medical practitioner, it appears that owing to illness a Constitutional Court judge or judge cannot perform his or her duties for a specified period the Minister may grant the judge sick leave for that period.

7. General provisions: Leave

When considering applications for leave the Chief Justice, the President of the Supreme Court of Appeal or the judge president concerned shall endeavour

to make such arrangements as will obviate as far as possible the need to make acting appointments.

8. No leave which may be granted in terms of these regulations shall be accumulative and no salary or allowance shall be claimed in respect of leave which could have been taken but which was not utilised.

9. The Director-General of Justice and Constitutional Development shall keep a record of leave granted to Constitutional Court judges and judges by the Minister.

10. Regulations 3, 6, 8 and 9 shall not apply to any acting judge.

TRANSPORT, AND ALLOWANCES IN RESPECT OF TRANSPORT, TRAVELLING AND SUBSISTENCE

11. Transport: Official duties

- (1) When a Constitutional Court judge, judge or acting judge is required to perform official duties away from his or her headquarters, he or she may make use of Government transport.
- (2) When a motor vehicle owned by the State as contemplated in section 12 of the Act is used for purposes of subregulation (1), an official driver must be made available -
 - (a) to the Chief Justice or acting Chief Justice, or the President or acting President of the Supreme Court of Appeal; and
 - (b) to any other Constitutional Court judge, judge or acting judge if such other Constitutional Court judge, judge or acting judge certifies that he or she cannot reasonably dispense with the services of an official driver.
- (3) If a Constitutional Court judge, judge or acting judge uses private transport in performing any official duties referred to in subregulation (1), he or she is to be compensated at a tariff of R1,80 per kilometre.

12. Benefits for spouses

- (1) The Chief Justice or acting Chief Justice or the President or acting President of the Supreme Court of Appeal is entitled to be accompanied by his or her spouse on official journeys at State expense and to claim in respect of his or her spouse the subsistence

allowance prescribed in regulation 14(1).

- (2) A Constitutional Court judge, judge or acting judge is entitled to be accompanied by his or her spouse on official journeys at State expense if she or he uses the same motor vehicle as the Constitutional Court judge, judge or acting judge, and to claim in respect of his or her spouse the subsistence allowance prescribed in regulation 14(1) if the Constitutional Court judge, judge or acting judge -
- (a) is on circuit court duty;
 - (b) is on official duties as contemplated by section 3(4) of the Supreme Court Act, 1959 (Act No. 59 of 1959), with the exception of official duties in the Witwatersrand Local Division of the High Court of South Africa;
 - (c) is on official duties as contemplated by section 3(5) of the Supreme Court Act, 1959 (Act No. 59 of 1959);
 - (d) performs service away from his or her headquarters after being discharged from active service; or
 - (e) attends occasions in his or her official capacity.

13. Travelling

- (1) (a) Any judge or acting judge of the Supreme Court of Appeal or any judge or acting judge of the Constitutional Court who is not permanently resident at his or her headquarters is entitled to travel once to his or her headquarters from his or her place of permanent residence, and once from his or her headquarters to his or her place of residence in respect of each term at State expense by public transport or, if such judge or acting judge uses private transport, for a consideration of R1,80 per kilometre.
- (b) In addition to the travelling referred to in paragraph (a), every such judge or acting judge is per annum entitled to 12 aeroplane, bus or train tickets either way between his or her headquarters and his or her home for the use of himself or herself or any person so designated by him or her or to be compensated at the rate of R1,80 per kilometre if private transport is used in lieu of an aeroplane, a bus or train.
- (2) A subsistence allowance in accordance with regulation 14(1) shall be paid to the judge or acting judge and his or her spouse when they are travelling as referred to in subregulation(1)(a) as if he or she were absent from his or her headquarters on official duties for the duration of each such journey.

- (3) When a person is appointed an acting judge to perform duties in a division, in the Supreme Court of Appeal or in the Constitutional Court away from his or her home, he or she may, when assuming his or her duties, travel to such division or to the seat of the Supreme Court of Appeal or the Constitutional Court and, at the conclusion of his or her duties, return to his or her home at State expense in the manner and at the rate of compensation prescribed in subregulations (1) and (2), and the allowance prescribed in regulation 14(1) shall be paid in respect of the acting judge as if he or she were absent from his or her headquarters on official duties for the duration of the journey concerned.
- (4) When a judge is required to perform official duties in a division away from his or her headquarters or an acting judge is required to perform official duties in a division away from his or her home, he or she may once a month at State expense travel to and fro between such division and his or her headquarters or home, as the case may be, in the manner prescribed in subregulations (1) and (2).
- (5) The registrar of the court concerned shall make the travel arrangements in connection with a Constitutional Court judge, judge or acting judge.

14. Subsistence

- (1) (a) A Constitutional Court judge, judge or acting judge on official duties away from his or her headquarters or on circuit court duty and an acting judge whose headquarters are situated outside the district in which he or she permanently resides is entitled to an all-inclusive subsistence allowance of R600 for every 24 hours that he or she is actually absent from his or her headquarters or home during his or her appointment, as the case may be.
(b) The allowance for an uncompleted period of 24 hours is calculated proportionately according to the number of full hours of absence.
- (2) The subsistence allowance mentioned in subregulation (1) may also be paid in respect of short periods during which a Constitutional Court judge or judge returns to his or her headquarters or when or she pays a visit elsewhere: Provided that his or her commitments in respect of accommodation continue at the place where he or she performs his or her duties.
- (3) For a period of absence on official duties of less than 24 hours in the circumstances referred to in subregulation (1), an all-inclusive subsistence allowance of R110 is payable.

15. Settlement allowance

- (1) An allowance of R700 for every completed period of 24 hours of actual presence for the purposes of a session of the Supreme Court of Appeal in Bloemfontein or at the seat of the Constitutional Court, as the case may be, and, if applicable, an allowance calculated in terms of subregulation (3) for an uncompleted part of such a period, is payable to the Chief Justice or acting Chief Justice or the President or acting President of the Supreme Court of Appeal if he or she resides permanently elsewhere than in Bloemfontein or Gauteng, as the case may be: Provided that if he or she resides permanently in Bloemfontein or Gauteng, as the case may be, an allowance of R 5 600 per month will be paid to him or her.
- (2) The following allowances are payable to any judge (other than the Chief Justice or acting Chief Justice or the President or acting President of the Supreme Court of Appeal) performing active service or service in the Constitutional Court or the Supreme Court of Appeal, as the case may be:
 - (a) If he or she resides permanently in Bloemfontein or Gauteng, R5000 per month; or
 - (b) if he or she resides permanently elsewhere than in Bloemfontein or Gauteng-
 - (i) R600 for every completed period of 24 hours of actual presence in Bloemfontein or Gauteng and, if applicable, an allowance calculated in terms of subregulation (3) for an uncompleted part of such a period;
 - (ii) R5 000 per month if he or she purchases a home in Bloemfontein or Gauteng; or
 - (iii) R5 000 per month for each month during which he or she leases a home in Bloemfontein or Gauteng, provided such home is leased for a continuous period of six months or longer.
- (3) The allowance for an uncompleted period of 24 hours is calculated proportionately according to the number of full hours of presence.

16. Actual expenses

If an amount payable in terms of regulation 14 or 15 (1), (2) (b) (i) or (3) is less than the amount which a Constitutional Court judge, judge or acting judge reasonably had to spend in respect of subsistence, an amount equal to the amount so spent may be paid to such Constitutional Court judge or judge.

17. Maintenance of practice

Anyone appointed an acting judge is paid an amount of R273 per day for the maintenance of his or her practice as advocate or attorney for the duration of such appointment.

18. Transport

- (1) When a judge of one division is permanently appointed in any other division or is appointed as a judge of the Constitutional Court or Supreme Court of Appeal or when a person is appointed a judge and his or her headquarters are not situated at the place where he or she resides on appointment, the cost of the transport of that judge or person and his or her family, domestic workers and effects to his or her new headquarters is defrayed from public funds.
- (2) When a Constitutional Court judge or judge performs service in terms of section 7 of the Act away from his or her home for a period longer than six months, that Constitutional Court judge or judge and his or her family, domestic workers and effects may be transported to the designated place of service and, after completion of such service, back to his or her home at State expense.
- (3) If a Constitutional Court judge, judge or person uses private transport in terms of subregulations (1) or (2) he or she is to be compensated at a tariff of R1,80 per kilometre.
- (4) (a) When effects have to be transported the registrar of the Constitutional Court, Supreme Court of Appeal or of the division from which the effects are to be transported shall obtain written tenders from at least three cartage contractors for the packing, loading, unloading and unpacking of the effects for transport by train and, should the Constitutional Court judge, judge or person concerned so prefer, for the transport thereof by road.
(b) The lowest tender for the packing, loading, unloading and unpacking of the effects is to be accepted by the registrar, but the Minister may approve the acceptance of a higher tender if, in his or her opinion, there are good reasons for rejecting the lowest tender.
- (5) The State is not responsible for any insurance premiums in respect of the transportation of effects: Provided that premiums in respect of insurance cover in the case of the transport of effects by road may be paid from public funds if the lowest tender for road transport includes such premiums as an integral part thereof.

- (6) (a) Not more than two motor vehicles of a Constitutional Court judge, judge or person referred to in subregulations (1) or (2) may be transported by train at State expense, provided that they are transported at the owner's risk.
- (b) The Constitutional Court judge, judge or person may be reimbursed from public funds for actual incidental expenses incurred in loading and unloading the vehicle or vehicles referred to in paragraph (a).
- (7) The transportation of the effects of a Constitutional Court judge, judge or person referred to in subregulation (1) shall take place within 12 months after the transfer or appointment of the Constitutional Court judge, judge or person concerned, unless the Minister grants permission for the postponement of the transport thereof.
- (8) The Minister may in exceptional cases approve the transportation of the effects of a Constitutional Court judge, judge or person referred to in subregulation (1) at State expense and their storage in a warehouse at his or her previous headquarters or home or at his or her new headquarters for a period not exceeding 12 months and, thereafter, their transportation to his or her new home: Provided that the registrar concerned shall call for at least three tenders for the performance of the services and the lowest tender shall be accepted by him or her: Provided further that the Minister may approve the acceptance of a higher tender if, in his or her opinion, there are good reasons for rejecting the lowest tender.
- (9) A judge of the Supreme Court of Appeal or of the Constitutional Court performing active service and who is not permanently resident in Bloemfontein or Gauteng, as the case may be, may, subject to the provisions of subregulations (3) and (5), transport part of his or her effects and library, separately or together, once to Bloemfontein or Johannesburg at State expense to meet his or her office and accommodation needs.

19. (1) On -

- (i) discharge from active service;
- (ii) resignation from office in terms of section 11 (1) of the Act;
- (iii) vacation of his or her office in terms of section 11(2) of the Act; or
- (iv) the death of a Constitutional Court judge or judge, his or her effects may be transported, once only, at State expense to any place in the Republic of South Africa where he or she or the

surviving spouse, as the case may be, is to settle, in which case the provisions of regulation 18 shall *mutatis mutandis* apply.

- (2) The transportation referred to in subregulation (1) shall be effected not earlier than two months prior to and not later than 12 months after the date of such discharge, resignation or vacation and, in the case of death, not later than 12 months after the date of death, unless the Minister is satisfied that owing to exceptional circumstances the transportation of effects in terms of subregulation (1) must be effected earlier than two months prior to the date of such discharge, resignation or vacation or later than 12 months after the date of discharge, resignation, vacation or death, in which case he or she may grant permission for the effects to be transported earlier or grant an extension of time for such transportation.

20. General provisions: Claims

- (1) All claims for the payment of allowances in terms of these regulations shall, where applicable, state the nature of the services, the exact time of departure and arrival and all other information as may be necessary to calculate the amount payable.
- (2) A claim referred to in subregulation (1) shall be signed and certified correct by the Constitutional Court judge, judge or acting judge concerned.

7. JUDICIAL SERVICE COMMISSION ACT 9 OF 1994

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:
No. 9 of 1994: Judicial Service Commission Act, 1994.

CONTENTS

Act	269.
Preamble	269.
<i>Chapter 1</i>	
Administrative Provisions	271.
<i>Chapter 2</i>	
Oversight over Judicial Conduct and Accountability of Judicial Officers	273.
<i>Chapter 3</i>	
Judicial Conduct Tribunals	288.
<i>Chapter 4</i>	
Miscellaneous Provisions	295.

[ASSENTED TO 5 JULY 1994] [DATE OF COMMENCEMENT: 13 JULY 1994]

(Afrikaans text signed by President)

as amended by

Judicial Service Commission Amendment Act 20 of 2008

Judicial Matters Amendment Act 24 of 2015

Regulations under this Act

PROCEDURE OF COMMISSION (GN R114 in GG 16952 of 2 February 1996)

ACT

To regulate matters incidental to the establishment of the Judicial Service Commission by the Constitution of the Republic of South Africa, 1996; to establish the Judicial Conduct Committee to receive and deal with complaints about judges; to provide for a Code of Judicial Conduct which serves as the prevailing standard of judicial conduct which judges must adhere to; to provide for the establishment and maintenance of a register of judges' registrable interests; to provide for procedures for dealing with complaints about judges; to provide for the establishment of Judicial Conduct Tribunals to inquire into and report on allegations of incapacity, gross incompetence or gross misconduct against judges; and to provide for matters connected therewith.

[Long title substituted by s.10 of Act 20 of 2008]

PREAMBLE

SINCE the Judicial Service Commission has been established by section 178 (1) of the Constitution of the Republic of South Africa, 1996;

AND SINCE section 178 (4) of the Constitution provides that the Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation;

AND SINCE section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt

with in the Constitution, including procedures for dealing with complaints about judicial officers;

AND SINCE section 177 (1) of the Constitution provides that a judge may be removed from office only if-

- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
- (b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members;

AND SINCE section 177 (3) of the Constitution provides that the President, on the advice of the Judicial Service Commission may suspend a judge who is the subject of a procedure in terms of section 177 (1);

AND SINCE it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, judicial officers, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;

AND SINCE it is necessary to create procedures, structures and mechanisms in terms of which-

- complaints against judges could be lodged and dealt with appropriately;
- allegations that any judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct could be investigated; and
- information can be placed before the Judicial Service Commission and Parliament in order to enable these institutions to make a finding whether a judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct,

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -
[Preamble substituted by s.1 of Act 20 of 2008]

Chapter 1

ADMINISTRATIVE PROVISIONS (ss 1-6)

[Heading inserted by s.2 of Act 20 of 2008]

1. Definitions

In this Act, unless the context otherwise indicates-

“Chairperson” means the Chief Justice;

“Commission” means the Judicial Service Commission established by section 178 of the Constitution;

“complainant” means a person who lodged a complaint against a judge in terms of section 14;

“Minister” means the Cabinet member responsible for the administration of justice;

“prescribed” means as prescribed in terms of a regulation made under section 35;

“respondent” means a judge against whom a complaint was lodged in terms of section 14, or who is the subject of an allegation referred to a Tribunal in terms of this Act;

“this Act” includes the Code of Judicial Conduct contemplated in section 12 and any regulations made under section 35; and

“Tribunal” means a Tribunal appointed in terms of section 21.
[s.1 substituted by s.3 of Act 20 of 2008]

2. Acting Chairperson and vacancies

- (1) When the Chairperson is for any reason unavailable to serve on the Commission or perform any function or exercise any power, the Deputy Chief Justice, as his or her alternate, shall act as chairperson.
- (2) If neither the Chief Justice nor the Deputy Chief Justice is available to preside at a meeting of the Commission, the members present at the

meeting must designate one of the members holding office in terms of section 178 (1)(b) or (c) of the Constitution as acting chairperson for the duration of the absence.

(3) A vacancy in the Commission shall-

(a) not affect the validity of the proceedings or decisions of the Commission; and

(b) be filled in accordance with section 178 (3) of the Constitution, and any member so designated shall, where applicable, hold office for the unexpired portion of his or her predecessor's term of office.

[s.2 substituted by s.4 of Act 20 of 2008]

3. **Remuneration and expenses of members of Commission**

(1) Any member of the Commission who is an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act 92 of 1997), may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission as the Minister may determine with the concurrence of the Minister of Finance.

(2) Any member of the Commission who is not-

(a) an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office- Bearers Act, 1997; or

(b) in the employ of the State and subject to the laws governing the public service, may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission, as the Minister may determine with the concurrence of the Minister of Finance.

[s.3 substituted by s.5 of Act 20 of 2008]

4. **Repealed**

.....

[s.4 repealed by s.6 of Act 20 of 2008]

5. **Publication of procedure of Commission**

The Minister must by notice in the *Gazette*, make known the particulars of the procedure, including subsequent amendments, which the Commission has

determined in terms of section 178 (6) of the Constitution.

[s.5 substituted by s.7 of Act 20 of 2008]

6. Annual report

(1) The Commission shall within six months after the end of every year submit a written report to Parliament for tabling.

(2) The report referred to in subsection (1) must include information regarding-

(a) the activities of the Commission during the year in question;

(b) all matters dealt with by the Judicial Conduct Committee referred to in section 8;

(c) all matters relating to, including the degree of compliance with, the Register of Judges' Registrable Interests referred to in section 13, as reported by the Registrar of Judges' Registrable Interests; and

(d) all matters considered by the Commission in the course of the application of Chapters 2 and 3 of this Act, including the number of matters outstanding and the progress in respect thereof.

[s.6 substituted by s.7 of Act 20 of 2008]

Chapter 2

OVERSIGHT OVER JUDICIAL CONDUCT AND ACCOUNTABILITY OF JUDICIAL OFFICERS (ss 7-20)

[chapter 2 inserted by s.9 of Act 20 of 2008]

Part I

Establishment and objects of Committee (ss 7-10)

[part I inserted by s.9 of Act 20 of 2008]

7. Definitions and interpretation

(1) For purposes of this Chapter, unless the context indicates votherwise-

(a) **'active service'** means active service as contemplated in section 1 of the Judges' Remuneration and Conditions of Service Act, 2001 (Act 47 of 2001);

(b) **'Chairperson'** , means the Chairperson of the Committee;

(c) **'Commission'** means the Commission, acting without the participation of the members referred to in section 178 (1)(h) and (i) of the Constitution;

- (d) **'Committee'** means the Judicial Conduct Committee referred to in section 8;
 - (e) **'Head of Court'**, in relation to a complaint against a judge-
 - (i) of the Constitutional Court, means the Chief Justice;
 - (ii) of the Supreme Court of Appeal, means the President of that Court;
 - (iii) of any other court, means the Judge President of that court;
 - (iv) who was performing judicial duties in an acting capacity on the date the complaint arose, means the Head of Court in which such judge acted when the complaint arose; or
 - (v) who has been discharged from active service, means the Chief Justice;
 - (f) **'immediate family member'** in relation to a judge refers to the spouse, civil partner or permanent life partner of that judge and includes dependent children of, and family members living in the same household with, that judge; and
 - (g) **'judge'** means any Constitutional Court judge or judge referred to in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), which includes a judge who has been discharged from active service in terms of that Act, as well as any person holding the office of judge in a court of similar status to a High Court, as contemplated in section 166 of the Constitution, and, except for the purposes of section 11, includes any Constitutional Court judge or judge performing judicial duties in an acting capacity.
- (2) In this Chapter any reference to a complainant or to a respondent must, unless it is inconsistent with the context, be construed to include a reference to a legal representative of that complainant or respondent.
- [s.7 inserted by s.9 of Act 20 of 2008]

8. Establishment and composition of Judicial Conduct Committee

- (1) The Commission has a Judicial Conduct Committee, comprising-
 - (a) the Chief Justice, who is the Chairperson of the Committee;
 - (b) the Deputy Chief Justice; and
 - (c) four judges, at least two of whom must be women, designated by the Chief Justice in consultation with the Minister, for the period determined at the time of such designation, provided that such

period may not exceed two years.

- (2) Any judge designated in terms of subsection (1)(c) may be reappointed once for a period not exceeding two years, but may not serve as such a member for more than four years in total.
- (3) The Chairperson may, either generally or in a specific case, delegate any of his or her powers or functions as Chairperson of the Committee to the Deputy Chief Justice.
- (4) When considering a complaint relating to the conduct of a judge who is a member of the Committee, the Committee must sit without that member.
- (5) The first designations in terms of subsection (1)(c) must be made within one month of this section coming into operation.
- (6) Any vacancy which may arise in respect of a designation in terms of subsection 1(c) must immediately be filled for the remaining period of such designation in the manner prescribed in this section.

[s.8 inserted by s.9 of Act 20 of 2008]

9. Meetings of Committee

- (1) The Committee meets at any time and place determined by the Chairperson.
- (2) (a) The Committee may determine the procedure to be followed at its meetings, but decisions of the Committee must be supported by a majority of its members.
(b) In the event of an equality of votes being cast by the Committee members present at a meeting, the person presiding at that meeting has a deciding vote in addition to his or her deliberative vote.
- (3) Meetings of the Committee may only be attended by the members of the Committee and persons whose presence are required or permitted in terms of this Act, unless the Committee on account of public interest and for good cause decides otherwise.

[s.9 inserted by s.9 of Act 20 of 2008]

10. Objects of Committee

- (1) The objects of the Committee are to receive, consider and deal with complaints in terms of Part III of this Chapter.
- (2) The Committee must report on its activities to the Commission at least once every six months.

[s.10 inserted by s.9 of Act 20 of 2008]

Part II

Judicial conduct (ss 11-13)

[part II inserted by s.9 of Act 20 of 2008]

11. Judge not to hold other office of profit or receive payment for any service

(1) A judge performing active service-

- (a) may not hold or perform any other office of profit; and
- (b) may not receive in respect of any service any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge:

Provided that such a judge may, with the written consent of the Minister acting in consultation with the Chief Justice, receive royalties for legal books written or edited by that judge.

(2) A judge who has been discharged from active service may only with the written consent of the Minister, acting after consultation with the Chief Justice, hold or perform any other office of profit or receive in respect of any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge.

- (3) (a) Written consent as contemplated in subsection (2) may only be given if the Minister is satisfied that the granting of such consent will not-**
- (i) adversely affect the efficiency and effectiveness of the administration of justice, including the undermining of any aspect of the administration of justice, especially the civil justice system;
 - (ii) adversely affect the image or reputation of the administration of justice in the Republic;
 - (iii) in any manner undermine the legal framework which underpins the judge for life concept;
 - (iv) result in any judge engaging in any activity that is in conflict with the vocation of a judge; and
 - (v) bring the judiciary into disrepute or have the potential to do so.
- (b) The Minister, acting after consultation with the Chief Justice, may, by notice in the *Gazette*, issue guidelines regarding any other criteria to be applied when considering the granting of consent**

contemplated in subsection (2).

- (c) Written consent as contemplated in subsection (2) may be granted on the conditions, if any, that the Minister deems appropriate.
- (4) The Minister must cause the Registrar of Judges' Registrable Interests referred to in section 13 (1) to be informed of all instances where written consent as contemplated in subsections (1) and (2) has been granted.
- (5) The Minister must, once every twelve months, table a report in Parliament containing particulars, including the outcome, of every application made in terms of subsection (1) or (2), including any conditions attached to any application granted, during the period covered by the report.

[s.11 inserted by s.9 of Act 20 of 2008]

12. Code of Judicial Conduct

- (1) The Chief Justice, acting in consultation with the Minister, must compile a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval.
- (2) The Minister must table the first Code under this section in Parliament within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (1) both versions of the Code must be tabled in Parliament within the said period.
- (3) When the Code or any amendment thereto is tabled in Parliament in terms of subsection (1) or (2), Parliament may, after obtaining and considering public comment thereon, approve the Code or such amendment-
 - (a) without any changes thereto; or
 - (b) with such changes thereto as may be effected by Parliament.
- (4) The Code must be reviewed at least once in every three years by the Chief Justice, acting in consultation with the Minister, and the result of such review, including any proposed amendment to the Code, must be tabled in Parliament, for approval, as contemplated in subsection (3).
- (5) The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the *Gazette* .

[s.12 inserted by s.9 of Act 20 of 2008]

13. Disclosure of registrable interests

- (1) The Minister, acting in consultation with the Chief Justice, must appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests.
- (2) The Registrar must open and keep a register, called the Register of Judges' Registrable Interests, and must-
 - (a) record in the Register particulars of Judges' registrable interests;
 - (b) amend any entries in the Register when necessary; and
 - (c) perform the other duties in connection with the Register as required in terms of this Act.
- (3) Every judge must disclose to the Registrar, in the prescribed form, particulars of all his or her registrable interests and those of his or her immediate family members.
- (4) The first disclosure in terms of subsection (3) must be within 60 days of a date fixed by the President by proclamation, and thereafter annually and in such instances as prescribed.
- (5) The Minister, acting in consultation with the Chief Justice, must make regulations regarding the content and management of the Register referred to in subsection (2), which regulations must at least prescribe-
 - (a) the format of the Register;
 - (b) the kinds of interests of judges and their immediate family members that are regarded as registrable interests;
 - (c) the manner and the instances in which, and the time limits within which, registrable interests must be disclosed to the Registrar;
 - (d) a confidential and a public part of the Register and the interests to be recorded in those parts respectively;
 - (e) the recording, in the public part of the register, of all registrable interests derived from the application of section 11;
 - (f) a procedure providing for public access to the public part of the Register and a procedure for providing access to, and maintaining confidentiality of, the confidential part of the Register; and
 - (g) the lodging of a complaint in terms of section 14 (1) by the Registrar, in the event of-
 - (i) failure to register any registrable interest by any judge, including any failure to register any such interest within a prescribed time limit; or
 - (ii) disclosure of false or misleading information by any judge.

- (6) The regulations may determine different criteria for judges in active service and judges who had been discharged from active service or judges in an acting capacity, including in respect of matters referred to in subsection (5)(d) .
 - (7) The Minister must table the first regulations under this section in Parliament, for approval, within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (5) both versions of the regulations must be tabled in Parliament within the said period.
 - (8) When the regulations or any amendment thereto is tabled in Parliament, Parliament may, after obtaining and considering public comment thereon, approve the regulations or such amendment-
 - (a) without any changes thereto; or
 - (b) with such changes thereto as may be effected by Parliament.
- [s.13 inserted by s.9 of Act 20 of 2008]

Part III

Consideration of complaints by Committee (ss 14-18)

[part III inserted by s.9 of Act 20 of 2008]

14. Lodging of complaints

- (1) Any person may lodge a complaint about a judge with the Chairperson of the Committee.
- (2) When a complaint is lodged with the Chairperson in terms of subsection (1), the Chairperson must deal with the complaint in accordance with section 15, 16 or 17, but in the event of a complaint falling within the parameters of section 15, the Chairperson may designate a Head of Court to deal with the complaint, unless the complaint is against the Head of Court.
- (3) A complaint must be-
 - (a) based on one or more of the grounds referred to in subsection (4); and
 - (b) lodged by means of an affidavit or affirmed statement, specifying-
 - (i) the nature of the complaint; and
 - (ii) the facts on which the complaint is based.
- (4) The grounds upon which any complaint against a judge may be lodged, are any one or more of the following:
 - (a) Incapacity giving rise to a judge's inability to perform the

functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177 (1)(a) of the Constitution;

- (b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);
- (c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
- (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17 (8), imposed in terms of this Act; and
- (e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph(a) to(d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.

[s.14 inserted by s.9 of Act 20 of 2008]

15. Lesser complaints may be summarily dismissed

- (1) (a) If the Chairperson or the Head of Court designated in terms of section 14 (2) is of the view that the complaint falls within the parameters of the grounds set out in subsection (2), he or she must dismiss the complaint.
- (b) If the Head of Court designated in terms of section 14 (2) is of the view that the complaint should not be dismissed under paragraph (a), he or she must refer the complaint to the Chairperson to be dealt with in terms of section 16 or 17.
- (2) A complaint must be dismissed if it-
 - (a) does not fall within the parameters of any of the grounds set out in section 14 (4);
 - (b) does not comply substantially with the provisions of section 14 (3);
 - (c) is solely related to the merits of a judgment or order;
 - (d) is frivolous or lacking in substance; or
 - (e) is hypothetical.
- (3) If a complaint is dismissed in terms of subsection (1) by a Head of Court, that Head of Court must inform the Chairperson in writing of that dismissal and the reasons therefore.

- (4) If a complaint is dismissed in terms of subsection (1), the Chairperson must inform the complainant in writing of-
 - (a) the reasons for the dismissal; and
 - (b) the right to appeal to the Committee against that dismissal in terms of subsection (5).
 - (5) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.
- [s.15 inserted by s.9 of Act 20 of 2008]

16. Committee may recommend appointment of Tribunal in respect of impeachable complaints

- (1) If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14 (4)(a) , the Chairperson must-
 - (a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and
 - (b) in writing, inform the respondent of the complaint.
- (2) If a complaint is referred to the Committee in terms of subsection (1) or section 15 (1) (b) or section 17 (4) (c) or 17 (5) (c) (iii), the Chairperson must determine a time and a place for the Committee to meet in order to consider a recommendation envisaged in subsection (1)(a) , and must inform the complainant and the respondent in writing that he or she may-
 - (a) submit a written representation for consideration by the Committee at that meeting; and
 - (b) with the leave of the Chairperson, address the Committee at that meeting.
- (3) For the purpose of a meeting referred to in subsection (2), the Committee may request such further information from the complainant or any other person as it deems fit.
- (4) At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross incompetence or gross misconduct by the respondent, whereupon the Committee may-

- (a) refer the complaint to the Chairperson for an inquiry referred to in section 17 (2); or
 - (b) recommend to the Commission that the complaint should be investigated by a Tribunal.
- (5) The Committee must inform the complainant, the respondent and the Commission in writing of any decision envisaged in subsection (4) and the reasons therefore.
- (6) A meeting referred to in subsection (2) must be attended by at least three members of the Committee.
- [s.16 inserted by s.9 of Act 20 of 2008]

17. Inquiry into serious, non-impeachable complaints by Chairperson or member of Committee

- (1) If-
- (a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or
 - (b) a complaint is referred to the Chairperson in terms of section 15 (1) (b) or section 16 (4) (a) , or section 18 (4) (a) (ii), the Chairperson or a member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint.
- (2) Any inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation.
- (3) For the purpose of an inquiry referred to in subsection (2), the Chairperson or member concerned-
- (a) must invite the respondent to respond in writing or in any other manner specified, and within a specified period, to the allegations;
 - (b) may obtain, in the manner that he or she deems appropriate, any other information which may be relevant to the complaint; and
 - (c) must invite the complainant to comment on any information so obtained, and on the response of the respondent, within a specified period.
- (4) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, he or she must, on the

- strength of the information obtained by him or her in terms of subsection (3)-
- (a) dismiss the complaint;
 - (b) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or
 - (c) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.
- (5) (a) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is of the opinion that a formal hearing is required in order to determine the merits of the complaint, he or she must determine a time and a place for a formal hearing and written notice of the hearing must, within a reasonable period before the date so determined, be given to the respondent and the complainant.
- (b) For purposes of a formal hearing contemplated in paragraph(a) -
- (i) the Chairperson or member concerned has all the powers of a Tribunal; and
 - (ii) the provisions of sections 24, 26, 27, 28, 29, 30, 31 and 32 are applicable with the changes required by the context.
- (c) Upon the conclusion of a formal hearing the Chairperson or member concerned must record his or her findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and his or her finding as to the merits of the complaint, and-
- (i) dismiss the complaint;
 - (ii) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or
 - (iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.
- (6) The Chairperson or member concerned must in writing inform the Committee, the complainant and the respondent of-
- (a) a dismissal contemplated in subsection (4) (a) or (5) (c) (i); or
 - (b) any finding and remedial steps contemplated in subsection (4) (b) or (5) (c) (ii); or

- (c) any recommendation contemplated in subsection 4 (c) or (5) (c) (iii), and the reasons therefor.
- (7) (a) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (4) (a) or (5) (c) (i) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.
- (b) A respondent who is dissatisfied with any finding or remedial steps contemplated in subsection (4) (b) or (5) (c) (ii) may, within one month after receiving notice of that finding and remedial steps, appeal to the Committee in writing against that finding or remedial steps or both such finding and remedial steps, specifying the grounds for the appeal.
- (8) Any one or a combination of the following remedial steps may be imposed in respect of a respondent:
 - (a) Apologising to the complainant, in a manner specified.
 - (b) A reprimand.
 - (c) A written warning.
 - (d) Any form of compensation.
 - (e) Subject to subsection (9), appropriate counselling.
 - (f) Subject to subsection (9), attendance of a specific training course.
 - (g) Subject to subsection (9), any other appropriate corrective measure.
- (9) The state shall not be responsible for any expenditure incurred as a result of, or associated with, any remedy referred to in subsection (8) (e), (f) or (g), unless such remedy was selected from a list of approved remedies or services compiled from time to time by the Minister, after consultation with the Chief Justice, and then only to the extent set out in that list.

[s.17 inserted by s.9 of Act 20 of 2008]

18. Consideration of appeal by Committee

- (1) The Committee must consider an appeal referred to in section 15 (5) or 17 (7) at a meeting determined by the Chairperson, and the Chairperson must inform the complainant and the respondent in writing-
 - (a) of the time and place of the meeting; and
 - (b) that they may submit written representations within a specified period for consideration by the Committee.

- (2) (a) A meeting referred to in subsection (1) must, subject to paragraph (c), be attended by at least three members of the Committee and be presided over by the Chairperson, but no member who made any decision or finding, or imposed any remedial step, that is the subject of the appeal, may participate in the consideration of the appeal.
- (b) In the event of the absence of the Chairperson to preside in a specific appeal, the Chief Justice must appoint an acting chairperson from amongst the members of the Committee, to preside in that appeal.
- (c) If any member of the Committee is for any reason unable to participate in the consideration of an appeal in terms of this section and there are not at least three of the other members available to so participate in the appeal, the Chief Justice may appoint any judge as a temporary member of the Committee for the purpose of the consideration of such an appeal.
- (3) At the meeting referred to in subsection (1), the Committee must consider-
 - (a) the reasons for-
 - (i) the dismissal against which the appeal is brought, as contemplated in section 15 (4) (a) or 17 (6) (a) ; or
 - (ii) the finding or remedial steps, or the finding and the remedial steps, as the case may be, against which the appeal is brought, as contemplated in section 17 (6) (b) ;
 - (b) the grounds for the appeal, as contemplated in section 15 (5) or 17 (7)(a) or(b) , as the case may be;
 - (c) any representations submitted in terms of subsection (1) (b) ; and
 - (d) such further written or oral argument, if any, as may be requested by the Committee.
- (4) After consideration of an appeal in terms of subsection (3), the Committee must-
 - (a) in the case of an appeal against a dismissal of a complaint as contemplated in section 15 (4) (a) -
 - (i) confirm the dismissal;
 - (ii) set aside the dismissal and refer the complaint to the Chairperson for an inquiry in terms of section 17; or
 - (iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19;

- (b) in the case of an appeal against a dismissal of a complaint as contemplated in section 17 (7) (a) -
 - (i) confirm the dismissal;
 - (ii) set aside the dismissal, and find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in section 17 (8) on the respondent; or
 - (iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19; or
 - (c) in the case of an appeal against a finding or remedial steps, or a finding and remedial steps as contemplated in section 17 (7) (b) -
 - (i) set aside the decision concerned; or
 - (ii) confirm the decision or set aside the decision concerned and substitute it with an appropriate decision, with or without any amendment of the remedial steps imposed, if applicable; or
 - (iii) set aside the decision and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19.
- (5) The Committee must in writing inform the complainant and the respondent of its decision in terms of subsection (4) and the reasons therefore.
- [s.18 inserted by s.9 of Act 20 of 2008]

Part IV

Request to appoint Tribunal and consideration of Tribunal report by Commission (ss 19-20)

[part IV inserted by s.9 of Act 20 of 2008]

19. Commission to request appointment of Tribunal

- (1) Whenever it appears to the Commission-
 - (a) on account of a recommendation by the Committee in terms of section 16 (4) (b) or 18 (4) (a) (iii), (b) (iii) or (c) (iii); or
 - (b) on any other grounds, that there are reasonable grounds to suspect that a judge-
 - (i) is suffering from an incapacity;
 - (ii) is grossly incompetent; or

- (iii) is guilty of gross misconduct, as contemplated in section 177 (1)(a) of the Constitution, the Commission must request the Chief Justice to appoint a Tribunal in terms of section 21.
- (2) The Commission must in writing state the allegations, including any other relevant information, in respect of which the Tribunal must investigate and report.
- (3) The Commission must, unless it is acting on a recommendation referred to in section 16 (4) (c) or 18 (4) (a) (iii), (b) (iii) or (c) (iii), before it requests the appointment of a Tribunal, inform the respondent, and, if applicable, the complainant, that it is considering to make that request and invite the respondent, and, if applicable, the complainant, to comment in writing on the fact that the Commission is considering to so request.
- (4) Whenever the Commission requests the appointment of a Tribunal in terms of subsection (1), the Commission must forthwith in writing-
 - (a) inform the President that it has so requested; and
 - (b) advise the President as to-
 - (i) the desirability of suspending the respondent in terms of section 177 (3) of the Constitution; and
 - (ii) if applicable, any conditions that should be applicable in respect of such suspension.

[s.19 inserted by s.9 of Act 20 of 2008]

20. Commission to consider report and make findings

- (1) The Commission must consider the report of a Tribunal at a meeting [d]etermined by the Chairperson, and the Commission must inform the respondent and, if applicable, the complainant, in writing-
 - (a) of the time and place of the meeting; and
 - (b) that he or she may submit written representations within a specified period for consideration by the Commission.
- (2) At the meeting referred to in subsection (1) the Commission must consider-
 - (a) the report concerned; and
 - (b) any representations submitted in terms of subsection (1)(b) .
- (3) After consideration of a report and any applicable representations in terms of subsection (2), the Commission must make a finding as to whether the respondent-
 - (a) is suffering from an incapacity;

- (b) is grossly incompetent; or
 - (c) is guilty of gross misconduct.
- (4) If the Commission finds that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, the Commission must submit that finding, together with the reasons therefore and a copy of the report, including any relevant material, of the Tribunal, to the Speaker of the National Assembly.
- (5) If the Commission, after consideration of a report and any applicable representations in terms of subsection (2) finds that the respondent-
- (a) is not grossly incompetent, but that there is sufficient cause for the respondent to attend a specific training or counselling course or be subjected to any other appropriate corrective measure, the Commission may make a finding that the respondent must attend such a course or be subjected to such measure; or
 - (b) is guilty of a degree of misconduct not amounting to gross misconduct, the Commission may, subject to section 17 (9), impose any one or a combination of the remedial steps referred to in section 17 (8)
- (6) The Commission must in writing inform the respondent in respect of whom a finding referred to in subsection (4) or (5) is made, and, if applicable, the complainant, of that finding and the reasons therefore.
- [s.20 inserted by s.9 of Act 20 of 2008]

Chapter 3

JUDICIAL CONDUCT TRIBUNALS (ss 21-34)

[chapter 3 inserted by s.9 of Act 20 of 2008]

Part 1

Introductory provisions (ss 21-25)

[part 1 inserted by s.9 of Act 20 of 2008]

21. Appointment of Tribunal

- (1) The Chief Justice must appoint a Judicial Conduct Tribunal, whenever requested to do so by the Commission.
- (2) The Chief Justice must, after consultation with the Minister, designate a place in the Republic as the seat of each Tribunal established in terms of this Act, but a Tribunal may sit at any place for the purpose of a hearing or of deliberating.

- (3) Before appointing any judge to a Tribunal, the Chief Justice must consult with the head of the court on which that judge serves.
- (4) Upon appointing a Tribunal, the Chief Justice must give written notice of the composition, terms of reference, and seat of the Tribunal, and the date by which the Tribunal is to commence proceedings, to-
 - (a) the members of the Tribunal
 - (b) the Minister;
 - (c) the respondent; and
 - (d) the complainant.
- (5) The Chief Justice-
 - (a) must delegate the functions assigned to the Chief Justice in terms of this Part or section 10 (2) to the Deputy Chief Justice, if the Chief Justice-
 - (i) is the respondent; or-
 - (ii) is personally implicated in the allegations against a judicial officer; and
 - (b) may delegate any of the functions assigned to the Chief Justice in terms of this Part or section 29 (2) to the Deputy Chief Justice, in any other case.

[s.21 inserted by s.9 of Act 20 of 2008]

22. Composition of Tribunal

- (1) A Tribunal comprises-
 - (a) two judges, one of whom must be designated by the Chief Justice as the Tribunal President; and
 - (b) one person whose name appears on the list maintained in terms of section 23 (1).
- (2) At least one member of every Tribunal must be a woman.
- (3) If a vacancy arises among the members of a Tribunal, or if a member of a Tribunal for any reason becomes unable to continue to serve on the Tribunal, and-
 - (a) there are at least two members remaining on the Tribunal, the Tribunal must continue its functions; or
 - (b) in any other case-
 - (i) the Tribunal is dissolved;
 - (ii) the Chief Justice must appoint a new Tribunal; and
 - (iii) any evidence gathered by or submitted to the former Tribunal, and any record kept by the former Tribunal, may be considered by the new Tribunal.

[s.22 inserted by s.9 of Act 20 of 2008]

23. Non-judicial members of tribunals

- (1) The Executive Secretary must, in the prescribed manner and form, establish and maintain a list of persons who are not judicial officers and who have been approved by the Chief Justice, acting with the concurrence of the Minister, as being suitable to serve on Tribunals in terms of section 22 (1)(b) .
- (2) The Minister, in consultation with the Cabinet member responsible for finance, may by notice in the *Gazette* prescribe a tariff of allowances to be paid for service as a member of a Tribunal to a person appointed in terms of section 22 (1)(b) .

[s.23 inserted by s.9 of Act 20 of 2008]

24. Tribunal investigative and administrative support

- (1) The President of a Tribunal may, after consulting the Minister and the National Director of Public Prosecutions, appoint a member of the National Prosecuting Authority to collect evidence on behalf of the Tribunal, and to adduce evidence at a hearing;
- (2) The Executive Secretary in the Office of the Chief Justice must assign such other employees of the Office to the Tribunal as may be necessary to assist the Tribunal in the performance of its functions.

[s.24 inserted by s.9 of Act 20 of 2008]

25. Rules and procedure

- (1) The Chief Justice must make rules regulating procedures before a Tribunal.
- (2) Rules made under subsection (1)-
 - (a) are applicable to all Tribunals;
 - (b) may be amended or repealed at any time;
 - (c) must be tabled in Parliament by the Minister before publication in the *Gazette* ; and
 - (d) must be published in the *Gazette* .
- (3) The first rules made under this section must be made within six months from the date of the commencement of this section.
- (4) Subject to this Act, a Tribunal has the power to regulate and protect its own proceedings.

[s.25 inserted by s.9 of Act 20 of 2008]

Part 2

Hearings of Tribunal (ss 26-33)

[part 2 inserted by s.9 of Act 20 of 2008]

26. Objects and nature of Tribunal

(1) The objects of a Tribunal are-

- (a) to inquire into allegations of incapacity, gross incompetence or gross misconduct against a judge, as contemplated in section 177 of the Constitution, by-
 - (i) collecting evidence;
 - (ii) conducting a formal hearing;
 - (iii) making findings of fact; and
 - (iv) making a determination on the merits of the allegations; and
- (b) to submit a report containing its findings to the Judicial Service Commission.

(2) A Tribunal conducts its inquiry in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact before a Tribunal.

(3) When considering the merits of any allegations against a judge, the Tribunal must make its determination on a balance of probabilities.

(4) A Tribunal must keep a record of its proceedings.

[s.26 inserted by s.9 of Act 20 of 2008]

27. Hearing to begin and be concluded without unreasonable delay

(1) In the interests of protecting and enhancing the dignity and effectiveness of the judiciary and the courts, a Tribunal must-

- (a) as soon as reasonably practicable after its appointment, determine a date, time and place for conducting a hearing in respect of the allegations referred to it; and
- (b) conclude the hearing without unreasonable delay.

(2) Subject to subsection (1) (b) , a Tribunal may adjourn its proceedings at any time, to any date, time and place.

[s.27 inserted by s.9 of Act 20 of 2008]

28. Involvement of judicial officer whose conduct is subject of hearing

(1) Notice of a hearing must be served on the respondent within a reasonable period before the date set for that hearing.

- (2) The respondent is entitled to attend the hearing and to be assisted by a legal representative, but the Tribunal may begin or continue a hearing, in whole or in part, in the absence of the respondent, or the respondent's legal representative, or both of them, if the Tribunal is satisfied that the respondent was properly informed of the hearing.
- (3) The respondent is entitled-
 - (a) to give and adduce evidence;
 - (b) to call witnesses, and to cross-examine any witness;
 - (c) to have access to any books, documents or other objects produced in evidence; and
 - (e) to make a submission to the Tribunal before the conclusion of the hearing.

[s.28 inserted by s.9 of Act 20 of 2008]

29. Attendance at hearing and disclosure of evidence

- (1) A hearing of a Tribunal may be attended only by-
 - (a) the respondent;
 - (b) the respondent's legal representative, if one has been appointed;
 - (c) any person who lodged a formal complaint against the respondent, if that complaint is related to the hearing;
 - (d) the legal representative of each person contemplated in paragraph (c) ;
 - (e) any person subpoenaed in terms of section 30, or called as a witness by the respondent, each of whom may attend-
 - (i) with or without a legal representative; and
 - (ii) only for the period that person is required by the Tribunal;
 - (f) any person contemplated in section 24 (2), if that person's presence is required by the Tribunal; and
 - (g) any other person whose presence the Tribunal considers to be necessary or expedient.
- (2) Subject to sections 32 and 33, a person may not disclose to any other person the contents of a book, document or other object in the possession of a Tribunal or the record of any evidence given before a Tribunal, except to the extent that the Tribunal President, in consultation with the Chief Justice, determines otherwise.
- (3) (a) Notwithstanding subsection (1), the Tribunal President may, if it is in the public interest and for the purposes of transparency, determine that all or any part of a hearing of a Tribunal must be held in public.

- (b) A determination contemplated in paragraph(a) must be made in consultation with the Chief Justice.
- (c) Subsection (2) does not apply if a determination is made under paragraph (a) , but the Tribunal President may prohibit the publication of any information or document placed before the Tribunal if that publication is not in the public interest.

[s.29 inserted by s.9 of Act 20 of 2008]

30. Tribunal may subpoena witnesses

A Tribunal may subpoena any person to appear before it in person at a hearing and-

- (a) to produce any book, document, statement or object relating to the hearing; and
- (b) to answer questions under oath or affirmation.

[s.30 inserted by s.9 of Act 20 of 2008]

31. Evidence to be given under oath or affirmation

- (1) No person may testify before, or be questioned by, a Tribunal unless the oath or affirmation that is usually administered or accepted in a court of law, has been administered to or accepted from that person by the Tribunal or, if evidence is to be given by such person through an interpreter, by the Tribunal through the interpreter.
- (2) An oath or affirmation administered to or accepted from a person in terms of subsection (1) remains binding on that person until the Tribunal has concluded the hearing or finally excused that person.
- (3) A person giving evidence at a hearing of the tribunal must answer any relevant question.
- (4) A tribunal may order a person giving evidence to answer any question, or to produce any article or document, even if it is self-incriminating to do so.
- (5) A self-incriminating answer given or statement made by a person giving evidence to a Tribunal in terms of this Act is inadmissible as evidence against that person in any criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury, or in which that person is tried for an offence contemplated in section 34 (1) (b) , and then such an answer or statement is admissible only to the extent that it is relevant to prove the offence charged.

[s.31 inserted by s.9 of Act 20 of 2008]

32. Evidence disclosing offence

If the Tribunal is of the opinion that evidence before the Tribunal discloses the commission of an offence by the respondent, the Tribunal President must notify the National Director of Public Prosecutions accordingly during or after the hearing and cause a copy of the record or the relevant part of the record in question to be submitted to the National Director of Public Prosecutions.

[s.32 inserted by s.9 of Act 20 of 2008]

33. Findings and report

(1) Upon the conclusion of a hearing, the Tribunal must-

- (a) record its findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and its findings as to the merits of the allegations in question; and
- (b) submit a report to the Judicial Service Commission, containing-
 - (i) its findings and the reasons for them;
 - (ii) a copy of the record of the hearing; and
 - (iii) all other relevant documents.

(2) The Tribunal must submit a copy of its report, and all other relevant documents, to the Chief Justice for safekeeping.

[s.33 inserted by s.9 of Act 20 of 2008]

Part 3

Offences relating to Tribunals (s 34)

[part 3 inserted by s.9 of Act 20 of 2008]

34. Offences

(1) A person is guilty of an offence in terms of this Act if the person-

- (a) having been subpoenaed in terms of section 29 to appear before a Tribunal, fails without reasonable excuse to-
 - (i) attend a hearing of a Tribunal;
 - (ii) remain in attendance until excused by the Tribunal; or
 - (iii) produce any book, document, statement or object relating to the hearing which he or she has been subpoenaed to produce;
- (b) having taken an oath or affirmation as a witness-
 - (i) refuses to answer a question; or
 - (ii) knowingly provides false information to the Tribunal;
- (c) wilfully hinders or obstructs a Tribunal in the performance of its

functions; or

- (d) other than as contemplated in section 29 (2), or in the performance of a function in terms of this Act, wilfully or negligently discloses to any other person the contents of a book, document or other object in the possession of a Tribunal or the record of any evidence given before a Tribunal.

- (2) Any person who is convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding five years.

[s.34 inserted by s.9 of Act 20 of 2008]

Chapter 4

MISCELLANEOUS PROVISIONS (ss 35-38)

[chapter 4 inserted by s.9 of Act 20 of 2008]

35. Regulations

- (1) The Minister-

- (a) must make the regulations required to be made in terms sections 13 of this Act; and

- (b) may make regulations regarding any matter that may be necessary or expedient to prescribe regarding-

- (i) the finances and financial management and accountability of the Commission and Office of the Registrar of Judges Registrable Interests;

- (ii) the manner in which a judge may apply for written consent of the Minister as contemplated in section 11 (1) and (2); and

- (iii) the administration and functioning of the Commission or Conduct Committee, the Secretariat of the Commission, or any other aspect of this Act.

- (2) Any regulation made under this section must be tabled in Parliament before publication thereof in the *Gazette* .

[s.35 inserted by s.9 of Act 20 of 2008]

36. Finances and accountability

- (1) Expenditure in connection with the administration and functioning of the Commission must be defrayed from monies appropriated by Parliament for this purpose to the Office of Chief Justice vote (hereinafter referred to as the Departmental vote) in terms of the Public Finance Management Act, 1999 (Act 1 of 1999).

- (2) Monies appropriated by Parliament for this purpose-
 - (a) constitute earmarked funds on the Departmental vote; and
 - (b) may not be used by the Office of the Chief Justice for any other purpose, without the approval of Treasury and the Chief Justice as Chairperson of the Commission.
- (3) The Minister must consult with the Chief Justice on the funds required for the administration and functioning of the Commission, as part of the budgetary process of departments of state, in the manner prescribed.
- (4) Subject to the Public Finance Management Act, 1999 (Act 1 of 1999), the Secretary-General of the Office of Chief Justice-
 - (a) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Commission; and
 - (b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

[s.36 substituted by s.5 of Act 24 of 2015]

37. Secretariat of Commission

- (1) The Executive Secretary in the Office of the Chief Justice must assign an appropriate number of personnel, one of whom must be designated as the Secretary of the Commission, from the staff in the Office of the Chief Justice to provide administrative support to the Commission.
- (2) Subject to section 36, the Secretary of the Commission, under the supervision, control and direction of the Executive Secretary, must-
 - (a) provide secretarial and administrative services to the Commission, the Committee and any Tribunal;
 - (b) cause all records of matters dealt with by the Commission in terms of this Act to be safeguarded;
 - (c) maintain a register of all complaints dealt with in terms of Chapter 2;
 - (d) perform such functions as may from time to time be prescribed; and
 - (e) generally, perform such secretarial and administrative tasks related to the work of the Commission, Committee or any Tribunal, as may from time to time be directed by the Chief Justice.
- (3) Subject to section 36, the Registrar of Judges' Registrable Interests, under the supervision, control and direction of the Chief Justice, must-
 - (a) maintain the Register of Judges' Registrable Interests;

- (b) cause all records of matters dealt in relation to the Register in terms of this Act to be safeguarded;
- (c) perform such functions as may from time to time be prescribed; and
- (d) generally, perform such secretarial and administrative tasks related to maintenance of the Register, as may from time to time be directed by the Chief Justice.

[s.37 inserted by s.9 of Act 20 of 2008]

38. Protection of confidential information

- (1) No person, including any member of the Commission, Committee, or any Tribunal, or Secretariat of the Commission, or Registrar or his or her staff, may disclose any confidential information or confidential document obtained by that person in the performance of his or her functions in terms of this Act, except-
 - (a) to the extent to which it may be necessary for the proper administration of any provision of this Act;
 - (b) to any person who of necessity requires it for the performance of any function in terms of this Act;
 - (c) when required to do so by order of a court of law; or
 - (d) with the written permission of the Chief Justice.
- (2) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.
- (3) Every member of the Commission, the Committee, any Tribunal and every member of the secretariat of the Commission and Office of the Registrar must, in the prescribed manner-
 - (a) before assuming office or duty; or
 - (b) if he or she is holding such office on the date of the commencement of this section, make and subscribe to an affirmation of secrecy in the following form:

'I, solemnly declare:

- (a) I have taken cognizance of the provisions of section 38 (1) and (2) of the Judicial Service Commission Act, 1994.**
- (b) I understand that I may not disclose any confidential information or document obtained by me in the performance of my functions in terms of that Act, except in accordance with the provisions of section 38 (1) of the Act.**
- (c) I am fully aware of the serious consequences which may**

**follow any breach or contravention of the
abovementioned provisions.**

(Signature)‘.

- (4) Any person who wilfully or negligently in any manner discloses any confidential information that came to his or her knowledge by means of a person who conveyed that information in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding a period of five years.

[s38 inserted by s.39 of Act 20 of 2008]

39. Short title

This act shall be called the Judicial Service Commission Act, 1994

[S.39, previously s.7, renumbered by s. 9 of Act 20 of 2008.]

8. CODE OF JUDICIAL CONDUCT ADOPTED IN TERMS OF SECTION 12 OF THE JSC ACT, 1994

ADOPTED IN TERMS OF SECTION 12 OF THE JUDICIAL SERVICE COMMISSION
ACT, 1994
(ACT NO. 9 OF 1994)

CONTENTS

Preamble	301.
Article 1: Definitions	302.
Article 2: Application	302.
Article 3: Objects and Interpretation	303.
Article 4: Judicial Independence	304.
Article 5: To act honourably	304.
Article 6: Compliance with the law	305.
Article 7: Equality	305.
Article 8: Transparency	306.
Article 9: Fair trial	306.
Article 10: Diligence	308.
Article 11: Restraint	309.
Article 12: Association	310.
Article 13: Recusal	311.
Article 14: Extra-judicial activities of judges on active service	312.
Article 15: Extra-judicial income	313.
Article 16: Reporting inappropriate conduct	314.
Article 17: Judges discharged from active service	315.

PREAMBLE

Whereas-

1. the supremacy of the Constitution, the rule of law, and the rights and freedoms enshrined in the Bill of Rights are the foundation of the democracy established by the Constitution;
2. section 165(1) of the Constitution provides that the judicial authority of the Republic vests in the courts;
3. section 165(2) of the Constitution provides that the courts are independent and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice;
4. section 174(8) of the Constitution provides that before judicial officers begin to perform their functions, they must take an oath, or affirm, in accordance with paragraph 6(1) of Schedule 2, that they “will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.”;
5. section 180(b) of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers;
6. the Judicial Service Commission Act, 1994 (Act No. 9 of 1994) (hereinafter referred to as the Act), seeks to maintain and promote the independence of the office of judge and judiciary as a whole, while at the same time acknowledging that it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, judges as defined in section 7(1)(g) of the Act, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;
7. it is necessary for public acceptance of its authority and integrity in order to fulfil its constitutional obligations that the judiciary should conform to ethical

standards that are internationally generally accepted, more particularly as set out in the Bangalore Principles of Judicial Conduct (2001) as revised at the Hague (2002);

8. Part II of Chapter 2 of the Act provides the legal framework for judicial conduct which judicial officers in South Africa must adhere to, and Part III and IV of Chapter 2 of the Act, particularly sections 14, 15, 16, 17, 18, 19 and 20 specify mechanisms, structures and procedures to be applied if a judge acts in a manner unbecoming a judge in respect of any of the five grounds spelt out in section 14(4) of the Act;

9. section 12 of the Act provides that the Chief Justice, acting in consultation with the Minister, must compile and maintain a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval; and

10. section 12(5), read with section 14 (4)(b) of the Act, specifically provides that the Code of Judicial Conduct shall serve as the prevailing standard judicial conduct, which judges must adhere to and that any wilful or grossly negligent breach of the Code may amount to misconduct which will lead to disciplinary action in terms of section 14 of the Act;

PARLIAMENT of the Republic of South Africa therefore approves the Code of Judicial Conduct for Judges as follows:-

ARTICLE 1: DEFINITIONS

In this Code, unless the context otherwise indicates-

- (a) **“the Act”** means the Judicial Service Commission Act, 1994 (Act No. 9 of 1994); and
- (b) any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it.

ARTICLE 2: APPLICATION

1. This Code applies to every judge referred to in section 7(1)(g) of the Act who is performing active service and, unless the context indicates otherwise, also to-

- (a) a judge released from active service and who is liable to be called upon to perform judicial duties; and
 - (b) an acting judge.
- 2. A Judge not on active service is bound by this Code insofar as applicable.
- 3. Any wilful or grossly negligent breach of this Code is a ground upon which a complaint against a judge may be lodged in terms of section 14(4)(b) of the Act.
- 4. Complaints must be dealt with in accordance with section 14, read with sections 15, 16, or 17 of the Act.

ARTICLE 3: OBJECTS AND INTERPRETATION

- 1. The object of this Code is to assist every judge in dealing with ethical and professional issues, and to inform the public about the judicial ethos of the Republic.
- 2. This Code must-
 - (a) be applied consistently with the Constitution and the law as embodied in the common law, statute, and precedent, having due regard to the relevant circumstances;
 - (b) not be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any judge or on the separation of powers; and
 - (c) not be interpreted as absolute, precise, or exhaustive. Conduct may therefore be unethical which, on a strict reading of this Code, may appear to be permitted and the converse also applies.
- 3. Although international standards and those applied in comparable foreign jurisdictions may not be directly applicable, they do provide a useful source of reference for interpreting, understanding and applying this Code.
- 4. Notes to Articles of this Code are for the purpose of elucidation, explanation and guidance with respect to the purpose and meaning of the Articles.

ARTICLE 4: JUDICIAL INDEPENDENCE

A judge must-

- (a) uphold the independence and integrity of the judiciary and the authority of the courts;
- (b) maintain an independence of mind in the performance of judicial duties;
- (c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and
- (d) not ask for nor accept any special favour or dispensation from the executive or any interest group.

Notes:

Note 4(i): A judge acts fearlessly and according to his or her conscience because a judge is only accountable to the law.

Note 4(ii): Judges do not pay any heed to political parties or pressure groups and perform all professional duties free from outside influence.

Note 4(iii): Judges do not appear at public hearings or otherwise consult with an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice.

Note 4(iv): Judicial independence is not a private right or a principle for the benefit of judges as individuals. It denotes freedom of conscience for judges and non-interference in the performance of their decision making. It does not justify judicial misbehaviour and does not provide an excuse for failing to perform judicial functions with due diligence or for otherwise acting contrary to this Code.

Note 4(v): Organs of state are constitutionally mandated to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility, and effectiveness. The correlative is the right of every judge not to have his or her independence of mind disturbed by any person or organ of state.

ARTICLE 5: TO ACT HONOURABLY

1. A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

2. All activities of a judge must be compatible with the status of judicial office.

Notes:

Note 5(i): A judge behaves in his or her professional and private life in a manner that enhances public trust in, or respect for, the judiciary and the judicial system.

Note 5(ii): A judge avoids impropriety and the appearance of impropriety in all the judge's activities.

Note 5(iii): A judge does not engage in conduct that is prejudicial to the effective and expeditious administration of the business of the court.

Note 5(iv): Judicial conduct is to be assessed objectively through the eyes of the reasonable person.

ARTICLE 6: COMPLIANCE WITH THE LAW

A judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land.

ARTICLE 7: EQUALITY

A judge must at all times-

- (a) personally avoid and dissociate him- or herself from comments or conduct by persons subject to his or her control that are racist, sexist or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution;
- (b) in court and in chambers act courteously and respect the dignity of others;
- (c) in conducting judicial proceedings, give special attention to the right to equality before the law and the right of equal protection and benefit of the law; and
- (d) in the performance of judicial duties refrain from being biased or prejudiced.

Notes:

Note 7(i): These provisions are aimed at promoting courtesy and ensuring a degree of decorum.

Note 7(ii): Judges strive to be aware of and understand the many differences between persons and to remain informed about changing social attitudes and values.

Note 7(iii): The multi-cultural nature of South African society calls for special sensitivity for the perceptions and sensibilities of all who are affected by court proceedings.

ARTICLE 8: TRANSPARENCY

A judge must-

- (a) take reasonable steps to enhance the accessibility of the courts and to improve public understanding of judicial proceedings; and
- (b) unless special circumstances require otherwise
 - (i) conduct judicial proceedings; and
 - (ii) make known his or her decisions and supporting reasoning, in open court.

Notes:

Note 8(i): The legitimacy of the judiciary depends on the public understanding of and confidence in the judicial process.

Note 8(ii): The function of the judiciary fails if its proceedings are not understood.

Note 8(iii): Judges are conscious of the desirability of complying with the spirit of the requirement that proceedings should take place in open court.

Note 8(iv): A judge avoids unnecessary discussion in chambers (i.e. with the legal representatives in the absence of the parties) of matters that may be relevant to the merits of the case.

Note 8(v): If what has happened in chambers has any effect on the proceedings, those facts are to be placed on record in open court.

ARTICLE 9: FAIR TRIAL

A judge must-

- (a) resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to
 - (i) observe the letter and spirit of the audi alteram partem rule;
 - (ii) remain manifestly impartial; and

- (iii) give adequate reasons for any decision;
- (b) in conducting judicial proceedings-
 - (i) maintain order;
 - (ii) act in accordance with commonly accepted decorum; and
 - (iii) remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise;
- (c) manage legal proceedings in such a way as to-
 - (i) expedite their conclusion as cost-effectively as possible; and
 - (ii) not shift the responsibility to hear and decide a matter to another judge; and
- (d) not exert undue influence in order to promote a settlement or obtain a concession from any party.

Notes:

Note 9(i): The duty to grant a party a fair hearing does not preclude a judge from keeping a firm hand on proceedings. In general-

- (a) reasonable time limits may be laid down for argument, which may also be cut short when the judge is satisfied that further argument would not be of material assistance;
- (b) the examination and cross-examination of witnesses should be curtailed if it exceeds reasonable bounds; and
- (c) applications for postponement and the like must be scrutinised for real merit and must be dealt with firmly and fairly.

Note 9(ii): Reasons for decisions must be clear, cogent, complete and succinct. A number of decisions do not necessarily require reasons, e.g. unopposed cases and interlocutory rulings, because the reasons are usually self evident. If reasons in such cases are later reasonably required, they must be given within a reasonable time.

Note 9(iii): Judgments may be written in a style and manner the judge thinks best.

Note 9(iv): A judge may have occasion to express critical views about people during the course of argument or in judgments, e.g. by using unflattering adjectives in regard to a recalcitrant or overzealous party, an uncooperative lawyer, a foot-dragging witness and the like. However, harsh language should be avoided if possible and a judge may not, under the guise of performing judicial functions, make defamatory or derogatory statements actuated by personal spite, ill will, or improper, unlawful or ulterior motive.

Note 9(v): Since judges are fallible and can err in relation to fact or law, such

errors are to be dealt with through the normal appeal and review procedures. Such errors, even if made by courts of final instance, cannot give rise to valid complaints. Complaints against judges that are related to the merits of a decision or procedural ruling are to be dismissed at the outset. Disenchantment about a judicial decision does not justify disciplinary proceedings. Section 15(2)(c) of the Act specifically provides that a complaint against a judge must be dismissed if it is solely related to the merits of a judgment or order.

Note 9(vi): A judge may in appropriate instances advise parties to consider settlement of a case or put a provisional view in the course of argument. Justice may, however, require that a party be afforded the opportunity to deal with such view.

ARTICLE 10: DILIGENCE

1. A judge must-
 - (a) perform all assigned judicial duties diligently;
 - (b) investigate the matter at hand thoroughly;
 - (c) dispose of the business of the court promptly and in an efficient and businesslike manner;
 - (d) give judgment or any ruling in a case promptly and without undue delay;
 - (e) not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court;
 - (f) attend chambers during normal office hours and attend court during normal court hours, unless such attendance is not reasonably required in order to perform any official duties;
 - (g) perform all official duties properly, timeously, and in an orderly manner;
 - (h) respect and comply with, the administrative requests of the head of court or the relevant senior judge;
 - (i) take reasonable steps to maintain the necessary level of professional competence in the law; and
 - (j) upon resignation, discharge from active service, or the expiry of anacting appointment, complete all part-heard cases and deliver all reserved judgments as soon as possible.
2. A judge must deliver all reserved judgments before the end of the term in which the hearing of a matter was completed, but may:

- (a) in respect of a matter that was heard within two weeks of the end of that term; or
- (b) where a reserved judgment is of a complex nature or for any other cogent and sound reason and with the consent of the head of the court, deliver that reserved judgment during the course of the next term.

Notes:

Note 10 (i): Unnecessary postponements, point-taking, undue formality and the like must be avoided.

Note 10 (ii): Litigants are entitled to judgment as soon as reasonably possible.

Note 10 (iii): Criminal proceedings, especially automatic reviews, applications for leave to appeal, and matters where personal liberty is involved, must be dealt with expeditiously.

Note 10 (iv): A judge keeps a record of all outstanding judgments and reports to the head of the particular court thereon if and when requested.

Note 10 (v): A pattern of intemperate or intimidating treatment of lawyers and others, or of conduct evidencing arbitrariness and abusiveness is prejudicial to the effective administration of justice and should be avoided.

ARTICLE 11: RESTRAINT

1. A judge must-

- (a) save in the discharge of judicial office, not comment publicly on the merits of any case pending before, or determined by, that judge or any other court;
- (b) not enter into a public debate about a case irrespective of criticism levelled against the judge, the judgment, or any other aspect of the case;
- (c) refrain from any action which may be construed as designed to stifle legitimate criticism of that or any other judge;
- (d) not disclose or use non-public information acquired in a judicial capacity for any purpose unrelated to his or her judicial duties;
- (e) avoid any personality issues with colleagues, lawyers and parties, and seeks to foster collegiality; and
- (f) unless it is germane to judicial proceedings before the judge concerned, or to scholarly presentation that is made for the purpose

of advancing the study of law, refrain from public criticism of another judge or branch of the judiciary.

2. A judge may participate in public debate on matters pertaining to legal subjects, the judiciary, or the administration of justice, but does not express views in a manner which may undermine the standing and integrity of the judiciary.
3. Formal deliberations as well as private consultations and debates among judges are and must remain confidential.

Notes:

Note 11 (i): If it is necessary to comment on a judgment, the head of court must deal with the matter in order to protect the judiciary as a whole. If the head of court does not deal with the matter, the judge concerned may, under special circumstances, issue a statement in a reasoned and dignified manner, preferably in open court or through the registrar, to clarify the issue. These provisions do not prohibit academic debate of the legal issues that arose in a case.

Note 11 (ii): Private consultations and debates between judges are necessary for the judiciary to perform its functions. However, these occasions may not be used to influence a judge as to how a particular case should be decided.

Note 11 (iii): Personal criticism must be avoided unless it is necessary during the course of appeal proceedings.

Note 11 (iv): Courtesy and collegiality towards colleagues are indispensable attributes of a judge.

ARTICLE 12: ASSOCIATION

1. A judge must not-
 - (a) belong to any political party or secret organization;
 - (b) unless it is necessary for the discharge of judicial office, become involved in any political controversy or activity;
 - (c) take part in any activities that practice discrimination inconsistent with the Constitution; and
 - (d) use or lend the prestige of the judicial office to advance the private interests of the judge or others.

2. A judge must, upon permanent appointment, immediately sever all professional links and recover speedily all fees and other amounts outstanding and organise his or her personal business affairs to minimise the potential for conflicts of interest.
3. A judge previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the judge's appointment, and a judge must not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled.
4. An acting judge who is a practising attorney does not sit in any case in which the acting judge's firm is or was involved as attorney of record or in any other capacity.

Notes:

Note 12 (i): Social associations, including association with members of the legal profession, should be such as not to create the impression of favouritism or to enable the other party to abuse the relationship.

Note 12 (ii): A judge does not ask for or receive any special favour or dispensation from potential litigants or members of the legal professions nor does a judge use the office for the attainment of personal benefit.

ARTICLE 13: RECUSAL

A judge must recuse him- or herself from a case if there is a-

- (a) real or reasonably perceived conflict of interest; or
- (b) reasonable suspicion of bias based upon objective facts, and shall not recuse him- or herself on insubstantial grounds.

Notes:

Note 13 (i): Recusal is a matter regulated by the constitutional fair trial requirement, the common law and case law.

Note 13 (ii): A judge hears and decides cases allocated to him or her, unless disqualified there from. Sensitivity, distaste for the litigation or annoyance at the suggestion to recuse him- or herself are not grounds for recusal.

Note 13 (iii): A judge's ruling on an application for recusal and the reasons for the ruling must be stated in open court. A judge must, unless there are exceptional circumstances, give reasons for the decision.

Note 13 (iv): If a judge is of the view that there are no grounds for recusal but believes that there are facts which, if known to a party, might result in an application for recusal, such facts must be made known timeously to the parties, either by informing counsel in chambers or in open court, and the parties are to be given adequate time to consider the matter.

Note 13 (v): Whether a judge ought to recuse him- or herself is a matter to be decided by the judge concerned and a judge ought not to defer to the opinion of the parties or their legal representatives.

ARTICLE 14: EXTRA-JUDICIAL ACTIVITIES OF JUDGES ON ACTIVE SERVICE

1. A judge's judicial duties take precedence over all other duties and activities, statutory or otherwise.
2. A judge may be involved in extra-judicial activities, including those embodied in their rights as citizens, if such activities-
 - (a) are not incompatible with the confidence in, or the impartiality or the independence of the judge; or
 - (b) do not affect or are not perceived to affect the judge's availability to deal attentively and within a reasonable time with his or her judicial obligations.
3. A judge must not-
 - (a) accept any appointment that is inconsistent with or which is likely to be seen to be inconsistent with an independent judiciary, or that could undermine the separation of powers or the status of the judiciary;
 - (b) act as an advocate, attorney, or legal adviser but may give informal legal advice to family members, friends, charitable organisations and the like without compensation;
 - (c) become involved in any undertaking, business, fundraising or other activity that affects the status, independence or impartiality of the judge or is incompatible with the judicial office;

- (d) engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position or are incompatible with the judicial office; and
- (e) sit as a private arbitrator.

4. A judge may-

- (a) act as a trustee of a family or public benefit trust but is not entitled to receive any remuneration for such services;
- (b) be a director of a private family company or member of a close corporation but if the company or close corporation conducts business the judge may not perform an executive function; and
- (c) be a director of a non-profit company.

Notes:

Note 14 (i): A judge conducts extra-judicial activities in a manner which minimises the risk of conflict with judicial obligations. These activities may not impinge on the judge's availability to perform any judicial obligations.

Note 14 (ii): While judges should be available to use their judicial skill and impartiality to further the public interest, they must respect the separation of powers and the independence of the judiciary when considering a request to perform non-judicial functions for or on behalf of the State, or when performing such function.

Note 14 (iii): Judges who are not on active service but are liable to be called upon to perform judicial duties must arrange their affairs so as to be reasonably available for such duties if called upon.

Note 14 (iv): Business or financial dealings with members of the legal professions are to be avoided.

Note 14 (v): Serving on university councils or governing bodies or boards of trustees of charitable institutions and the like is acceptable.

ARTICLE 15: EXTRA-JUDICIAL INCOME

1. In terms of section 11(1) of the Act, a judge performing active service may not receive in respect of any service any fees, emoluments, or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge, except insofar as the position with regard to royalties is regulated in the Act.

2. A judge must not-
 - (a) receive any income or compensation that is incompatible with judicial office;
 - (b) directly or indirectly negotiate or accept remuneration, gifts, advantages or privileges which are incompatible with judicial office or which can reasonably be perceived as being intended to influence the judge in the performance of his or her judicial duties, or to serve as a reward for them; and
 - (c) accept, hold or perform any other office of profit, or receive in respect of any service any fees, emoluments or other remuneration apart from the salary and any allowances payable to the judge in a judicial capacity.

Notes:

Note 15 (i): Section 11(1) provides that a judge may, with the written consent of the Minister acting in consultation with the Chief Justice, receive royalties for legal books written or edited by that judge.

Note 15 (ii): Judges may deliver public lectures or papers on appropriate subjects or teach at academic institutions. Judges who had been discharged from active service may receive reasonable honoraria in respect thereof as well as subsistence and travel allowances or payments by way of reimbursement for such expenditure.

ARTICLE 16: REPORTING INAPPROPRIATE CONDUCT

1. A judge with clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner or public prosecutor must inform the relevant professional body or a Director of Public Prosecutions of such misconduct or professional incompetence.
2. Before commenting adversely on the conduct of a particular practitioner or prosecutor in a judgment, the judge must give that person the opportunity to deal with the allegation.
3. A judge who reasonably believes that a colleague has been acting in a manner which is unbecoming of judicial office must raise the matter with that colleague or with the head of the court concerned.

Notes:

Note 16 (i): The judge must usually await the conclusion of the proceedings before informing the relevant professional body or a Director of Public Prosecutions of such misconduct or professional incompetence.

Note 16(ii): The reference to the appropriate authority is to be made in a neutral fashion and may not be judgmental.

ARTICLE 17: JUDGES DISCHARGED FROM ACTIVE SERVICE

1. In terms of section 11(2) of the Act, a judge who has been discharged from active service may only with the written consent of the Minister, acting after consultation with the Chief Justice, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as judge.

2. A judge who is no longer on active service or liable to be called upon to perform judicial duties (herein referred to as a retired judge) shall always act honourably and in a manner befitting his or her status.

3. All activities of a judge no longer on active service must be compatible with his or her status as a retired judge.

4. A judge discharged from active service must not-

- (a) accept any appointment that is likely to affect or be seen to affect the independence of the judiciary, or which could undermine the separation of powers or the status of the judiciary and must not receive any income incompatible with judicial office;
- (b) act as an advocate, attorney or legal adviser; and
- (c) be involved in any undertaking, business, fundraising, or other activity that is incompatible with the status of a judge.

Notes:

Note 17 (i): A retired judge may accept an appropriate appointment as a judge, whether as judge in another jurisdiction, or as an arbitrator or mediator, in professional or semi-professional disciplinary matters and the like.

Note 17 (ii): A retired judge must not sit as a director of a public company.

Note 17 (iii): A retired judge must not become a member of a professional partnership or body corporate.

Note 17 (iv): A retired judge must not enter party politics.

9. RULES TO REGULATE PROCEDURES BEFORE JUDICIAL CONDUCT TRIBUNAL (MADE IN TERMS OF SECTION 25(1) OF THE JSC ACT, 1994

The Chief Justice has, under section 25(1) of the Judicial Service Commission Act,
1994
(Act No. 9 of 1994), made the rules in the Schedule.

CONTENTS

Definitions	319.
Non-Judicial Member of Tribunal to take Prescribed Oath	319.
Appointment of Evidence Leader and Giving of Notice of Hearing	319.
Information to be Provided to Respondent Before Hearing	320.
Inquiry Conference	321.
Subpoena of Witnesses	321.
Hearing	322.
Oath by Interpreter	324.
Recording of Proceedings	324.
Short Title	324.
Annexure	325.

SCHEDULE

1. Definitions

In these Rules, any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates-

“day” means a calendar day;

“evidence leader” means a member of the National Prosecuting Authority appointed in terms of section 24(1) of the Act;

“notice of hearing” means a notice of hearing served in terms of section 28(1) of the Act;

“the Act” means the Judicial Service Commission Act, 1994 (Act No. 9 of 1994); and

“Tribunal President” means the Tribunal President designated as such by the Chief Justice in terms of section 22 (1) (a) of the Act.

2. Non-judicial member of Tribunal to take prescribed oath

(1) Any person serving on a Tribunal in terms of section 22 (1) (b) of the Act, before commencing with his or her functions in terms of the Act for the first time, must take an oath or make an affirmation subscribed by him or her in the form set out below:

I, _____ (full name and surname),
do hereby swear/solemnly and sincerely affirm that whenever I am called upon to perform the functions of a non-judicial member of the Tribunal, I will administer justice to all persons alike, without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned.

(2) Any oath or affirmation referred to in subrule (1) must be taken by, or made before, the Tribunal President.

3. Appointment of evidence leader and giving of notice of hearing.

(1) The Tribunal President must within five days of his or her appointment-

- (a) direct the Secretary of the Commission to cause a notice of hearing, which must correspond substantially with Form 1 of the Annexure, to be served in accordance with section 28(1) of the Act on the respondent and complainant, specifying the date, time and place of the hearing; and
 - (b) where he or she deems it necessary, appoint an evidence leader.
- (2) The notice of hearing must determine a date on which the hearing commences, which date may not be less than 90 days from the date of service of the notice of hearing.
- (3) Service of the notice of hearing must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.

4. Information to be provided to respondent before hearing

- (1) The Tribunal President must, not later than 60 days before the date on which the hearing is to commence before the Tribunal, direct the Secretary of the Commission to cause a notice, which must correspond substantially with Form 2 of the Annexure, to be served on the respondent, which notice must contain-
 - (a) the facts which are alleged to constitute a complaint of incapacity, gross incompetence or gross misconduct against the respondent;
 - (b) a concise summary of the evidence and any other information which substantiate the complaint of incapacity, gross incompetence or gross misconduct;
 - (c) a copy of any book, document or statement which is to be produced to the Tribunal; and
 - (d) a photograph of any object which is to be produced to the Tribunal.
- (2) Service of the notice in terms of subrule (1) must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.
- (3) The respondent may with the written permission of the Tribunal President and in the presence of the evidence leader and Secretary of the Commission, at any time before the commencement of the Tribunal hearing, inspect any original book, document, statement or object referred to in subrule (1) (c) and (d).

5. Inquiry conference

- (1) The Tribunal may, at its own instance or at the request of the respondent or evidence leader, at any stage before or during a hearing convene an inquiry conference of the parties with a view to clarify issues, the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof, the limitation of the number of witnesses and in general anything that might expedite the hearing.
- (2) The Tribunal may, after the holding of such an inquiry conference, make an order which recites the actions taken at the inquiry conference, the agreements made by the parties as to any of the matters considered, and which limits the issues for consideration by the Tribunal to those not disposed of by admissions or agreements of the parties.

6. Subpoena of witnesses

- (1) A subpoena in terms of section 30 of the Act must correspond substantially with Form 3 of the Annexure.
- (2) A subpoena must be signed by the Tribunal President and must-
 - (a) specifically require the person named in it to appear before the Tribunal;
 - (b) state the date, time and place when and at which the person must appear;
 - (c) state the reason why such person must appear before the Tribunal; and
 - (d) sufficiently identify any book, document, statement or object to be produced by that person.
- (3) If the Tribunal, evidence leader or respondent wishes to have a witness subpoenaed, the Secretary of the Commission must, not later than 21 days before the hearing, be requested to issue a subpoena, and the Secretary of the Commission must, subject to subrule (2), forthwith issue the subpoena and, unless otherwise directed by the Tribunal President, address it to the sheriff for service.
- (4) Service of a subpoena must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.
- (5) A subpoena must be served on a person at least 14 days before the date on which that person is required to appear before the Tribunal.

7. Hearing

- (1) The evidence leader may at the hearing, before any evidence is adduced, address the Tribunal, without comment, for the purpose of explaining the allegations against the respondent and what evidence he or she intends adducing in support of these allegations.
- (2) The evidence leader may then examine the witnesses which he or she intends to call to prove that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, and may adduce such evidence as may be admissible.
- (3) Where any book, document or statement, produced in evidence by the evidence leader, may be received in evidence by the Tribunal upon its mere production, the evidence leader must read out such book, document or statement in the Tribunal unless the respondent is in possession of a copy of such book, document or statement or dispenses with the reading out thereof.
- (4) The respondent may at the hearing, after the evidence leader has addressed the Tribunal in terms of subrule (1) and before any evidence is adduced, address the Tribunal, without comment, for the purpose of explaining why he or she is not suffering from an incapacity, is not grossly incompetent or is not guilty of gross misconduct, and what evidence he or she intends adducing to refute these allegations.
- (5) The respondent may examine the witnesses which he or she intends to call to refute the allegations against him or her, and may adduce such other evidence as may be admissible.
- (6) Where any book, document or statement, produced in evidence by the respondent, may be received in evidence by the Tribunal upon its mere production, the respondent must read out such book, document or statement in the Tribunal unless the evidence leader is in possession of a copy of such book, document or statement or dispenses with the reading out thereof.
- (7) Where a hearing begins or continues in the absence of the respondent in terms of section 28 (2) of the Act, the respondent may, when he or she subsequently attends that hearing, unless he or she was legally represented during his or her absence, with permission of the Tribunal and on good cause shown that his or her absence from the hearing was as a result of illness or other cause deemed sufficient by the Tribunal, examine any witness who testified during his or her absence, and inspect the record of the proceedings or require the Tribunal to have such record read over to him or her.

- (8) Any witness at a Tribunal hearing must give his or her evidence orally.
- (9) The evidence leader may-
 - (a) cross-examine any witness called on behalf of the respondent;
 - (b) re-examine any witness called in terms of subrule (2) on any matter raised during the cross-examination of that witness; and
 - (c) examine or cross-examine any witness called by the Tribunal at the hearing.
- (10) The respondent may-
 - (a) cross-examine any witness called by the evidence leader;
 - (b) re-examine any witness called in terms of subrule (5) on any matter raised during the cross-examination of that witness; and
 - (c) examine or cross-examine any witness called by the Tribunal at the hearing.
- (11) If it appears to the Tribunal that any cross-examination is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the Tribunal may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination.
- (12) The Tribunal may, at any stage of the hearing, examine any person, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings or a person contemplated in section 29 (1) (g) of the Act, and may recall and re-examine any person already examined at the proceedings, and the Tribunal must examine, or recall and re-examine the person concerned if his or her evidence appears to the Tribunal essential to the just decision of the case.
- (13) (a) After all the evidence has been adduced, the evidence leader may address the court, and thereafter the respondent may address the court.
 - (b) The evidence leader may reply on any matter of law or fact raised by the respondent in his or her address.
 - (c) At the request of the Tribunal, or with the permission of the Tribunal, the evidence leader or respondent may furnish written submissions to the Tribunal before or after oral submissions.
 - (d) The Tribunal may on application by the evidence leader or respondent, but subject to section 27 (1) (b) of the Act, adjourn the proceedings to a specific date in order to afford

the party concerned the opportunity to prepare oral or written submissions.

8. Oath by interpreter

- (1) Before any interpreter may interpret in a hearing of the Tribunal he or she must take an oath or make an affirmation in the following form:

‘I, _____
do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in the Tribunal, I shall truly and correctly and to the best of my ability interpret from the _____
_____ language into the _____
_____ language and *vice versa*.’

- (2) Such oath or affirmation must be taken or made in the manner prescribed by law for taking an oath or making an affirmation, and must be signed by the interpreter.

9. Recording of proceedings

- (1) Any proceedings before the Tribunal must be taken down in shorthand or recorded by mechanical means by a person assigned to the Tribunal in terms of section 24 (2) of the Act or such other person as the Tribunal President may designate, and may only be transcribed if the Tribunal President so directs or where required by the Act.
- (2) Any shorthand notes, or transcription thereof, or any mechanical recording of the proceedings, or transcription thereof, must be certified as true notes or a true record taken, or a true transcription thereof, whereafter such notes, record or transcription becomes part of the record of the proceedings.

10. Short title

These rules are called the Rules regulating Procedures before Judicial Conduct Tribunals, 2012.

ANNEXURE

Form 1

Notice of Hearing before Judicial Conduct Tribunal in Terms of Section 28(1) of the Judicial Service Commission Act, 1994

Reference number: _____

In the complaint between:

Complainant

and

Respondent

To: Particulars of * complainant/ *respondent:

(a) Name and surname: _____

(b) Physical address where notice may be served: _____

(c) Contact phone number: _____

1. A copy of the notice of the Chief Justice in terms of section 21(4) of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), is attached.

2. You are hereby informed that the hearing of the complaint will commence on
_____ (date) at _____ (time).

3. The venue for the hearing is: _____

(name of place, room number and physical address).

Signed at _____ this day _____ of _____ 20 _____

President of Judicial Conduct Tribunal

Enquiries may be addressed to: _____

(name and surname of Secretary of the Commission) with the following contact details:

Telephone number: _____

Fax number: _____

E-mail address: _____

*** Delete whichever is not applicable**

Form 2

Notice in Terms of Rule 4 of the Rules Regulating Procedures Before Judicial Conduct Tribunals, 2012

Reference number: _____

In the complaint between:

Complainant

and

Respondent

To: Particulars of respondent:

(a) Name and surname: The Honourable _____

(b) Physical address where notice may be served: _____

(c) Contact phone number: _____

Please take note:

With reference to the notice of hearing before the Judicial Conduct Tribunal which was served on you on _____, the following information is provided in terms of rule 4 of the Rules regulating Procedures before Judicial Conduct Tribunals, 2012:

- (a) It is alleged that the facts set out in Annexure A to this notice constitute a complaint of incapacity, gross incompetence or gross misconduct against you.
- (b) A concise summary of the evidence and any other information which substantiate the complaint against you is set out in Annexure B.
- (c)* A copy of the following book(s), document(s) or statement(s) which is/are to be presented to the Tribunal is attached as Annexures C1 to

(d)* Photographs of the following object(s) which is/are to be presented to the Tribunal is/are attached as Annexures D1 to _____

(You may with the written permission of the Tribunal President and in the presence of the evidence leader and Secretary of the Commission, at any time before the commencement of the Tribunal hearing inspect any original book, document, statement or object referred to in Rule 4 (1)(c) and(d).)

Signed at _____ this day _____ of _____ 20 _____

President of Judicial Conduct Tribunal

*** Delete whichever Conduct Tribunal is not applicable**

Enquiries may be addressed to: _____

(name and surname of Secretary of the Commission) with the following contact details:

Telephone number: _____

Fax number: _____

E-mail address: _____

Form 3

Subpoena to Attend Hearing before Judicial Conduct Tribunal in Terms of Section 30 of the Judicial Service Commission Act, 1994

Reference number: _____

In the complaint between:

Complainant

and

Respondent

To:

(a) Name and surname of witness: _____

(b) Physical address for service of subpoena: _____

(c) Contact phone number: _____

You are hereby subpoenaed in terms of section 30 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), read with rule 6 of the Rules regulating Procedures before Judicial Conduct Tribunals, 2012, to appear before the Judicial Conduct Tribunal on

_____ (date) _____ (time), at _____

_____ (address)-

(a) to give evidence in connection with: _____

(specify reason why witness must appear before the Tribunal); and/or

(b) to produce the following book(s), document(s), statement(s) or object(s): _____

Signed at _____ this day _____ of _____ 20 _____

President of Judicial Conduct Tribunal

Take note:

In terms of section 34 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), a person is guilty of an offence if he or she, having been subpoenaed to appear before a Tribunal, fails without reasonable excuse to-

- (a) attend a hearing of a Tribunal;**
 - (b) remain in attendance until excused by the Tribunal; or**
 - (c) produce any book, document, statement or object relating to the hearing which he or she has been subpoenaed to produce.**
- A person convicted of such an offence is liable to a fine or to imprisonment not exceeding five years.**

Enquiries may be addressed to: _____

(name and surname of Secretary of the Commission) with the following contact details:

Telephone number: _____

Fax number: _____

E-mail address: _____

10. REGULATIONS ON JUDGES REGISTRABLE INTEREST (MADE IN TERMS OF SECTION 13 (8) OF THE JSC ACT, 1994

The Minister of Justice and Constitutional Development, has under section 35(1) (a) read with section 13(5) of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), in consultation with the Chief Justice and after section 13(8) of the said Act was complied with, made the regulations in the Schedule.

CONTENTS

Definitions	333.
Registrable interests	333.
Disclosure of registrable interests	334.
Application for consent	335.
Register	336.
Short title	336.
Annexure A	337.
Annexure B	340.
Annexure C	347.

(Gazette No. 15850, Notice No. 1235, dated 13 July 1994. Commencement date: 13 July 1994.)

Government Notice R56 in Government Gazette 37273 dated 29 January 2014.
Commencement date: 29 January 2014

REGULATION

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates-

“day” means any day of the week other than a Saturday, Sunday or public holiday;

“acting judge” does not include a judge who is temporarily appointed to act in a different capacity or as a judge of a different court;

“judge” does not include an acting judge;

“Register” means the Register of Judges’ Registrable Interests, referred to in section 13(2) of the Act;

“Registrar” means the Registrar of Judges’ Registrable Interests, appointed in terms of section 13(1) of the Act;

“registrable interest” means an interest contemplated in regulation 2;

“the Act” means the Judicial Service Commission Act, 1994 (Act No. 9 of 1994).

2. Registrable interests

- (1) Subject to subregulation (2), the registrable interests of-
- (a) judges in active service and those of their immediate family

members; and

- (b) judges who have been discharged from active service, who are required to be available to perform service in terms of section 7((1) (a) (i) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001),

are as listed in Annexure A.

- (2) (a) The interests of judges who have been discharged from active service and who are not required to be available to perform service in terms of section 7 (1) (a) (i) of the Judges' Remuneration and Conditions of Employment Act, 2001, are not registrable, but if such a judge is called on to perform service as a judge, the Head of the Court where that judge performs that service may, on an application in chambers by a party to proceedings before that judge, require the judge to disclose to the Head of Court and the party in question whether the judge has any interests that may, or may be perceived to, prejudice the integrity of those proceedings. If the service in question is not related to a particular court, the application may be made to the Chief Justice.
- (b) The interests of a judge's dependent children are registrable if the judge is in active service. The interests of a judge's other immediate family members are only registrable if-
 - (i) the judge is in active service;
 - (ii) the judge wishes to disclose those interests; and
 - (ii) the immediate family members in question consent to such disclosure.
- (3) The interests of an acting judge are not registrable, but the Head of the Court where such a judge holds an acting appointment may, on an application in chambers by a party to proceedings before that acting judge, require the acting judge to disclose to the Head of Court and the party in question whether the acting judge has any interests that may, or may be perceived to, prejudice the integrity of those proceedings.

3. Disclosure of registrable interests

- (1) A judge referred to in regulation 2(1) must disclose particulars of all his or her registrable interests on a form which corresponds substantially with Form 1 of Annexure B, and must lodge that disclosure with the Registrar. A judge in active service must also disclose the registrable interests of his or her dependent children and may, in respect of other

- immediate family members, make such disclosures as to which they may consent.
- (2) Subject to section 13(4) of the Act, a judge must lodge the first disclosure with the Registrar within 30 days of his or her appointment as a judge.
 - (3) The Registrar must enter the particulars of a disclosure by a judge in the Register and must cause a copy of all entries relating to that judge, to be delivered to the judge. All entries relating to the registrable interests of a family member of a judge must be made in the confidential part of the Register.
 - (4) A judge referred to in subregulation (1) may at any time make disclosures to the Registrar, or inform the Registrar of such amendments as may be required, but every such judge must, during March every year, inform the Registrar in writing whether the entries in the Register are an accurate reflection of that judges' registrable interests and, if applicable, make such further disclosures or amendments, as may be required.
 - (5) If the Registrar becomes aware at any time of any information relating to the interests of a judge in active service, that may require material changes to the disclosures made by that judge, the Registrar must in writing inform the Head of Court of the judge of that information.
 - (6) If the Registrar has reason to believe that any judge-
 - (a) has failed or is failing to comply with a provision of these regulations; or
 - (b) may have disclosed incorrect or misleading information,the Registrar must without delay invite that judge in writing to comply with the provision in question or to correct any information so disclosed.
 - (7) If, after a period of 30 days has lapsed after a judge received a written invitation in terms of subregulation (6), the Registrar still has reason to believe that the judge-
 - (a) has failed or is failing to comply with a provision of these regulations; or
 - (b) may have disclosed incorrect or misleading information,the Registrar must without delay lodge a complaint against that judge in the manner contemplated in section 14(3) of the Act.

4. Application for consent

- (1) An application for the written consent of the Minister as contemplated in-
 - (a) section 11(1) of the Act, must be in writing and must correspond substantially with Part I of Form 2 of Annexure B; and
 - (b) section 11(2) of the Act, must be in writing and must correspond substantially with Part II of Form 2 of Annexure B.
- (2) An application contemplated in subregulation (1), together with certified copies of supporting documentation must be lodged in duplicate with the Chief Justice, who must-
 - (a) consider the application;
 - (b) make a written recommendation to the Minister; and
 - (c) submit his or her written recommendation, together with a copy of the application and supporting documentation, to the Minister for consideration.
- (3) The Minister must cause the Chief Justice and the judge who made an application to be informed of his or her decision regarding the application within a reasonable time.

5. Register

- (1) The Register must correspond substantially with the format set out in Annexure C.
- (2) The public part of the Register may be inspected by any person at the office of the Registrar or at any other venue agreed to by the Registrar, during office hours and under the supervision of a person designated by the Registrar.
- (3) The Registrar must keep the Register in a safe place.
- (4) Only the Heads of Court, the Registrar, an official designated in writing by the Registrar and, when it is relevant to a complaint referred to in section 14 of the Act, the person conducting the inquiry into that complaint, have access to the Confidential Part of the Register.
- (5) The Registrar must, for the purposes of indicating the degree of compliance with the Register in the annual report of the Commission, as contemplated in section 6 (2) (c) of the Act, also furnish the Commission with the names of those judges in active service who have disclosed interests of their family members.

6. Short title

These regulations shall be called the Regulations relating to the Judicial Service Commission Act, 1994.

ANNEXURE A

Regulations relating to the judicial Service commission act, 1994

Registrable interests [Regulation 2]

PART 1:

Interests to be disclosed by Judges in active service

- 1.** Immovable property, including immovable property outside South Africa. (The physical address and value of the property are to be disclosed in the confidential part of the Register.)
- 2.** Shares and other financial interests in companies and other corporate entities. (Public part of the Register.)
- 3.** Directorships, business or financial interests in any business enterprise or any legal entity. (Public part of the Register.)
- 4.** Any royalties derived from the application of section 11 of the Act.
- 5.** Gifts, other than a gift received from an immediate family member, with a value of more than R1500 or gifts received from a single source with a cumulative value of more than R1500 in a calendar year, and including hospitality intended as such. (Public part of the Register.)
- 6.** Any other financial income not derived from the holding of judicial office. (Public part of the Register.)

PART 2:

Interests to be disclosed by Judges discharged from active service who are required to be available to perform service in terms of section 7((1)(a)(i) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001)

- 1.** Shares and other financial interests in companies and other corporate entities. (Public part of the Register.)
- 2.** Directorships, business or financial interests in any business enterprise or any legal entity. (Public part of the Register.)
- 3.** Any royalties, income or other benefits derived from the application of section 11 of the Act. (Public part of the Register.)
- 4.** Any other financial income not derived from the holding of judicial office. (Public part of the Register.)

PART 3:

Interests of immediate family members to be declared by judges in active service if applicable

- A.** In respect of the dependent children of the judge, the following interests, in the confidential part of the Register:
- 1.** Immovable property, including immovable property outside South Africa.
 - 2.** Shares and other financial interests in companies and other corporate entities.
 - 3.** Directorships, business or financial interests in any business enterprise or any legal entity. (Public part of the Register.)
 - 4.** Sponsorships, including financial assistance, from any source other than an immediate family member.
 - 5.** Gifts, other than a gift received from an immediate family member, with a value of more than R1500 or gifts received from a single source with a cumulative value of more than R1500 in a calendar year, and

including hospitality intended as such, unless the judge concerned has been discharged from active service.

B. In respect of immediate family members, other than dependent children of the judge, any one or more of the interests listed in A above, that the judge may, with the consent of the family member, wish to declare in the confidential part of the Register.

ANNEXURE B

Form 1

Regulations Relating to the Judicial Service Commission Act, 1994 Disclosure of Registrable Interests [Regulation 3]

File number: _____

Please note:

- 1. This form must be completed in block letters.*
- 2. Failure to comply with any provision in Regulation 3, or the disclosure of false or misleading information, may result in the lodging of a complaint contemplated in section 14 of the Act.*
- 3. Proof of Minister's consent, granted in terms of section 11 of the Act, must be attached, where applicable.*

A.	PERSONAL PARTICULARS OF JUDGE (To be completed by every judge referred to in regulation 2(1))			
Surname:				
Full names:				
Identity number				
Court where serving (only in case of judge in active service [or acting]):				
Postal address:				
Telephone (h):	()	Telephone (b):	()	
Cellular phone nr:				
Facsimile nr:	()			
E-mail address:				
Please indicate service status:	Active service		Discharged: ____ years of age	

B.	Particulars of immediate family member(s) (to be completed by judges in active service if disclosure is to be made. Please attach separate page if more than two family members have registrable interests.)			
1. Surname:				
Full names:				
Identity number:				
Relationship to judge:				
2. Surname:				
Full names:				
Identity number:				
Relationship to judge				

C.	PARTICULARS OF INTERESTS DISCLOSED		
1.	OWNERSHIP OR CO-OWNERSHIP OF IMMOVABLE PROPERTY (To be disclosed by judges in active service. Please indicate if disclosure is made in respect of immediate family members.)		
	DESCRIPTION	LOCATION	VALUE
			REMARKS
2.	SHARES (To be disclosed by all judges required to make disclosures in terms of regulation 2(1). Please indicate if disclosure is made in respect of immediate family members.)		
	NATURE	NOMINAL VALUE	COMPANY / ENTITY
			REMARKS
3.	DIRECTORSHIPS, BUSINESS OR FINANCIAL INTERESTS IN ANY BUSINESS ENTERPRISE OR ANY LEGAL ENTITY (To be disclosed by all judges required to make disclosures in terms of regulation 2(1). Please indicate if disclosure is made in respect of immediate family members.)		
	NAME OF ENTITY	TYPE OF BUSINESS	INVOICE/ BENEFIT DERIVED
			REMARKS
4.	ROYALTIES, INCOME OR OTHER BENEFITS DERIVED FROM THE APPLICATION OF SECTION 11 OF ACT 9 OF 1994 (To be disclosed by all judges required to make disclosures in terms of regulation 2(1).)		
	NATURE OF BENEFIT	VALUE	PARTICULARS OF MINISTERIAL CONSENT
			REMARKS
5.	SPONSORSHIPS (Only in respect of immediate family members, if applicable, by judges in active service.)		
	SOURCE OF SPONSORSHIP	NATURE OF SPONSORSHIP	NOMINAL VALUE
			REMARKS

6.	GIFTS AND HOSPITALITY (To be disclosed by judges required to make disclosures in terms of regulation 2(1). Please indicate if disclosure is made in respect of immediate family members.)			
	SOURCE OF GIFT/HOSPITALITY	DESCRIPTION OF GIFT/ HOSPITALITY	NOMINAL VALUE	REMARKS

7.	ANY OTHER FINANCIAL INCOME NOT DERIVED FROM HOLDING JUDICIAL OFFICE (To be disclosed by all judges required to make disclosures in terms of regulation 2(1).)			
	SOURCE OF INCOME	NATURE OF INCOME	NOMINAL VALUE	REMARKS

I, the undersigned _____ (name of judge) hereby certify that the above information is complete and correct to the best of my knowledge.

Signed at _____ this _____ day of _____ 20 _____

Signature of judge

Form 2

Regulations Relating to the Judicial Service Commission Act, 1994

Application for Consent in Terms of Section 11(1) and (2) of the Judicial Service Commission Act, 1994 [Regulation 4(1)]

Please note:

- 1. This form must be-
(a) completed in block letters; and
(b) submitted in duplicate to the Chief Justice.*
- 2. Certified copies of supporting documentation must be attached to application.*
- 3. If space provided is not enough, please continue on a separate page.*
- 4. Part I of the form must be completed by a judge performing active service.*
- 5. Part II of the form must be completed by a judge who has been discharged from active service.*

PART I.	APPLICATION FOR CONSENT IN TERMS OF SECTION 11(1) OF THE JUDICIAL SERVICE COMMISSION ACT, 2008 (To be completed by a judge performing active serviced)			
Surname:				
Full names:				
Identity number				
Business address:				
Telephone (h):	()	Telephone (b):	()	
Cellular phone nr:				
Facsimile nr:	()			
E-mail address:				
Consent requested: Royalties for:	Legal books written		Legal books edited	
Give full description of royalties:				
SIGNED:	_____ Name of Judge Place Date			
PART II	APPLICATION FOR CONSENT IN TERMS OF SECTION 11(2) OF THE JUDICIAL SERVICE COMMISSION ACT, 2008 (To be completed by a judge who has been discharged from active service)			
Surname:				
Full names:				
Identity number:				
Residential Address:				
Business address:				
Postal address:				
Telephone (h):	()	Telephone (b):	()	
Cellular phone nr:				
Facsimile nr:	()			
E-mail address:				

Consent requested for:	Holding/ performing other office of profit		Fees/ emoluments/ other remuneration/ allowance apart from salary	
Give full description of office/fees/ emoluments/ other, remuneration/ allowance / other amount:				
From whom would office/fees emoluments/ other remuneration/ allowance / other amount be received				
SIGNED:	<div style="display: flex; justify-content: space-between; margin-bottom: 10px;"> <div style="width: 30%; border-bottom: 1px solid black;"></div> <div style="width: 30%; border-bottom: 1px solid black;"></div> <div style="width: 30%; border-bottom: 1px solid black;"></div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">Name of Judge</div> <div style="width: 30%;">Place</div> <div style="width: 30%;">Date</div> </div>			

ANNEXURE C

Format of Register of Judges’ Registrable Interests
[Regulation 5]

REGISTER OF JUDGES' REGISTRABLE INTERESTS
PART I: PUBLIC PART
CHAPTER 1: JUDGES IN ACTIVE SERVICE

Name of Superior Court, e.g. Supreme Court of Appeal

Justice (Name of Judge):

Immovable property:

Description	Date of entry
-------------	---------------

Shares:

Nature	Nominal value	Company/Entity	Date of entry
--------	---------------	----------------	---------------

Directorships, business or financial interests in any business enterprise or any legal entity:

Name of entity	Type of business	Income/benefit derived	Date of entry
----------------	------------------	------------------------	---------------

Benefit derived from application of section 11 of Act 9 of 1994:

Nature of benefit	Value	Particulars of written consent	Date of entry
-------------------	-------	--------------------------------	---------------

Gifts and hospitality:

Source	Nature	Nominal value	Date of entry
--------	--------	---------------	---------------

Other financial income not related to judicial office:

Source	Value	Date of entry
--------	-------	---------------

CHAPTER 2: JUDGES DISCHARGED FROM ACTIVE SERVICE

Justice (Name of Judge):

Date discharged:

Age:

Shares:

Nature	Nominal value	Company/Entity	Date of entry
--------	---------------	----------------	---------------

Directorships, business or financial interests in any business enterprise or any legal entity:

Name of entity	Type of business	Income/benefit derived	Date of entry
----------------	------------------	------------------------	---------------

Benefit derived from application of section 11 of Act 9 of 1994:

Nature of benefit	Value	Particulars of written consent	Date of entry
-------------------	-------	--------------------------------	---------------

Other financial income not related to judicial office:

Source	Value	Date of entry
--------	-------	---------------

PART 2: CONFIDENTIAL PART CHAPTER 1; JUDGES IN ACTIVE SERVICE

Name of Superior Court, e.g. Supreme Court of Appeal

Justice (name of Judge):

Personal registrable interests:

Immovable property:

Description	Location	Value	Date of entry
-------------	----------	-------	---------------

Name, age and gender of immediate family member of Judge:

Registrable assets of (name of above family member):

Immovable property:

Description	Location	Value	Date of entry
-------------	----------	-------	---------------

Shares:

Nature	Nominal value	Company/Entity	Date of entry
--------	---------------	----------------	---------------

Directorships/partnerships/business enterprises:

Name of entity	Type of business	Income/benefit derived	Date of entry
----------------	------------------	------------------------	---------------

Sponsorships:

Source	Nature	Nominal value	Date of entry
--------	--------	---------------	---------------

Gifts and hospitality:

Source	Nature	Nominal value	Date of entry
--------	--------	---------------	---------------

CHAPTER 2: JUDGES DISCHARGED FROM ACTIVE SERVICE

Justice (name of Judge):

Immovable property:

Description	Location	Value	Date of entry
-------------	----------	-------	---------------

11. REGULATIONS ON NON-JUDICIAL MEMBERS OF TRIBUNAL, 2012

The Minister of Justice and Constitutional Development, has under section 23(1) read with section 35 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), made the regulations in the Schedule.

CONTENTS

Definitions	353.
List of Persons who are not Judicial Officers and who are Suitable to Serve on Tribunal	353.
Annexure	354.

SCHEDULE

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates -

“Executive Secretary” means the Executive Secretary in the Office of the Chief Justice as contemplated in section 37(1) of the Act; and

“the Act” means the Judicial Service Commission Act, 1994 (Act No. 9 of 1994).

2. List of persons who are not judicial officers and who are suitable to serve on Tribunals

- (1) The Executive Secretary must from time to time and subject to the directions of the Chief Justice, invite the organised legal professions, the deans of law faculties of South African universities and members of the public to nominate persons who are not judicial officers, to be entered on the list contemplated in section 23(1) of the Act.
- (2) The nomination of a person contemplated in subregulation (1) must-
 - (a) be in writing on a form which corresponds substantially with Form 1 of the Annexure; and
 - (b) be accompanied by-
 - (i) a curriculum vitae of the nominee; and
 - (ii) such further particulars of the nominee as may be directed by the Chief Justice.
- (3) Upon receipt of nominations contemplated in subregulation (1) the Executive Secretary must submit them to the Chief Justice.
- (4) Upon receipt of the names of nominees approved by the Chief Justice in concurrence with the Minister, the Executive Secretary must enter those names on a list, which corresponds substantially with Form 2 of the Annexure.

ANNEXURE

Form 1

Nomination of Person who is not a Judicial Officer to Serve on a Tribunal

Part 1: Nomination Of Person

I, _____ (Full names),
identity number _____, in my capacity as _____, whose
further particulars are provided below, hereby nominate _____
_____ (Full names) as a
suitable person to serve on a Tribunal established in terms of section 21 of the
Judicial Service Commission Act, 1994 (Act No. 9 of 1994).

I would like to provide the following motivation in support of my nomination:
(Attach written motivation as an Annexure to this form and sign each page)

Postal Address: _____

Contact numbers:

Work: _____

Home: _____

Cellular: _____

E-mail: _____

Signed at _____ this day _____ of _____ 20 _____

Signature of person nominating: _____

Part 2: Acceptance of Nomination

I, _____ (Full names),
identity number _____, whose further
particulars are provided below, hereby accept the above nomination.

Postal Address: _____

Contact numbers:

Work: _____

Home: _____

Cellular: _____

E-mail: _____

Signed at _____ this day _____ of _____ 20 _____

Signature of person nominating:

Form 2
List of Persons who are not Judicial Officers and who are Suitable to Serve on Tribunals

FULL NAMES	ADDRESS		CONTACT NUMBERS			DATE APPROVED	SIGNATURE OF EXECUTIVE SECRETARY
	Postal	E -mail	Home	Work	Cellular		

**12. SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE
ACT 14, 2008**

CONTENTS

Act	360.
Preamble	360.
Definitions	361.
Objects of Act	361.
Establishment of Institute	362.
Seat of Institute	362.
Functions of Institute	362.
Establishment of Council	363.
Composition of Council	363.
Meetings of Council	364.
Committees of Council	364.
Powers and duties of Council	365.
Administration of Institute	365.
Appointment of Director	366.
Finances and accountability	366.
Remuneration of staff of Institute	367.
Annual report	367.
Guidelines	368.
Reimbursement of members of Council	368.
Seal of Institute	368.

Transitional provisions	368.
Short title and commencement	369.

[ASSENTED TO 12 SEPTEMBER 2008] [DATE OF COMMENCEMENT: 23 JANUARY 2009]

(English text signed by the President)

as amended by

Judicial Matters Amendment Act 24 of 2015

ACT

To establish a South African Judicial Education Institute in order to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts by providing judicial education for judicial officers; to provide for the administration and management of the affairs of that Institute and for the regulation of its activities; and to provide for matters connected therewith.

PREAMBLE

SINCE the need for education and training of judicial officers, whether aspirant, newly appointed or experienced, has long been recognised and that principle is practiced and entrenched in most judicial systems around the world;

AND SINCE there is a need for the education and training of judicial officers in a quest for enhanced service delivery and the rapid transformation of the judiciary;

AND SINCE the law has become much more complex and varied, develops rapidly and is increasingly influenced by the globalisation of legal systems, trade, technology, new insights and challenges;

AND SINCE education and training of judicial officers are necessary to uphold judicial independence, on the one hand, and to facilitate judicial accountability, on the other, and both are indispensable requirements of a judiciary in a functioning democracy;

AND SINCE it is desirable that the education and training of judicial officers should primarily be directed and controlled by the judiciary;

AND SINCE section 180(a) of the Constitution provides that national legislation may provide for training programmes for judicial officers,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

1. Definitions

In this Act, unless the context indicates otherwise-

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Council” means the Council of the Institute established by section 6;

“Department” means the Office of the Chief Justice;

“Director” means the Director appointed in terms of section 12 (1);

“Institute” means the South African Judicial Education Institute established by section 3;

“Minister” means the Cabinet member responsible for the administration of justice;

“Office of the Chief Justice” means the Office of the Chief Justice, proclaimed as a national department in terms of Proclamation No.44 of 2010 of 23 August 2010.

“Secretary-General” means Secretary-General of the Office of the Chief Justice.

[s.1 substituted by s.16 of Act 24 of 2015]

“this Act” includes any guidelines issued under section 16.

2. Objects of Act

The main objects of this Act are to establish a national education and training institution for the judiciary so as to enhance judicial accountability and the transformation of the judiciary, in order to promote the implementation of the

values mentioned in section 1 of the Constitution, and for that purpose to-

- (a) provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
- (b) offer judicial education and training to aspiring and newly appointed judicial officers as well as continued training for experienced judicial officers.

3. Establishment of Institute

There is hereby established a body to be known as the South African Judicial Education Institute, which-

- (a) is a juristic person; and
- (b) is responsible for the judicial education and training of judicial officers and aspiring judicial officers.

4. Seat of Institute

The seat of the Institute is at a place to be determined by the Council with the concurrence of the Minister: Provided that the Institute may, with the approval of the Minister, also conduct its activities away from its seat.

5. Functions of Institute

The functions of the Institute are-

- (a) to establish, develop, maintain and provide judicial education and professional training for judicial officers;
- (b) to provide entry level education and training for aspiring judicial officers to enhance their suitability for appointment to judicial office;
- (c) to conduct research into judicial education and professional training and to liaise with other judicial education and professional training institutions, persons and organisations in connection with the performance of its functions;
- (d) to promote, through education and training, the quality and efficiency of services provided in the administration of justice in the Republic;
- (e) to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts; and
- (f) to render such assistance to foreign judicial institutions and courts as may be agreed upon by the Council.

6. Establishment of Council

There is hereby established a Council responsible for the governance of the Institute.

7. Composition of Council

- (1) The Council comprises the Chief Justice as chairperson, the Deputy Chief Justice as deputy chairperson and the following other members:
 - (a) The Minister or her or his nominee;
 - (b) a judge of the Constitutional Court, designated by the Chief Justice after consultation with the judges of the Constitutional Court;
 - (c) a judge or any other person designated by the Judicial Service Commission from among its ranks;
 - (d) the President of the Supreme Court of Appeal;
 - (e) two judges president and two other judges, at least one of whom must be a woman, designated by the Chief Justice after consultation with the judges president;
 - (f) five magistrates, designated by the Magistrates Commission, and of whom-
 - (i) at least two must be women; and
 - (ii) two must be Regional Court Magistrates;
 - (g) a judge who has been discharged from active service as contemplated in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), designated by the Chief Justice in consultation with the Minister;
 - (h) the Director;
 - (i) one advocate designated by the General Council of the Bar of South Africa;
 - (j) one attorney designated by the Law Society of South Africa;
 - (k) two university teachers of law designated by the South African Law Deans Association;
 - (l) two other members who are not involved in the administration of justice, designated by the Minister after consultation with the Chief Justice; and
 - (m) one traditional leader designated by the National House of Traditional Leaders referred to in the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003).
- (2) A member designated in terms of subsection (1)(b),(c),(e),(f),(g),(i), (j), (k), (l) or (m) holds office as such a member for a period of five years,

- but such a member may be replaced
- (i) in the case of a member designated in terms of subsection (1) (c), (f), (i), (j), (k), (l) or (m) by the designating person or body on written notice to the Chief Justice; or
 - (ii) in the case of a member designated in terms of subsection (1) (b), (e) or (g), by the Chief Justice after consultation with the persons required to be consulted in respect of the designation in question.
- (3) Any member referred to in subsection (2) whose term of office has expired, may be designated again.
 - (4) A vacancy in the membership of the Council does not affect the validity of the proceedings or the decisions of the Council.
 - (5) Due consideration must be given in the composition of the Council to demographic and gender representivity.

8. Meetings of Council

- (1) Meetings of the Council must be held at the times and places determined by the Chief Justice, but at least every six months.
- (2) A majority of the members of the Council constitutes a quorum.
- (3) If the Chief Justice is absent from a meeting, the Deputy Chief Justice must act as chairperson, and if both are absent, the members must elect one of their number to preside at that meeting.
- (4) The Council may regulate the proceedings at its meetings as it considers fit and must keep minutes of the proceedings.
- (5) (a) Every member of the Council has one vote.
(b) In the event of an equality of votes the person presiding will have both a deliberative and a casting vote.

9. Committees of Council

- (1) The Council must establish standing committees to take responsibility for each of the following areas of the Institute's activities:
 - (a) Curriculum planning and development;
 - (b) oversight of judicial education;
 - (c) budget and finance;
 - (d) personnel management; and
 - (e) general administration.
- (2) The Council may further appoint-
 - (a) an executive committee from its ranks, which must be chaired by the Deputy Chief Justice;

- (b) such further standing committee or other committee for a particular purpose as may become necessary.
- (3) (a) The members of a standing or other committee may be members of the Council or may be co-opted for that purpose by the Council.
 - (b) The majority of the members of any such committee must be members of the Council.
- (4) The Council-
 - (a) is not divested of any function entrusted to any of its committees by virtue of subsection (1) or (2); and
 - (b) may set aside or vary any decision taken by such committee, subject to any rights that may have accrued to a person as a result of the decision.

10. Powers and duties of Council

- (1) The Council may do all that is necessary or expedient to achieve the objects of this Act.
- (2) Without derogating from the generality of subsection (1) but subject to section 13, the Council-
 - (a) may-
 - (i) acquire and alienate movable and immovable property;
 - (ii) hire and let movable and immovable property;
 - (b) must-
 - (i) oversee the appointment of temporary and permanent professional staff;
 - (ii) engage in research into matters affecting the Institute and its functions and engage suitably qualified persons or institutions to conduct such research on its behalf;
 - (iii) establish and maintain contact with the Judicial Service Commission, the Magistrates Commission, Heads of Courts, the organised legal profession, academics and other individuals and entities with an interest in judicial education.

11. Administration of Institute

In order to perform its functions the Institute must, amongst other things-

- (a) employ a Director as the administrative head of the Institute;
- (b) employ academic staff and procure the services of suitably qualified judicial educators;
- (c) employ such administrative staff as may be necessary; and

- (d) enter into contracts with service providers and accept liability for the expenses incurred as a result of such services being rendered.

12. Appointment of Director

- (1) The Council must appoint a Director for a determined term and on such conditions as the Council may determine.
- (2) The Council may re-appoint the Director at the end of the term.
- (3) The Director, as the administrative head and chief executive officer of the Institute, is responsible for the general administration of the Institute, and must-
 - (a) manage and direct the activities of the Institute subject to the direction of the Council;
 - (b) appoint and supervise the administrative staff of the Institute; and
 - (c) provide quarterly management reports to the Secretary-General.

[S.12(c) substituted s.17 of Act 24 of 2015]

- (4) The Minister must, with the concurrence of the Council and after consultation with the Minister of Finance, determine the Director's remuneration, allowances, benefits and other terms and conditions of employment.

13. Finances and accountability

- (1) Expenditure in connection with the administration and functioning of the Institute must be defrayed from monies appropriated by Parliament for this purpose.
- (2) Monies appropriated by Parliament for this purpose-
 - (a) constitute earmarked funds on the Departmental vote; and
 - (b) may not be used by the Department for any other purpose unless the Council has been consulted and the National Treasury approves such use.
- (3) The Institute may receive funds from donations, contributions or gifts and from other sources approved by the Council in accordance with National Treasury regulations.
- (4) Subject to the Public Finance Management Act, 1999 (Act 1 of 1999), the Secretary-General-
 - (a) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Institute and for donations, contributions or

gifts in accordance with National Treasury regulations; and
[s.13 (4) substituted by s.18 of Act 24 of 2015]

- (b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.
- (5) The Institute must utilise the donations, contributions or gifts to advance the objects of the Institute as contained in this Act or any other law.
- (6) The financial year of the Institute is the period of 1 April in any year to 31 March in the following year, except that the first financial year of the Institute begins on the date on which this Act comes into operation, and ends on 31 March of the following year.
- (7) The Institute may invest or deposit money that is not immediately required for contingencies or current expenditure-
 - (a) in a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (b) in an investment account with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984).
- (8) Within six months after the end of each financial year, the Director must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising-
 - (a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Institute during the preceding financial year; and
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (9) The Auditor-General must audit the financial statements of the Institute each year.

14. Remuneration of staff of Institute

The Council may, with the concurrence of the Minister who must consult with the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of staff.

15. Annual report

- (1) The Council must prepare and submit to the Minister an annual report in the form prescribed by the Minister within six months after the end

of the Institute's financial year.

- (2) The annual report referred to in subsection (1) must include the following documents:
 - (a) The audited financial statements prepared in terms of this Act;
 - (b) the auditor's report prepared in terms of this Act;
 - (c) a report of the activities undertaken in terms of the Institute's functions set out in this Act; and
 - (d) a statement of the progress made during the preceding year towards achieving the objects of this Act.
- (3) The Minister must table in Parliament each annual report submitted in terms of this Act.

16. Guidelines

The Chief Justice may issue guidelines, with the concurrence of the Minister, in respect of any matter concerning the exercise of any power and the performance of any function of the Institute.

17. Reimbursement of members of Council

- (1) No member of the Council, other than the members referred to in section 7 (1) (1) , may be remunerated for her or his services on the Council.
- (2) Members may be reimbursed for their reasonable expenses incurred in the course of their service as members of the Council.

18. Seal of Institute

- (1) The seal of the Institute must be determined by the Council with the concurrence of the Minister.
- (2) The President must approve the seal of the Institute.
- (3) The seal of the Institute must be published in the *Gazette* on approval by the President.

19. Transitional provisions

- (1) The Institute must commence with its training functions as from a date fixed by the Minister by notice in the *Gazette* .
- (2) Before the date so fixed, the necessary arrangements must be made for the Institute to be accommodated, equipped and staffed in order to perform its functions properly.

20. Short title and commencement

This Act is called the South African Judicial Education Institute Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.



CONTACT US

188, 14th Road, Noordwyk, Midrand, 1685

Private Bag X10, Marshalltown, 2107

tel: +27 10 493 2500 (Switchboard)

e-mail: info@judiciary.org.za

www.judiciary.org.za



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA