

Constitutions of Selected Countries after the Transition from Authoritarian Regimes

Collection of Legal Acts

Vol. 2



Chile



Spain



South Africa

Edited by

Joanna Marszałek-Kawa

Joanna Piechowiak-Lamparska

Anna Ratke-Majewska

Patryk Wawrzyński

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Sales Department:
tel./fax 56 648 50 70; e-mail: marketing@marszalek.com.pl

Europejskie Centrum Edukacyjne, ul. Warszawska 52, 87-148 Łysomice
tel. 56 678 34 78, e-mail: info@marszalek.com.pl, www.marszalek.com.pl
Drukarnia nr 1, ul. Lubicka 46, 87-100 Toruń, tel. 56 659 98 96

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INTRODUCTION

Any comparative study of selected constitutions requires examining the question related to the importance of these legal documents. One may agree that it does not only provide a framework for a political order but influences the essence of such competition as well. It seems to be more than the main legal document; a constitution is a symbolic expression of political identity it establishes or reinforces. As for the role of a constitution, the political identity and the formal framework are equally important. Alan Hamlin stated: “a Constitution is both the means of organizing the group’s collective functionality and the way of sustaining the group as a body”¹.

In this context, a constitutional framework significantly influences a path of political transition. During the process of democratization, it generally constitutes a milestone, and its introduction often makes it possible to distinguish democratic transition from consolidation of democracy. As the main legal document, not only does it introduce a new set of political rules but it also represents the idea of new political identity and reflects ongoing changes in behavior, knowledge and shared values². Moreover, the process of constitution making sometimes becomes a mass public debate on the principles by which a new democracy should abide³, and is a period when terms of reconciliation and the dichotomy between the just and the justice are established⁴.

¹ A. Hamlin, *Constitutions, Politics, and Identity*, in: “Constitutional Mythologies. New Perspectives on Controlling the State” ed. by A. Marciano, New York 2011, 49 (38–51).

² S.E. Finkel, A.E. Smith, *Civic Education, Political Discussion, and the Social Transmission of Democratic Knowledge and Values in a New Democracy: Kenya 2002*, “American Journal of Political Science” 2011, 55 (2), 417 (417–435).

³ E. Unterhalter, *Education, citizenship and difference in the South African transition: policy, politics and practice*, “Curriculum Journal” 2000, 11 (1), 72–73 (69–85).

⁴ E.C. Eze, *Transition and the Reasons of Memory*, “South Atlantic Quarterly” 2004, 1003 (4), 763–764 (755–768).

Besides shaping the formal framework of democracy and influencing the new political identity, constitutional choices also have an impact on effects of democratization⁵. Danica Fink-Hafner and Matija Hafner-Fink describe how the rules of political competition may limit the influence of negative remnants of an authoritarian past, concluding that “the institutional factors of success to democracy do matter”⁶.

The importance of a constitution as an institutional framework and a symbolic expression of new political identity often seems to be underestimated. Even though the transitional studies have become one of the fastest developing fields of 21st century political science, most of academics recognize adopting a new constitution as just a stage of democratization, not as an important determinant of the future success of the state. The role of a constitution during transition still seems to be marginalized; however, after the experience of the Third Wave of Democratization⁷, examinations of the preconditions of democratic governance⁸ have been replaced within the transitional studies by investigations of the role played by political culture, civic culture and common values, together with analyzing the influence of economic growth or the significance of top society groups agreeing on the route to democracy⁹.

⁵ A. Przeworski, M. Alvarez, J.A. Cheibub, F. Limongi, *What Makes Democracies Endure?*, “Journal of Democracy” 1996, 7 (1), 39–55.

⁶ D. Fink-Hafner, M. Hafner-Fink, *The Determinants of the Success of Transitions to Democracy*, “Europe-Asia Studies” 2009, 61 (9), 1614–1619 (1603–1625).

⁷ S.P. Huntington, *The Third Wave: Democratization in The Late Twentieth Century*, Norman 1991. See also: idem, *Democracy's Third Wave*, “Journal of Democracy” 1991, 2 (2), 12–34.

⁸ R.A. Dahl, *Polyarchy*, New Haven 1971.

⁹ R. Inglehart, *Culture shift in advanced industrial societies*, Princeton 1990; A. Przeworski, F. Limongi, *Modernization: Theories and facts*, “World Politics” 1997, 49, 155–183; G.A. O'Donnell, P.C. Schmitter, *Transitions from authoritarian rule: Tentative conclusions about uncertain democracies*, Baltimore 1986. See also: E.M. Jepsen, *Processes of Democratization*, in: “21st Century Political Science. A Reference Handbook” ed. by J.T. Ishiyama, M. Breuning, Thousand Oaks 2011, 275–282; J. Linz, A. Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and post-Communist Europe*, Baltimore 1996.

* * *

The first volume of *Constitutions of Selected Countries after the Post-Authoritarian Transition* presents constitutions of three post-communist states: Estonia, Georgia and Poland; the second includes post-authoritarian constitutions of Chile, Spain and South Africa. Thus the collection introduces a diverse scope of legal frameworks for democratization; moreover, it facilitates analysis of similarities and differences between transition paths in these six cases. Examination of legal acts collected in these two volumes may highlight diverse political, economic, social and historical preconditions that have influenced the courses of post-authoritarian transitions in the last four decades.

The constitution as a legal framework for new political order and as a symbolic expression of new political identity represents the way a society deals with such transitional challenges as establishing democratic elites, building civil society, developing self-governance, introducing the rule of law, satisfying the sense of justice, justifying economic and social costs of the transition, introducing new standards of political competition, changing the electoral system, and developing international integration. All these aspects are reflected in different pace at which individual countries implemented democracy.

Chile. The Constitution of the Republic of Chile, approved in 1980 during the military dictatorship of General Augusto Pinochet Ugarte, became a basis for the Chilean democratic transition. The main reason why the authoritarian junta had decided to introduce a new legal framework of the political system was a desire to institutionalize its power. One of the constitutional provisions had obliged General Pinochet's junta to organize a plebiscite in 1988, during which Chilean citizens had to determine whether the junta's candidate, Pinochet himself, would remain in power for the next eight years. The plebiscite took place on October 5, 1988, and the majority of the Chilean society voted against the military regime. Thus the democratic transition occurred through the national plebiscite and the presidential elections on December 14, 1989, won by a Christian Democrat Patricio Aylwin Azócar. Therefore the beginning of Aylwin's presidency in March 1990 may be recognized as the end of democratic transition in Chile. However, the formal end of transition was proclaimed by the president in 1992. It is significant that the Chilean transformation is commonly recognized as a model one: the transition was nego-

tiated, based on rational premises, and implemented as a peaceful process. Pinochet resigned as he had promised, and the new government committed itself to protect the neoliberal economics introduced during the dictatorship and to abide constitutional rules established in 1980¹⁰.

Spain. The Spanish dictator Francisco Franco y Bahamonde, in power since 1939, died on November 20, 1975. After his death the Spanish society had to decide which political directions the state should follow. Three possible solutions presented themselves: the first one, *reformismo*, offered a progressive reform of authoritarian institutions; the second one, *ruptura democrática*, called for immediate democratic breakthrough; the last one, *continuismo*, suggested continuation of the authoritarian order without reforms and was instantly recognized as unviable. Considering the risk of deepening internal conflicts, the Spanish society opted for democratization as a progressive and peaceful deconstruction of authoritarian regime's institutions. Significant factors in Spanish transition were the attitude of the Francoist political elites, who decided to negotiate with the opposition, and the mediation of King Juan Carlos de Borbón. The king of Spain was able to gain mass support for two reasons: firstly, he was recognized as a legitimate successor of the *Caudillo* Franco, officially designated by the dictator himself in 1969; (so his position was supported by conservative Francoist politicians); secondly, Juan Carlos I was promoted by pro-democratic movements and political parties. The king played therefore a crucial role in Spanish transformation, and he has been called *el motor del cambio*, a force of change. Besides Juan Carlos I, the manager of Spanish democratization was Adolfo Suárez, a Christian Democrat politician and prime minister of Spain in 1976–1981. Close cooperation of the king and the prime minister facilitated the deconstruction of authoritarian institutions and unification of anti-Francoist opposition. The final step of Spanish transition was the adoption of a new constitution on October 30, 1978; the document was named *the Constitution of Agreement* as it was not only accepted by the democratic Cortes

¹⁰ E. Boeninger, *Democracia en Chile. Lecciones para la gobernabilidad*, Santiago de Chile 1997; M.C. Eakin, *The History of Latin America. Collision of Cultures*, New York 2007; P. Aylwin Azócar, *Mensaje Presidencial del 21 de Mayo de 1992*, on-line: http://historiapolitica.bcn.cl/mensajes_presidenciales [31.01.2014]; T. Moulia, *Chile actual. Anatomía de un mito*, Santiago de Chile 1997; A. Wilde, *Irruptions of Memory: Expressive Politics in Chile's Transition to Democracy*, "Journal of Latin American Studies" 1999, 31 (2), 473–500.

Generales but also supported by the citizens at the 1978 national referendum. The introduction of a new fundamental law is often recognized as the completion of Spanish democratization, yet some academics emphasize that the formal end of the transition was marked by the first democratic elections in March 1979¹¹.

South Africa. The crisis of the racist regime of Afrikaner nationalism in the 1980s and the resignation of President P. W. Botha, *Die Groot Krokodil* (“the Big Crocodile”), hastened secret negotiations between the apartheid authorities and the imprisoned African National Congress leader Nelson Mandela. The change within the National Party’s leadership resulted in legalization of all formerly banned political parties by president F. W. de Klerk on February 2, 1990, and release of Mandela after 27 years in prison on February 11. Negotiations between Afrikaner government and the opposition began two months later; they brought initial results of the *Groot Schuur Minute*, the *Pretoria Minute* (and suspension of armed struggle by Umkhonto we Sizwe), and the National Peace Accord of September 14, 1991. On December 20, the multiparty negotiations of the Convention for Democratic South Africa (CODESA I) started and were continued next year during the second session (CODESA II) until June 1992, when they collapsed. Talks between the National Party and the African National Congress were continued by Roelf Meyer and Cyril Ramaphosa, and enabled the Multiparty Negotiating Forum (MPNF) to gather on April 1, 1993. After eight months of work, on November 18 the MPNF ratified the Interim Constitution. On the basis of the new constitutional framework, the democratic elections were held on April 27, 1994, and resulted in a sweeping victory of the African National Congress and the new South African president Mandela. The milestone of post-apartheid transition was Joe Slovo’s proposition of the *sunset clause* in

¹¹ J.F. Corona Ramón, *Economía y política en la transición y la democracia*, Madrid 2001; *El franquismo y la transición en España*, ed. by D.A. González Madrid, Madrid 2008; V. Druliolle, *Democracy Captured by Its Imaginary: The Transition as Memory and Discourses of Constitutionalism in Spain*, “Social and Legal Studies” 2008, 17 (1), 75–92; P. McDonough, *Identities, Ideologies, and Interests: Democratization and the Culture of Mass Politics in Spain and Eastern Europe*, “Journal of Politics” 1995, 57 (3), 649–676; M. Sanchez Soler, *La transición sangrienta. Una historia violenta del proceso democrático en España (1975–1983)*, Barcelona 2010; R. Quirosa-Cheyrouze y Muñoz, *Historia de la Transición en España. Los inicios del proceso democratizador*, Madrid 2007.

1992, a rule which protected the interest of Afrikaner nationalists in democratic conditions and then influenced the shape of the Truth and Reconciliation Commission (TRC), the main institution of South African transitional justice. However, the consolidation of democracy in the Republic took place on December 10, 1996, when Mandela promulgated a new Constitution, replacing the Interim Constitution of February 4, 1993¹².

* * *

Constitutions of Selected Countries after the Post-Authoritarian Transition is a two-volume collection of documents, and is published as a result of an ongoing research project *Politics of Memory as the Constitutional Factor of New Identities during the Transition from Authoritarian Regimes*, financed by the National Science Center¹³. The project is realized by a team of political scientists from the Faculty of Political Science and International Studies at the Nicolaus Copernicus University in Toruń under the supervision of Professor Joanna Marszałek-Kawa, PhD. The research includes six case studies of the transitions – in Estonia and in Georgia by Joanna Piechowiak-Lamparska; in Chile and in Spain by Anna Ratke-Majewska; in Poland and in South Africa

¹² A. Butler, *Contemporary South Africa*, Basingstone–New York 2004; N.L. Clark, W.H. Worger, *South Africa. The Rise and Fall of Apartheid*, Harlow 2011; D. Glaser, *Politics and Society in South Africa. A Critical Introduction*, London 2001; A. Guelke, *South Africa: The Long View on Political Transition*, “Nationalism and Ethnic Politics” 2009, 15, 417–435; J. Herbst, *Prospects for Elite-Driven Democracy in South Africa*, “Political Science Quarterly” 1997, 112 (4), 595–615; N. Kersting, *Direct Democracy in Constitutional Processes: The South African Plebiscite of 1992*, “Politikon” 2010, 37 (2–3), 207–222; N. Mandela, *Long Way to Freedom. The Autobiography of Nelson Mandela*, London 2012; M.H. Maserumule, *Politics of Transition in South Africa and the Post-1994 Democratic State*, “Journal of Asian and African Studies” 2011, 47 (3), 301–314; A. Sampson, *Mandela. The Authorised Biography*, Johannesburg 1999; R. Spitz, M. Chaskalson, *The Politics of Transition. A Hidden History of South Africa's Negotiated Settlement*, Johannesburg 2000; D. Welsh, *The Rise and Fall of Apartheid*, Johannesburg–Cape Town 2009; O. von Feigenblatt, *The South African Transition: A Holistic Approach to the Analysis of the Struggle Leading to the 1994 Elections*, “Journal of Alternative Perspectives in the Social Sciences” 2008, 1 (1), 48–80.

¹³ This project was financed from the funds of the National Science Centre allocated on the basis of the decision number DEC-2012/05/E/HS5/02722.

by Patryk Wawrzyński – and the comparative analysis of the role politics of memory played during democratization. The project focuses on verifying theoretical hypotheses concerning the universality of transitional models, based on the ways in which particular states use the remembrance narratives to justify democratization of a political regime and a change of political identity.

Selected documents present legislation in force as of June 1, 2013.

Joanna Marszałek-Kawa
Joanna Piechowiak-Lamparska
Anna Ratke-Majewska
Patryk Wawrzyński

Political Constitution of the Republic of Chile

Created – 11.08.1980

Ratified (national constitutional referendum) – 11.09.1980

Came into effect – 11.03.1981

Chapter I

INSTITUTIONAL FOUNDATIONS

Article 1

All persons are born free and equal in dignity and rights.

The family is the fundamental nucleus of the society.

The State recognizes and empowers the intermediate groups through which society organizes and structures itself and guarantees them adequate autonomy in order to achieve their own specific objectives.

The State serves the people and its purpose is to promote the common good, in order to achieve this aim, it must contribute to the creation of social conditions which permit each and every one of the members of the national community to achieve the greatest spiritual and material fulfillment possible, with full respect for the rights and guarantees that are constitutionally established.

It is the duty of the State to safeguard national security, to give protection to the population and the family and to strengthen the latter, to promote the harmonious integration of all sectors of the Nation and to assure the right of every person to participate equally in national life.

Article 2

The national flag, the coat of arms of the Republic and the national anthem are national emblems.

Article 3

Chile is a unitary State.

The administration of the State shall be functional and territorially decentralized, or deconcentrated as the case may be, in conformity with the law.

The organs of the State shall strengthen the regionalization of the country and promote development based on equity and solidarity between the regions, provinces and communes of the national territory.

Article 4

Chile is a democratic republic.

Article 5

Sovereignty resides essentially in the Nation. It is exercised by the people by means of plebiscites and periodic elections as well as through the authorities this Constitution establishes. No sector of the people or [any] individual may claim its exercise for itself.

The exercise of sovereignty recognizes as a limitation the respect of essential rights emanating from human nature. The organs of the State must respect and promote such rights, guaranteed by this Constitution as well as by the international treaties that are ratified by Chile and that are in force.

Article 6

The State organs must act in accordance with the Constitution and the norms dictated in conformity therein, and guarantee the institutional order of the Republic.

The provisions of this Constitution require either the incumbent or members of such organs such as the entire person, institution or group.

Violation of this generates the standard responsibilities and sanctions determined by the law.

Article 7

The State organs acting prior valid properly invested of its members, within its jurisdiction and in the manner prescribed by law.

No magistrate, individual or group of persons may claim for itself, not even under the pretext of extraordinary circumstances, powers or rights other

than those that have been expressly conferred upon it by virtue of this Constitution or the laws.

Any act in contravention this article is null and give rise to the responsibilities and sanctions under the law indicate.

Article 8

The exercise of public functions requires its holders to give strict implement the principle of probity in all its performances.

The acts and decisions of the State organs as well as the reasons on which they are based and the procedures by which they are adopted are public. Nevertheless, the withholding of the former or the secrecy of the latter may be imposed exclusively by a law adopted by a qualified majority in cases where the publicity would affect the proper fulfillment of the functions of the said organs, the rights of individuals, the security of the Nation or the national interest.

The President of the Republic, the Ministers of State, Members and senators, and other authorities and officials that an organic law constitutional point, must declare their interest and heritage publicly.

This law shall cases and conditions that these authorities delegated to third parties administration of those assets and liabilities involving conflict of interest in the exercising their powers public. Also, may consider additional appropriate steps to resolve and, in cases qualified to have the disposition of all or part of those assets.

Article 9

Terrorism, in any of its forms, is essentially contrary to human rights.

A law passed by qualified quorum shall determine terrorist conduct and its punishment. Those responsible for such crimes shall be prohibited for a period of fifteen (15) years from exercising public functions or positions, whether or not these are conferred by popular election, or those of a headmaster or director of an educational establishment, or from discharging teaching functions in them; from running a medium of mass communication as a commer-

cial enterprise or acting as manager or administrator of the same, or from carrying out functions related to the communication or dissemination of opinions or information; nor shall they be leaders of political organizations, organizations related to education, neighborhood associations or others of a professional, business, union, student or corporate character during this period. The preceding shall apply without prejudice to other ineligibilities or to those which the law may establish for a longer period of time [than five years].

The crimes referred to in the preceding paragraph shall always be considered as common and not as political offenses for all legal purposes and shall not warrant particular pardon, except in order to commute the death penalty to lifetime imprisonment.

Chapter II

NATIONALITY AND CITIZENSHIP

Article 10

Chileans are:

1. Those born in the territory of Chile, with the exception of children of foreigners who are in Chile in order to serve their Government, and the children of transient foreigners; all of them, however, may opt for Chilean nationality;
2. The children of a Chilean father or mother born in foreign territory. It shall be necessary, however, that one of their direct ancestors of the first or second degree [i.e. either parents or grandparents] has acquired Chilean nationality by virtue of the provisions of numerals 1, 4 or 5;
3. Foreigners who have obtained their nationalization letter in conformity with the law;
4. Those who obtain a special grace of nationalization by law.

The law shall regulate the procedure of opting for Chilean nationality; for the granting, denial or cancellation of the nationalization letters, and the creation of a register for all of these acts.

Article 11

Chilean nationality is lost:

1. By voluntary renunciation expressed before the competent Chilean authority. This renunciation is only effective if the person concerned has previously acquired the nationality of a foreign country;
2. By supreme decree, in case of services rendered during a foreign war to enemies of Chile or its allies;
3. By cancellation of the nationalization letter; and
4. By a law revoking nationalization which has been granted by special grace.

Those who have lost Chilean nationality on any of the grounds established in this article may only recover it by law.

Article 12

A person who is affected by a measure or decision of an administrative authority depriving him or her of his nationality or disregarding it, may appeal, either in person or through interposition of another person acting in his or her name, to the Supreme Court which shall hear the case as jury and sit in full court. The lodging of the appeal shall suspend the [legal] effects of the challenged measure or decision.

Article 13

Citizens are those Chileans who have attained eighteen (18) years of age and have not been sentenced to prison.

The status of citizen grants the rights to vote, to have access to elective office and the other rights conferred by the Constitution and the laws.

In the case of the Chileans referred to in numerals 2 and 4 of Article 10, the exercise of the rights conferred upon them by citizenship depends on their having been citizens of Chile for more than one (1) year.

Article 14

Foreigners residing in Chile for more than five (5) years who comply with the requirements specified in the first paragraph of Article 13 may exercise the right to vote in the cases and manner determined by law.

Those who have obtained Chilean nationality in conformity with Article 10, numeral 3, shall have access to elective public office only after having been in possession of their nationalization letters for five (5) years.

Article 15

In a popular vote, the ballot shall be personal, equal and secret. For citizens it shall be, in addition, obligatory.

A popular vote may only be organized in elections and plebiscites expressly provided for in this Constitution.

Article 16

The right to vote is suspended:

1. By prohibition in case of dementia;
2. For persons being accused of a crime that is punishable by a prison sentence or of a crime that the law qualifies as terrorist conduct; and
3. For [persons] having been punished by the Constitutional Tribunal in conformity with the seventh paragraph of numeral 15 of Article 19 of this Constitution. Those who, for this reason, are deprived of the exercise of the right to vote may recover such right after five (5) years, counted from the date of the declaration of the Court. Without prejudice to the provision of the seventh paragraph of numeral 15 of Article 19, this suspension shall not produce any other legal effect.

Article 17

The status of citizenship is lost:

1. By loss of Chilean nationality;
2. By a prison sentence; and

3. By being sentenced for crimes that the law qualifies as terrorist conduct and for those linked to drug traffic which, in addition, are punishable by a prison sentence.

Those who have lost their citizenship on the grounds prescribed in numeral 2 may recover it in accordance with the law, once their criminal liability has been extinguished. Those who have lost their citizenship on the grounds provided in numeral 3 may apply to the Senate for its restoration, once the sentence is served.

Article 18

There shall be a public electoral system. An organic constitutional law shall determine its organization and operation, regulate the manner in which electoral processes and plebiscites are conducted with regard to all matters which are not provided for by this Constitution, and shall always guarantee the full equality between independents and members of political parties, in respect of the presentation of candidates as well as with regard to their participation in the processes described above.

The defense of public order during electoral acts and plebiscites shall rest with the Armed Forces and Armed Police in the manner indicated by law.

Chapter III

CONSTITUTIONAL RIGHTS AND DUTIES

Article 19

The Constitution guarantees to all persons:

1. The right to life and to the physical and psychological integrity of the person.

The law protects the life of the one that is to be born.

The death penalty may only be established for a crime contemplated in a law approved by a qualified quorum.

It prohibits the use of any ill-treatment;

2. Equality before the law. In Chile there are no people or group privileged. In Chile there are no slaves and that step on their territory is free. Men and women are equal before the law.
Neither the law or authority some may provide arbitrary differences;
3. Equal protection of law in the exercise of their rights.
Everyone has the right to a legal defense in the manner provided by law and no authority or individual may prevent, restrict or distort the intervention due counsel when required. In case of the members of Armed Forces Order and Security Public, this right shall be governed, in the relative to administrative and disciplinary, by the norms of their respective statutes. The law shall determine the means to give advice and legal defense those unable to provide it for themselves thereof.
No one shall be tried by special committees, but the court point out by the law and established by prior to the perpetration of the act.
Any judgment of a court exercising jurisdiction must be based on a process previous legally processed. The legislator always set guarantees a procedure rational research and fair.
The law can not presume by right responsibility criminal.
No offense is punishable with another penalty than that indicated by a law enacted prior to commission, unless that a new law benefit to the affected. No law shall establish penalties without that conduct is sanctioned are expressly described therein;
4. Respect and protection of life private and to honor of the person and their family;
5. The inviolability of the home and all forms of private communication. The home may be searched and communications and private documents intercepted, opened or recorded in the cases and certain forms determinate by law;
6. The awareness freedom, the expression of all beliefs and free exercise of all cults that not inconsistent to morality, to practice or public order.
Religious denominations may erect and maintain temples under the conditions of health and safety established by law and ordinances.
Churches, confessions and any religious institutions shall have the rights issued and recognized, with respect to the goods, by the laws currently into force. The temples and its dependencies, exclusively for the service of worship, shall be exempt from kinds of taxes;

7. The right to personal freedom and to individual security.

As a result:

- a) Every person has right to live and remain in any Instead of the Republic, move from one to another, and in and out of their territory, saved the norms established in law and unless provided the injury of others;
- b) No person may be deprived of personal freedom, not be restricted except in cases and in the manner determined by the Constitution and laws;
- c) No one can be arrested or detained but official order of specifically public authorized by law and after that order has been served legally. However, may be detained that he caught in a crime flagrant, in order to be made available to the judge within the twenty-four hours follows. If the authority order the arrest or detain any person, shall, within forty and eight hours, notify the competent judge, putting available at affected. The judge may, by resolution cause, extend this term up to five days and up to ten days, in the case that the investigation concern facts qualified by law as terrorists conduct;
- d) No one can be arrested or detained, liable to imprisonment detention or imprisonment but at home or in public places for this object.
Those responsible for the prisons can not receive anyone as arrested or prosecuted or prisoner, without constancy of the order corresponding issued by authority who have legal statutory in a public register.
No isolation may prevent the officer of the prison to visit the arrested or prosecuted or prisoner, who is therein. This official due provided to the arrest if is requires, transmit to the competent judge back the arrest warrant, or to claim to be given that copy, or to give himself a certificate that he is arrested, if at the time of arrest any omitted this requirement;
- e) Freedom of defendant shall unless the detention is considered by the judge as necessary for research or the safety of offended or society. The law establishes the conditions and procedures to obtain it.
The appeal against the decision taken in respect of the liberty of a person charged with the offenses referred to in Article 9 has to be determined by the competent superior tribunal, composed exclusively by its regular members. The decision which it approves and imposes has to be unanimous. While the person charged remains at liberty, he/she is always subject to the control measures of the [competent] authority as defined by law;

- f) In criminal cases the defendant or accused may not be forced to testify under oath on his/her own actions; nor may his/her family, children, spouse and other persons which, depending on the cases and circumstances as determined by law, be forced to testify against him/her;
 - g) No penalty of confiscation of goods may be imposed, without prejudice to the confiscation in the cases prescribed by law; but such penalty shall be permitted with respect to illicit associations;
 - h) The loss of social security rights may not be imposed as a penalty; and
 - i) Once a definitive stay of proceedings or a not-guilty verdict has been issued, a person who has been subject to the trial or sentence in any process as a result of a decision which the Supreme Court declares unjustifiably erroneous or arbitrary shall have the right to be indemnified by the State for patrimonial and moral losses which he/she has suffered. The indemnification shall be judicially determined in a brief and summary proceeding in which the evidence shall be analyzed conscientiously;
8. The right to live in an environment free from contamination. It is the duty of the State to see to it that this right is not affected and to control the preservation of nature.
The law may establish specific restrictions on certain rights or liberties in order to protect the environment;
9. The right to the protection of health.
The State protects the free and equal access to services which have the promotion, protection and recovery of health as their object and to those aiming at the rehabilitation of the individual.
Likewise, the coordination and control of activities related to health shall rest with the State.
It is a primary duty of the State to guarantee the delivery of health care services, whether performed by public or private institutions, in the form and conditions that the law determines, which may establish compulsory fees.
Every person has the right to choose the health system he/she wants to join, whether it is of a public or private character;
10. The right to education.
The objective of education is the full development of the individual in the different stages of life.
Parents have the primary right and the duty to educate their children. The State shall grant special protection for the exercise of this right.

The State shall promote pre-school education. Basic education and intermediate education are compulsory, the State having the obligation to finance a free system for this purpose, designed to ensure the access of the entire population to them. In the case of intermediate education, this system shall be extended, in accordance with the law, until the age of twenty-one (21).

Likewise, the State has to promote the development of education at all levels; to stimulate scientific and technological research, artistic creation and the protection and growth of the cultural patrimony of the Nation. It is the duty of the community to contribute to the development and improvement of education;

11. Freedom of education includes the right to establish, organize and maintain educational establishments.

Freedom of education has no other limitations than those imposed by morals, good customs, public order and national security.

Officially recognized education may not be oriented towards propagating any political partisan tendency.

Parents have the right to choose the educational establishment for their children.

An organic constitutional law shall establish the minimum requirements that have to be formulated for each of the levels of basic and intermediate education and shall provide the objective provisions, of general application, that permit the State to monitor its fulfillment. The law, likewise, shall establish the requirements for the official recognition of the educational establishments of every level;

12. Freedom to express opinions and disseminate information, without prior censorship, in any form and by any means, without prejudice to the responsibility for crimes and abuses that are committed in the exercise of these freedoms, in conformity with the law which must be passed by a qualified quorum.

In no circumstance may the law establish a State monopoly over the media of mass communication.

Every natural or legal person offended or unfoundedly implicated by a medium of mass communication has the right to have his/her declaration or rectification freely disseminated, in the conditions that the law determines.

Every natural or legal person has the right to establish, edit and maintain

newspapers, magazines and periodicals in the conditions specified by law. The State and those universities and other individuals or entities that the law determines, may establish, operate and maintain television stations. There shall be a National Council for Television, autonomous and with a legal personality, which shall be in charge of supervising the proper operation of this medium of communication.

A law passed by a qualified quorum shall determine the organization and other functions and attributions of this Council;

13. Meetings in public squares, streets and other places of public use shall be governed by the general police provisions;
The meetings in the squares, streets and other public places will be governed by the general provisions of police;
14. The right to submit petitions to the authorities on any matter of public or private interest with no limitation other than that to proceed in a respectful and appropriate manner;
15. The right to associate without prior authorization.

In order to enjoy legal personality, associations must be constituted in conformity with the law.

No one may be obligated to join an association.

Associations contrary to morals, public order and the security of the State are prohibited.

Political parties may not intervene in any activities other than those specific to them nor have any privilege or monopoly on citizen participation; the list of its members must be registered with the electoral service of the State, which shall keep a copy of it that shall be accessible to the members of the respective party, its accounting shall be public; the sources of its financing may not come from money, goods, donations or credits of foreign origin; its statutes must contemplate rules ensuring an effective internal democracy. An organic constitutional law shall regulate other matters that concern them and the penalties that are to be applied for the breach of its rules, which may include their dissolution. Associations, movements, organizations or groups of people that pursue or carry out activities of political parties without conforming to the aforementioned rules are illicit and will be sanctioned in accordance with the above-mentioned organic constitutional law.

The Political Constitution guarantees political pluralism. Unconstitutional are parties, movements or other forms of organization whose

objectives, acts or conduct do not respect the basic principles of the democratic and constitutional regime or promote the establishment of a totalitarian system, as well as those which use, propagate or encourage violence as a means of political action. The Constitutional Tribunal is competent to pronounce said unconstitutionality.

Without prejudice to the other penalties established in the Constitution or the law, the persons who have participated in the events leading to the declaration of unconstitutionality that the preceding paragraph refers to, may not participate in the formation of other political parties, movements or other forms of political organizations, nor run for elective public office nor carry out the functions that are mentioned in numerals 1 to 6 of Article 57 for a period of five (5) years, counted from the date of the declaration of the Court. If, at this date the persons referred to are in charge of the tasks or functions indicated, they shall lose them as of right. Persons punished by virtue of this provision may not benefit from rehabilitation during the period indicated in the preceding paragraph. The duration of the ineligibilities contemplated in the said paragraph is doubled in the case of recurrence;

16. Freedom to work and its protection.

Every individual has the right to freely enter employment contracts and to freely choose his/her occupation with a just pay.

Any discrimination which is not based on capacity or personal qualification is prohibited, without prejudice to the law which may require Chilean nationality or age limits in determined cases.

No type of work may be prohibited except if it is contrary to morals, public security or health or if the national interest demands it and a law so declares. No law or provision from a public authority may require affiliation to an organization or any entity as a prerequisite for carrying out a determined activity or work, nor may it demand that any such affiliation be discontinued as a condition for keeping such activity or work. The law shall determine the professions that require a university degree or title and the conditions that must be full filled in order to exercise them. The professional bodies established in accordance with the law which are associated with the work of such professions shall be authorized to decide on the complaints which are brought with regard to the ethical conduct of their members. Its decisions may be appealed before the respective

Court of Appeal. The non-associated professionals shall be judged by special tribunals established by the law.

Workmen have the right to collective bargaining with the company for which they work, except in circumstances where the law expressly does not permit negotiations. The law shall establish the modalities of collective bargaining and the adequate procedures to bring about a just and peaceful solution within its framework. The law shall determine the cases in which collective bargaining must be submitted to mandatory arbitration which shall be assigned to special courts of experts whose organization and powers shall be established by it.

Neither State nor municipal employees may go on strike. Nor persons may working for corporations or enterprises, regardless of their nature, objectives or functions, which provide services of public interest or whose paralysis might cause serious damage to [public] health, the economy of the country, the supply of the population or national security. The law shall establish the procedures to determine the corporations or enterprises whose workers will be subject to the prohibition which is established in this paragraph;

17. Admission to all roles and public jobs, without other requirements that imposing the Constitution and laws;

18. The right to social security.

The laws governing the exercise of this right be qualified quorum.

The action of the State shall be directed to guarantee to all inhabitants the access to the enjoyment of uniform basic benefits, whether granted by public or private institutions. The law may establish compulsory fees. The State shall supervise the proper exercise of the right to social security;

19. The right unions in cases and so by law. Trade union membership will always be voluntary.

Union organizations shall enjoy legal personality solely by registration of their constitutive acts and statutes in the form and conditions that the law determines.

The law shall contemplate the mechanisms which ensure the autonomy of these organizations. Union organizations may not take part in partisan political activities;

20. Equal taxes distribution in proportion to income or in the progression or manner established by law, and equal distribution of other public loads.

In any case the law may levy taxes manifestly disproportionate or unjust. The taxes that are collected shall, regardless of their nature, form part of the wealth of the Nation and may not be earmarked for a specific purpose. However, the law may authorize that certain taxes may be set aside for national defense. Likewise, it may authorize that those [taxes] imposed on activities or goods which have a clear regional or local identification, may be used, within the limits established by it, by the regional or communal authorities for the financing of development projects;

21. The right to carry out any economic activity which is not contrary to morals, public order or national security in conformity with the legal provisions which regulate it.

The State and its organs may carry out entrepreneurial activities or participate in them only if a law passed by a qualified quorum authorizes it. In such a case, those activities shall be subject to the common legislation applicable to private individuals without prejudice to exceptions that may be established for well-founded motives by the law, which must equally be adopted by a qualified quorum;

22. The prohibition of arbitrary discrimination with respect to the treatment that has to be granted by the State and its entities in economic matters.

Only by virtue of a law, and always provided that they do not imply such discrimination, may certain direct or indirect benefits in favor of any sector, activity or geographic zone be authorized or special charges affecting the one or the other be established. In the case of tax exemptions or indirect benefits, the estimated cost of these must be included annually in the Budget Law;

23. Freedom to acquire ownership of all types of goods except those which nature has made the common property of all men or which have to belong to the entire Nation and which are so qualified by the law. The preceding is without prejudice to what is prescribed in other provisions of this Constitution.

When the national interest requires, a law passed by a qualified quorum may establish limitations or requirements for the acquisition of ownership of specific goods;

24. The right of property in its different forms in respect of all classes of material and immaterial property.

Only the law may establish the manner in which property is acquired, used, enjoyed and disposed of, and the limitations and obligations de-

rived from its social function. This includes, to the extent required by the general interests of the Nation, national security, public utility and public health and the conservation of the environmental patrimony.

No one may, in any circumstance, be deprived of his/her property, of the objects concerned or of any of the essential faculties or attributes of ownership except by virtue of a general or special law which authorizes the expropriation for the public benefit or the national interest as duly qualified by the legislator. The person whose property has been expropriated may challenge the legality of the expropriation act before the ordinary courts and shall always have the right to compensation for the material damage effectively caused, which shall be fixed by mutual agreement or by a sentence rendered in accordance with the law by said courts.

In the absence of an agreement the compensation must be paid in cash. The seizure of the expropriated objects shall take place following the total payment of the compensation, which, in the absence of agreement, shall be provisionally determined by evaluators in the manner prescribed by law. In the case of a dispute about the way in which the expropriation has been carried out, the judge may, on the basis of the files presented to him/her, order the suspension of the taking of possession.

The State has the absolute, exclusive, inalienable, and imprescriptible ownership of all mines including metal-rich sands, salt mines, coal and hydrocarbon deposits and other fossil substances with the exception of surface clays, notwithstanding the ownership of natural or legal persons over the lands under whose surface they are situated. The surface lands shall be subject to the obligations and limitations specified by law in order to facilitate the exploration, exploitation and benefits of these mines. The law shall determine which of the substances among those referred to in the preceding paragraph, except liquid or gaseous hydrocarbons, may be the object of exploration or exploitation concessions. Such concessions shall always be conferred by judicial resolution and shall last for the period [specified], shall confer the rights and impose the obligations prescribed by a law which shall have the character of organic constitutional law. The mining concession obliges the owner to carry out the necessary activities in order to satisfy the public interest which justifies its granting. Its protection regime shall be established by said law which shall seek, by direct or indirect means, to secure the fulfillment of this obligation and shall contemplate grounds of expiry or of simple termination of the

ownership of the concession in the case of non-fulfillment. In every case such grounds and their effects must be established at the moment of the granting of the concession.

The ordinary courts of justice shall have the exclusive jurisdiction to declare the termination of such concessions. They shall settle the controversies that arise with respect to [the] expiry or termination of the ownership of the concession, in the case of expiry, the party affected may request from the courts of justice a declaration on the continued existence of his/her rights.

The ownership of the person holding title in respect of his/her mining concession shall be protected by the constitutional guarantee dealt with in this numeral.

The exploration, exploitation or the beneficial use of deposits which contain substances that are not subject to concession may be carried out directly by the State or by its companies, or by means of administrative concessions or special operation contracts, in accordance with the requirements and in the conditions which the President of the Republic determines for each case by supreme decree. This provision shall also apply to any species existing in maritime waters subject to the national jurisdiction and those located, wholly or in part, in zones that, in conformity with the law, are qualified as being essential to national security. The President of the Republic may at any time, without giving reasons and with the corresponding compensation, terminate administrative concessions or operation contracts relating to exploitation measures in zones which have been declared essential to national security.

The rights of the individuals over the waters, recognized or established in conformity with the law, conferred the former ownership of the latter;

25. The freedom to create and disseminate works of art, as well as the rights of the author in respect of his/her intellectual and artistic creations of any kind, for a period prescribed by law and which shall not be shorter than the life of the owner.

The rights of the author are understood to include the ownership of the works and other rights such as authorship, the edition and the integrity of the work, all this in conformity with the law.

Also, industrial ownership of invention patents, trademarks, models, technological processes or other analogous creations is guaranteed for the period established by law.

The conditions set forth in the second, third, fourth and fifth paragraphs of the preceding numeral are applicable to the ownership of intellectual and artistic creations and industrial ownership; and

26. The certainty that the legal provisions which by mandate of the Constitution regulate or complement the guarantees established therein or which limit them in the cases authorized by the Constitution may not affect the rights in their essence nor impose conditions, taxes or requirements which impede their free exercise.

Article 20

Anybody who, due to arbitrary or illegal actions or omissions, suffers privation, disturbance or threats in the legitimate exercise of the rights and guarantees established in Article 19, numerals 1, 2, 3 of the fourth paragraph, 4, 5, 6, 9 of the final paragraph, 11, 12, 13, 15, 16 relative to freedom of work and to freedom of choice and freedom of contract, and to what is established in the fourth paragraph, 19, 21, 22, 23, 24 and 25 may on his/her own or by third party approach the respective Court of Appeal which shall immediately adopt the measures that it deems necessary to re-establish the rule of law and to ensure the due protection of the affected person without prejudice to other rights which he/she might invoke before the competent authorities or courts.

The action of for the protection of fundamental rights shall always be in the case of numeral 8 of Article 19, when the right to live in an environment free from contamination has been affected by an illegal act or omission imputable to an authority or specific person.

Article 21

Every individual who is arrested, detained or imprisoned in contravention of the Constitution or the laws may appeal on his/her own or through a third party to the magistrate prescribed by law, for the result of the magistrate ordering compliance with the legal formalities and adopting without delay the judgment necessary to re-establish the rule of law and to assure the due protection of the affected person.

The magistrate may order that the individual be tried in his/her presence and everyone in charge of the jails or places of detention shall scrupulously

observe this decree. After having examined the files, the magistrate shall decree the individual's immediate release or shall rectify the legal defects [of the detention order] or may put the individual at the disposal of a competent judge, always proceeding in a brief and summary manner, and correcting on his/her own such defects or informing the person competent for their correction thereof.

The same remedy, in the same manner, may be granted in favor of every person who unlawfully suffers any other deprivation, infringement or threat with regard to his/her right to personal freedom and individual security. The respective judicial authority shall dictate in such a case the measures indicated in the aforementioned paragraph which it deems conducive to the re-establishment of the rule of law and the due protection of the affected individual.

Article 22

Every inhabitant of the Republic must respect Chile and its national emblems.

Chileans have the fundamental duty to honor their fatherland, to defend its sovereignty and contribute to the preservation of national security and of the essential values of the Chilean tradition.

Military service and other personal charges imposed by law are mandatory in terms and forms established by it.

The Chilean state to bear arms shall be inscribed in Military Records, if they are not legally excepted.

Article 23

Intermediate groups of the community and their leaders who abuse the autonomy which the Constitution accords to them, by taking part in activities alien to their specific objectives, shall be sanctioned in conformity with the law. The leadership positions in trade unions shall be incompatible with leadership functions, at the national and regional level, in political parties.

The law shall establish the sanctions to be applied to union leaders who intervene in partisan political activities and to the leaders of the political parties

who interfere in the operation of union organizations and other intermediate groups that the relevant law specifies.

Chapter IV

GOVERNMENT

President of the Republic

Article 24

The government and the administration of the State are vested in the President of the Republic, who is the Head of State.

His authority extends to all matters related to the conservation of the public order in the domestic sphere and the external security of the Republic in accordance with the Constitution and the laws.

On May 21 of each year, the President of the Republic shall give before Congress in plenary session an account to the country of the administrative and political state of the Nation.

Article 25

In order to be elected President of the Republic it is necessary to possess Chilean nationality in accordance with the provisions of numerals 1 or 2 of Article 10; to have attained thirty-five (35) years of age and possess the other qualities necessary in order to be a citizen with the right to vote.

The President of the Republic shall hold office for a term of four (4) years and may not be re-elected for the following period.

The President of the Republic may not leave the national territory for more than thirty (30) days nor do so in the last ninety (90) days of his/her term without the consent of the Senate.

In any case, the President of the Republic shall communicate with due notice in advance to the Senate his/her decision to leave the territory and the reasons which justify it.

Article 26

The President of the Republic shall be elected by direct ballot and by an absolute majority of the votes validly cast. The election shall be held jointly with that of the members of Parliament, in the manner determined by the respective organic constitutional law, ninety (90) days before the end of the administration that is in office.

If, in the Presidential election, more than two (2) candidates are presented and neither of them has obtained more than half of the votes validly cast, then a second round of voting shall be held which will be restricted to the candidates having obtained the two (2) highest number of votes and in this round the candidate shall be elected who obtains the highest number of votes. This new election shall be held in accordance with the law on the thirtieth (30th) day after the first election if this day falls on a Sunday. If it does not so fall, then it shall be held on the Sunday immediately following the thirtieth (30th) day.

With regard to the two preceding paragraphs, blank votes and those which are null and void shall be considered to have never been cast.

In case of the death of one or both candidates referred to in paragraph 2, the President of the Republic shall convene a new election within a period of thirty (30) days, starting with the day of the death. The election shall be held on the Sunday which is closest to the ninetieth (90th) day following the convening of the elections.

If the term of the President of the Republic in office expires before the inauguration of the President who is elected in accordance with the preceding paragraph, the provision contained in paragraph 1 of Article 28 shall apply, as far as it is pertinent.

Article 27

The process of qualification for the Presidential election must be concluded within fifteen (15) days following the first or second election, whichever is applicable.

The Elections Tribunal shall immediately notify the President of the Senate of the proclamation of the elected President.

The Plenary Congress shall convene a public session ninety (90) days after the first and only round of voting and, with the members in attendance, shall take note of the resolution by virtue of which the Elections Tribunal proclaims the President-elect.

On the same occasion, the President-elect shall take before the President of the Senate the oath or the promise to faithfully carry out his/her Presidential duties, preserve the independence of the Nation, comply and ensure compliance with the Constitution and the laws, and shall take office immediately afterwards.

Article 28

If the President-elect is impeded from taking office, [the office] is taken over, with the title of Vice-President of the Republic, by the President of the Senate; in his/her absence, by the President of the Chamber of Deputies and, in the absence of the latter, by the President of the Supreme Court.

However, if the impediment of the President-elect is absolute or continues indefinitely, the Vice-President, within the ten (10) days following Senate approval adopted in conformity with Article 53, numeral 7, shall expedite the appropriate orders in order to proceed with a new election within a period of sixty (60) days in the manner prescribed by the Constitution and the Electoral Law. The President of the Republic elected in this procedure assumes his/her functions on the occasion indicated by that law, and shall stay in office until the day which corresponds with the end of the term of the President-elect who could not assume his/her office and whose impediment has motivated the new election.

Article 29

If the President of the Republic, whether it be for sickness, absence from the territory or another serious reason, is temporarily prevented from discharging the duties of office, he/she shall be replaced, with the title of Vice-President, by the Minister who, in accordance with the rules of protocol, is next in one. In his/her absence, the President is replaced by the Minister who is next on the list and, in the absence of all of them, in successive order by the President of the Senate, the President of the Chamber of Deputies and the President of the Supreme Court.

In case of the vacancy of the office of President of the Republic, the replacement is provided in the same manner as in the cases referred to in the preceding paragraph, and a successor is elected in accordance with the rules stipulated in the following paragraphs.

If the vacancy occurs less than two (2) years before the next general parliamentary election, the President shall be elected by the Plenary Congress with the absolute majority of the senators and deputies in office. The election by Congress shall take place within ten (10) days following the date of the vacancy, and the elected individual shall assume his/her duties within the following thirty (30) days.

If the vacancy occurs two (2) or more years from the next general parliamentary election, the Vice-President, within the first ten (10) days of his/her term, shall convene the citizens for a presidential election on the sixtieth (60th) day after the convocation order has been issued. The President who is elected shall assume his/her duties on the tenth (10th) day after his/her proclamation.

The President who has been elected in accordance with one of the preceding paragraphs shall stay in office until the end of the term which remained to the person he/she is replacing, and may not stand as a candidate in the following presidential election.

Article 30

The President shall cease his/her functions on the same day on which his/her term ends and shall be succeeded by the recently elected person.

Whoever has performed these duties for a full term shall acquire, immediately and of right, the official capacity of Ex-President of the Republic.

By virtue of this capacity, the provisions of the second, third and fourth paragraphs of Articles 61 and 62 shall apply:

Neither the citizen who occupies the office of President of the Republic by virtue of a vacancy in that office nor the one who has been found guilty in an impeachment procedure brought against him/her acquires the capacity of Ex- President.

The Ex-President of the Republic who assumes any functions paid for by public funds shall not receive, during the period in which he/she discharges these functions, his/her allowances, but shall retain the other privileges attached to him/her. With the exception of teaching jobs and functions of that nature or commissions of higher secondary and special education.

Article 31

The President appointed by the Plenary Congress, or as the case may be, the Vice-President of the Republic shall have all the powers which this Constitution confers upon the President of the Republic.

Article 32

Special powers of the President of the Republic are:

1. To concur in the making of laws in accordance with the Constitution, to sanction them and promulgate them;
2. To request, by indicating the reasons, the convening of any of the branches of the National Congress. In such a case, the session must take place at the shortest possible notice;
3. To dictate, subject to the prior authorization by Congress, decrees with the force of law on the matters determined by the Constitution;
4. To convene a plebiscite in the cases referred to in Article 128;
5. To declare the constitutional state of emergency in the manner and form determined by this Constitution;

6. To exercise the regulatory powers in all those matters which are not of a legal nature without prejudice to the ability to issue other decrees or instructions which he/she deems appropriate for the execution of the laws;
7. To appoint and remove at will Ministers of State, Under-Secretaries, Superintendents and Governors,
8. To appoint ambassadors and diplomatic ministers and representatives to international organizations. These officials, as well as those referred to in the preceding numeral 7, depend exclusively on the confidence of the President of the Republic and shall remain in office as long as they can be counted upon;
9. To nominate the Comptroller-General of the Republic with the agreement of the Senate;
10. To nominate and remove functionaries considered by law to be dependent exclusively on his/her confidence and to fill the other civilian positions in conformity with the law. The removal of other functionaries shall be subject to the provisions that this law determines;
11. To grant pensions, retirements, widows' pensions and *de gratia* pensions, in accordance with the rules of law;
12. To nominate the magistrates and public prosecutors of the Courts of Appeal and the career judges upon the proposition of the Supreme Court and the Courts of Appeal, respectively; the members of the Constitutional Tribunal to be appointed by him/her, and the magistrates and public prosecutors of the Supreme Court as well the National Prosecutor, upon proposition of this Court and with the approval of the Senate in conformity with the provisions of this Constitution;
13. To watch over the ministerial conduct of the judges and other employees of the judiciary and to request from the Supreme Court for this purpose, if necessary, the declaration of misconduct by these persons or of the public ministry that it asks for disciplinary measures from the competent court or, if there is sufficient merit to the case, that it files the relevant accusation;
14. To grant individual reprieve in the cases and manner determined by law. The reprieve shall be inappropriate in the absence of a final judgment in the respective process. Functionaries impeached by the Chamber of Deputies and condemned by the Senate may only be pardoned by Congress;
15. To conduct political relations with foreign powers and international organizations, and to carry out negotiations; to conclude, sign and ratify

treaties deemed beneficial to the interest of the country, which must be submitted to the approval of Congress in conformity with Article 54, numeral 1. The discussions and deliberations of these matters shall be secret if the President of the Republic so requests;

16. To appoint and remove Commanders-in-Chief of the Army, Navy, Air Force and the Director-General of the Armed Police in conformity with Article 104, and to make arrangements for the appointment, promotion and retirement of officers of the Armed Forces and the Armed Police in the manner prescribed in Article 105;
17. To command the air, sea and land forces and to organize and deploy them in accordance with national security needs;
18. To assume, in case of war, the supreme command of the Armed Forces;
19. To declare war, after authorization by law and after having heard the National Security Council; and
20. To oversee the collection of public revenue and decree its expenditure in accordance with the law. The President of the Republic, with the signatures of all the Ministers of the State, may decree payments not authorized by law in order to meet needs which cannot be postponed, resulting from public calamities, foreign aggression, internal unrest, a serious danger or detriment to national security or the exhaustion of resources designed for the maintenance of services which cannot be interrupted without causing serious damage to the country. The total investment made towards such objectives shall not exceed two percent (2%) of the cumulated expenses authorized by the Budget Law. The hiring of employees charged to this law is permitted but this item may not be increased nor diminished by transfers. The Ministers of State or officers who authorize or approve expenditures that contravene the provisions of this numeral shall be jointly and personally responsible for the reimbursement thereof and guilty of the crime of embezzlement of public funds.

Ministers of State

Article 33

The Ministers of the State are the direct and immediate collaborators of the President of the Republic in the government and administration of the State.

The law shall determine the number and organization of the Ministers as well as the order of precedence of the incumbent Ministers.

The President of the Republic may entrust one or more Ministers with the coordination of the work to be performed by the Secretaries of State and the relations of the Government with the National Congress.

Article 34

In order to be nominated as a Minister, one must be Chilean, have attained twenty-one (21) years of age and meet the general requisites for entering Public Administration.

In cases of absence, impediment or resignation of a Minister or when for another reason a vacancy occurs, he/she shall be replaced in the manner established by law.

Article 35

The regulations and decrees of the President of the Republic must be signed by the respective Minister and shall not be enforced without this essential requirement.

Decrees and instructions may be issued with the sole signature of the respective Minister by order of the President of the Republic, in conformity with the rules as established by law.

Article 36

The Ministers shall be individually responsible for the acts which they sign and jointly responsible for acts which they sign or agree upon with other Ministers.

Article 37

Ministers may, when they deem it appropriate, attend sessions of the Chamber of Deputies or of the Senate and take part in their debates, having a preferential right to speak, but without the right to vote. During the vote they

may, however, rectify the concepts put forward by a deputy or senator in order to justify his/her vote.

Without prejudice to the foregoing, the Ministers have to personally take part in the special sessions which are convened by the Chamber of Deputies or Senators in order to inform themselves on matters falling within the sphere of competences of the respective Secretaries of State which they agree to discuss.

Article 37 bis

For the Ministers will be applicable incompatibilities established in the first paragraph of Article 58. For the single accepting the appointment, the Minister shall cease to hold office, employment, function or commission incompatible to play.

During the year from office, the Ministers subject to the ban on contracts or bail with the State, acting as lawyers or attorneys in any kind of trial or as attorney or agent in particular negotiations of the administration, be director of banks or of any corporation and holding office similar importance in these activities.

General Bases for the State Administration

Article 38

An organic constitutional law shall determine the basic organization of the Public Administration; guarantee the career of civil servants and the principles of a technical and professional character on which it must be based, and ensure the equality of opportunity for entering it as well as the training and the improvement of the skills of its officers.

Any person whose right may have been adversely affected by the Administration of the State, its organs or the municipalities, may appeal to the courts determined by law, without prejudice to the liability which might be incurred by the officer who has caused the harm.

States of Constitutional Exception

Article 39

The exercise of the rights and guarantees that the Constitution offers to all persons may only be affected in the following situations of exception: foreign or internal war, internal disturbances, emergency and public calamity, when they gravely affect the normal functioning of the institutions of the State.

Article 40

The state of assembly, in the case of a foreign war, and the state of siege, in the case of internal war or grave internal disturbances, shall be declared by the President of the Republic with the approval of the National Congress. The declaration must determine the zones affected by the respective state of exception.

Within a period of five (5) days from the submission of the declaration of the state of assembly or siege for its consideration by the President of the Republic, the National Congress must make the decision either to accept or to reject the proposal, without having the possibility to amend it. If the Congress does not make a decision within this period, the proposal of the President is deemed to have been accepted.

However, the President of the Republic may implement the state of assembly or siege immediately while the Congress ponders its decision on the declaration, but in the latter state [of exception], may only restrict the exercise of the right to assemble. The measures adopted by the President while the National Congress is not in session are subject to revision by the courts of law, without the provisions in Article 45 being applicable, however.

The declaration of the state of siege may only be made for a period of fifteen (15) days, although the President of the Republic may request its extension. The state of assembly remains in force as long as the situation of foreign war lasts, unless the President of the Republic decides to suspend it on an earlier date.

Article 41

The state of catastrophe, in the case of a public calamity, shall be declared by the President of the Republic who determines the zone affected by it.

The President of the Republic is obliged to inform the National Congress about the measures which have been adopted with regard to the state of catastrophe. The National Congress may render the declaration ineffective one hundred and eighty (180) days after it has been made if the reasons for it have disappeared completely. However, the President of the Republic may declare the state of catastrophe for a period exceeding one (1) year only with the approval of the National Congress. The approval is granted in the manner established in the second paragraph of Article 40.

After the state of catastrophe has been declared, the respective zones remain under the direct control of the Chief of National Defense appointed by the President of the Republic. He/she assumes the direction and control in his/her jurisdiction with the rights and duties defined by the law.

Article 42

The state of emergency, in the case of a grave alteration of the public order or grave damage to the security of the Nation, shall be declared by the President of the Republic who determines the zones affected by those circumstances. The state of emergency may not last longer than fifteen (15) days, although the President of the Republic may extend it for the same period. However, for successive extensions the President of the Republic always needs the approval of the National Congress. The approval is granted in the manner established in the second paragraph of Article 40.

After the state of emergency has been declared, the respective zones remain under the direct control of the Chief of National Defense appointed by the President of the Republic. He/she assumes the direction and control in his/her jurisdiction with the rights and duties defined by the law.

The President of the Republic is obliged to inform the National Congress about the measures which have been adopted with regard to the state of emergency.

Article 43

By virtue of the declaration of the state of assembly, the President of the Republic is authorized to suspend or restrict personal liberty, the right to assembly and freedom to work. He/she may also restrict the exercise of the right of association, intercept, open or register documents and any type of communications, order the requisition of goods and establish limitations on the exercise of the right to property.

By virtue of the declaration of the state of siege, the President of the Republic may restrict the free movement of persons and arrest people in their own homes or in places determined by the law that are neither jail nor intended to be used for the detention or imprisonment of common criminals. He/she may, in addition, suspend or restrict the right of assembly.

By virtue of the declaration of the state of catastrophe, the President of the Republic may restrict the free movement of persons and the freedom of assembly. He/she may also order the requisition of goods, establish limitations on the exercise of the right to property and adopt all exceptional measures of an administrative character which are necessary for a quick return to normality in the affected zone.

By virtue of the declaration of emergency, the President of the Republic may restrict the free movement of persons and the freedom of assembly.

Article 44

A constitutional organic law shall regulate the states of exception as well as their declaration and the implementation of the legal and administrative measures made necessary by them. This law shall contemplate what is strictly necessary for a quick return to constitutional normality and may not affect the competences and the functioning of the constitutional organs nor the rights and immunities of the respective office holders.

The measures which are taken during the states of exception may in no case extend beyond their duration.

Article 45

The courts of law may question neither the justification nor the facts upon which the authority bases its decisions to decree the states of exception, the provision in Article 39 notwithstanding. This does not exclude, however, that the specific measures which affect constitutional rights can always be challenged before the judicial authorities with the appropriate remedies.

The requisitions which are carried out give rise to compensation in accordance with the law. The right to compensation is also triggered by limitations imposed on the right to property when they entail the deprivation of any of the essential qualities or faculties attached to it and thereby cause damage.

Chapter V

NATIONAL CONGRESS

Article 46

The National Congress consists of two (2) branches: the Chamber of Deputies and the Senate. Both concur in the formation of laws in conformity with this Constitution and have the other powers established therein.

Composition and Establishment of the Chamber of Deputies and Senate

Article 47

The Chamber of Deputies is composed of one hundred and twenty (120) members elected by direct ballot in the electoral district established by the respective organic constitutional law.

The Chamber of Deputies shall be totally renewed every four (4) years.

Article 48

In order to be elected, representatives must be Chilean citizens with the right to vote, have attained twenty-one (21) years of age, have received secondary education or its equivalent and have resided in the region of the pertinent electoral district for a period of no less than two years prior to the date of the election.

Article 49

The Senate shall be composed of members elected by direct ballot in senatorial constituencies, with regard to the regions of the countries. The respective constitutional organic law shall determine the number of the senators, the senatorial constituencies and the manner of their election.

The senators shall remain in office for eight (8) years, and shall be partially renewed every four (4) years, the renewal taking place in one period with regard to the representatives of odd-numbered regions and in the following period with regard to the representatives of even-numbered regions and the Metropolitan Area.

Article 50

In order to be elected Senator, one needs to be a [Chilean] citizen with the right to vote, to have completed secondary education or the equivalent and attained thirty-five (35) years of age on the day of the election.

Article 51

It shall be understood that deputies have, by the sole operation of the law, their residence in the corresponding region while they are in the exercise of their charge.

The elections of the deputies and of the senators shall be held jointly. Parliamentarians may be re-elected to their offices.

The vacant seats of deputies and those of senators shall be filled with the citizen nominated by the political party to which the parliamentarian whose seat has become vacant belonged when he/she was elected.

The parliamentarians who have been elected as independents shall not be replaced.

The parliamentarians elected as independents who as candidates had joined the list of one or more political parties shall be replaced by the citizen who is nominated by the party which the respective parliamentarian had named at the time he/she presented his/her candidacy.

The replacement candidate must meet the requirements for being elected deputy or Senator, as the case may be. However, a deputy may be appointed to fill the post of Senator; in this case, the provisions of the preceding paragraphs must apply in order to fill the vacant seat left by the deputy who ceases his/her former functions [of deputy] on assuming his/her new office [of Senator].

The new deputy or Senator shall exercise his/her functions for the rest of the term which was left to the person who caused the vacancy.

In no case shall complementary elections be held.

Exclusive Powers of the Chamber of Deputies

Article 52

The exclusive powers of the Chamber of Deputies are:

1. To oversee the acts of the Government. In order to exercise this power, the Chamber may:
 - a) With the vote of the majority of deputies present, adopt resolutions or submit observations which shall be transmitted in writing to the President of the Republic who must give a reasoned reply, through the competent Minister of State, within thirty (30) days.
Without prejudice to the foregoing, any deputy may, with the favorable vote of one-third (1/3) of the Chamber members present, request specific documents from the Government. The President of the Republic shall give a reasoned reply, through the competent Minister of State, within the delay specified in the preceding paragraph.

In no case shall the resolutions, observations or requests of documents affect the political responsibility of the Ministers of State;

- b) Summon a Minister of State, upon the application of at least one- third (1/3) of the deputies in office, in order to question him/her on matters related to the exercise of his/her functions. However, the same Minister may not be summoned for this purpose more than three (3) times in a calendar year without a prior decision by an absolute majority of the deputies in office.

The presence of the Minister is compulsory; he/she must answer the questions and requests which have motivated his/her summons; and

- c) Establish special investigation committees upon the application of at least two-fifths (2/5) of the deputies in office, with the objective to collect information in relation to specific Government actions.

The investigation committees may, upon application of one-third (1/3) of its members, issue summons and request documents. The Ministers of State, the other officials of the Administration and the staff of the companies run by the Government or of those in which the State holds majority shares, who are summoned by these committees, shall be obliged to appear before them and to deliver the documents and the information which have been requested from them.

Nevertheless, the Ministers of State may not be summoned more than three (3) times before the same investigation committee without prior decision by an absolute majority of its members.

The constitutional organic law of the National Congress shall regulate the functioning and the powers of the investigation committees and the way in which the rights of the persons which they summon or deal with are protected.

- 2. To declare whether or not accusations made by no less than ten (10) or more than twenty (20) of its members against the following persons have merit:

- a) The President of the Republic, for acts of his/her administration which have gravely compromised the honor and the security of the Nation, or have openly violated the Constitution or the laws. This accusation may be filed while the President is in office and within six (6) months following the expiration of his/her term. During the latter period he/she may not leave the Republic without the approval of the Chamber;

- b) Ministers of State, for actions which may have gravely compromised the honor and security of the Nation, for violating the Constitution or the laws or for not having executed the laws and for the crimes of treason, blackmail, embezzlement of public funds and bribery;
- c) Magistrates of the higher courts of justice and the Comptroller General of the Republic for genuine neglect of their duties;
- d) Generals or admirals of the institutions belonging to the Forces of National Defense for having gravely compromised the honor or the security of the Nation; and
- e) Superintendents and governors for breach of the Constitution and crimes of treason, sedition, embezzlement of public funds and blackmail.

The accusation shall be processed in conformity with the organic constitutional law relative to Congress.

The accusations referred to in letters b), c), d) and e) may be filed while the affected person is in office or in the three (3) months following the expiration of his/her term. Upon filing the accusation, the affected person may not leave the country without the permission of the Chamber, and he/she may not do so in any case if the accusation should have been already approved.

The vote of the majority of the deputies in office is necessary in order to declare whether the accusation brought against the President of the Republic is or is not acceptable.

In the other instances, the majority of the deputies present shall be required and the accused shall be suspended in the performance of his/her functions from the time the Chamber declares that the accusation has merit. The suspension shall cease to be effective if the Senate rejects the accusation or if it does not make a pronouncement within the following thirty (30) days.

Exclusive Powers of the Senate

Article 53

The exclusive powers of the Senate are:

1. To decide on the accusations submitted to it by the Chamber of Deputies in accordance with the preceding article.

The Senate shall act as jury and shall be limited to declare whether or not the accused is guilty of the offense, infraction or abuse of power imputed to him.

The declaration of guilt must be pronounced by two-thirds (2/3) of the senators in office when the accusation is brought against the President of the Republic, and by the majority of the senators in office in other cases. By the declaration of guilt, the accused shall be dismissed from his/her position and may not perform any public function, whether elective or not, until five (5) years have passed.

The official declared guilty shall be judged in accordance with the laws by a competent court in order to apply the penalty attached to the crime, if any, as well as in order to establish civil liability for the harm and damage caused to the State or to private individuals;

2. To decide on the admissibility of judicial actions which any individual might bring against any Minister of State for damages unjustly suffered as a result of the actions of a Minister of State while performing his/her duties;
3. To decide on jurisdictional disputes which arise between political or administrative authorities and the higher courts of justice;
4. To grant the restoration of the citizenship in the case of Article 17, numeral 3 of this Constitution;
5. To lend or deny its consent to actions of the President of the Republic in cases required by the Constitution and law.

If the Senate does not make a pronouncement within thirty (30) days after the request of urgency by the President of the Republic, it shall be deemed that its assent has been granted;

6. To grant its approval so that the President of the Republic can leave the country for more than thirty (30) days or within the last ninety (90) days of his/her term;

7. To declare the incapacity of the President of the Republic or of the President-elect when a physical or mental impediment prevents him from exercising his/her duties; and equally to declare when the President of the Republic resigns from his/her office whether or not the grounds that have caused the resignation are well founded and consequently to accept or reject the resignation. In both cases it must previously hear the Constitutional Tribunal;
8. To approve, by the majority of its members in office, the declaration of the Constitutional Tribunal which is referred to in the second part of numeral 10 of Article 93;
9. To approve in a special session convened for this purpose and with the vote of two-thirds (2/3) of the senators in office the appointment of the ministers and the public prosecutors of the Supreme Court and of the National Prosecutor; and
10. Give the opinion to the President of the Republic where that its request. The Senate, its commissions and other organs thereof including the parliamentary committees, if they have them, may not control the actions of the Government or of its independent entities or adopt decisions which imply such control.

Exclusive Powers of Congress

Article 54

The powers of Congress are:

1. To approve or reject international treaties which are presented to it by the President of the Republic prior to the ratification thereof. The approval of a treaty shall be subject to the procedures provided by law. The approval of the treaty requires in each Chamber the relevant quorum defined in Article 66 and is subject, so far as it is pertinent, to the procedure governing the adoption of laws.

The President of the Republic informs the Congress about the contents and the scope of the treaty, as well as about the reservations which he/she intends to confirm or to formulate.

Congress may suggest the formulation of reservations or interpretative declarations to an international treaty in the course of the proceedings for

its approval, always provided that these are in conformity with the provisions of the treaty itself and the general rules of international law.

The measures which the President of the Republic adopts or the agreements which he/she concludes in order to fulfill a treaty in force shall not require new approval by Congress, unless they concern matters which have to be dealt with by way of legislation. The treaties concluded by the President of the Republic in the exercise of his/her regulatory powers shall not require the approval of Congress.

The provisions of a treaty may only be derogated, modified or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law.

The power to denounce a treaty or to withdraw from it belongs exclusively to the President of the Republic who shall ask both Chambers of Congress for their view if the treaties in question have been approved by them. When the renunciation or withdrawal becomes effective in accordance with the provisions of the international treaty, the latter ceases to produce effects in the Chilean legal order.

In the case of the denunciation of or withdrawal from a treaty which had been approved by Congress, the President of the Republic must inform the former about it within fifteen (15) days after the denunciation or withdrawal has become effective.

The withdrawal of a reservation, which had been formulated by the President of the Republic and which the National Congress had discussed at the time when it approved the treaty, shall require the approval of the latter, in accordance with the provisions in the respective constitutional organic law. The National Congress must make a decision within thirty (30) days after the reception of the official request asking for its consent. If it does not make a decision within this time period, the withdrawal of the reservation is deemed to have been approved.

In accordance with the provisions of the law, facts related to the international treaty – its entry into force, the formulation and withdrawal of reservations, interpretative declarations, objections to a reservation and its withdrawal, the denunciation of the treaty, the withdrawal from it, its suspension, termination and nullity – shall receive appropriate publicity. In the decision approving an international treaty, Congress may authorize the President of the Republic to dictate, while it is in force, the provisions with the force of law which he/she deems necessary for its comprehensive

- fulfillment, with the consequence, that in such a case the provisions of the second and the following paragraphs of Article 64 are applicable; and
2. To make the decisions for which it is competent with regard to the states of constitutional exception, in the manner prescribed in the second paragraph of Article 40.

Functioning of Congress

Article 55

The National Congress will be installed and start his period sessions in the form determine in its constitutional organic law.

In any case, means convened whenever full right to know the declaration of states of constitutional exception.

The constitutional organic law referred to in the first paragraph shall regulate the proceedings for constitutional impeachments, the assessment of urgency matters in accordance with Article 74 and everything which is related to the internal discussion of the law.

Article 56

The House Deputies and the Senate meeting and may enter adopt resolutions without the concurrence of the third its members in exercise.

Each of the chambers shall at its own closure rules the debate by simple majority.

Common Rules for Deputies and Senators

Article 57

The following persons may not be candidates for deputies or senators:

1. Ministers of State;
2. The superintendent, the governors, mayors, regional directors, the councilors and secretaries;

3. Members of the Board of the Central Bank;
4. Magistrates of the high courts of justice and the ordinary judges;
5. Members of Constitutional Court, of the Elections Court and regional electoral tribunals;
6. The Comptroller-General of the Republic;
7. Persons that are in direct charge of unions or local groups;
8. Individuals and managers or managers of legal persons entered into or guarantee government contracts;
9. The National Prosecutor, regional prosecutors and the Deputy Prosecutors, and
10. The Commanders-in-Chief of the Army, the Navy and the Air Force, the Director-General of the Armed Police (Carabineros), the Director-General of the Investigation Police and the officials of the Armed Forces and the Forces of Public Order and Security.

The ineligibilities established in this article shall apply to those who have had the qualifications or functions previously mentioned within the year immediately preceding the election; with the exception of the persons mentioned in numerals 7) and 8) who do not have to meet these conditions at the time when they register their candidacy, and of those indicated in numeral 9), in respect of which the period of ineligibility will cover the two (2) years immediately preceding the election. If they are not elected, they may not be re-instated in the same position nor appointed to positions similar to those held until one (1) year after the election.

Article 58

The offices of deputies and senators are incompatible with each other and with any employment or commission financed with State funds or by municipalities or autonomous public entities, semi-public or State enterprises or those in which the National Treasury participates with the contribution of capital funds, and with all other functions or commissions of the same nature. Teaching positions and functions or commissions of a like character in higher, intermediate and special education are excepted there from.

Likewise, the duties of deputies and senators are incompatible with the functions of board members or advisors, even when they are of an honorary char-

acter, in autonomous fiscal entities, semi-public or State enterprises, or those companies in which the State holds a share of the capital.

Solely by virtue of the fact of having been proclaimed elected by the Elections Tribunal, the deputy or senator ceases to perform the other incompatible office, employment or commission.

Article 59

No deputy or senator, from the time of his/her proclamation by the Elections Tribunal, may be nominated for an employment, function or commission referred to in the preceding article.

This provision shall not apply in case of a foreign war; nor is it applicable to the offices of President of the Republic, Minister of State and diplomatic agent; only the offices which are bestowed in a state of war are compatible with the functions of deputy or senator.

Article 60

A deputy or senator, who leaves the country for more than thirty (30) days without permission from the Chamber to which he/she belongs, or if in recess, of its President, shall cease to hold office.

A deputy or senator shall cease to hold office if during his/her term he/she concludes or approves contracts with the State, acts as an attorney or agent in any class of lawsuit against the National Treasury, or as a proxy or agent in special proceedings of administrative character or in the public provision of jobs, departments, functions or commissions of a similar nature. The same penalty shall be incurred [by a deputy or senator] who agrees to be the director of a bank or of an anonymous society or occupies a position of similar importance in these activities.

The incapacity referred to in the preceding paragraph shall apply regardless of whether the deputy or senator acts in his/her own name or through a natural or legal person intervening as an intermediary or through an association of which he/she is a part.

A deputy or senator shall cease to hold office if he/she exercises any influence upon the administrative or judicial authorities in favor or on behalf of the employer or the workers in labor negotiations or conflicts, whether of the public or private sector, or intervenes in them on their behalf. The same penalty shall be applied to the parliamentarian who participates or intervenes in student activities, whatever the branch of education, with the goal of hindering their normal development.

Without prejudice to the provisions in the seventh paragraph of numeral 15 of Article 19, a deputy or senator shall likewise cease to hold office if he/she verbally or in writing incites a transformation of the public order or advocates a change of the legal institutional order by means other than those established by the Constitution, or which seriously compromises the security or the honor of the Nation.

Whoever loses the position of deputy or senator for any of the aforementioned grounds shall not be eligible for any function or public employment, whether elective or not, for a period of two (2) years except for the cases mentioned in the seventh paragraph of numeral 15 of Article 19, in which case the penalties contemplated in that provision shall apply.

Likewise, the deputy or senator who, during his/her term of office, loses any general prerequisite for eligibility or realizes any of the causes of ineligibility referred to in Article 57 shall lose his/her office, without prejudice to the exception contemplated in the second paragraph of Article 59 with regard to Ministers of State.

Deputies and senators may renounce their office when they are affected by a grave illness which prevents them from discharging their duties and [the renunciation] is qualified accordingly by the Constitutional Tribunal.

Article 61

Deputies and senators are only inviolable with regard to the opinions they express and the votes they cast in performance of their duties in congressional sessions or committees.

No deputy or senator, from the day of his/her election or from the taking of the oath, as the case may be, may be accused or deprived of his/her freedom

except if he/she is caught in flagrant delicto, unless the Court of Appeals of the respective jurisdiction has previously authorized in plenary session the accusation, declaring that the case has merit. This decision may be appealed before the Supreme Court.

In the case of a deputy or senator who is arrested on charges of a crime committed in flagrant delicto, he/she shall be brought immediately before the respective Court of Appeals with the corresponding summary information. The Court shall then proceed in accordance with the provisions of the aforementioned paragraphs.

From the time it is declared by a firm resolution that the case has merit, the defendant deputy or senator shall be suspended from his/her position and submitted to the competent judge.

Article 62

Deputies and senators shall receive as sole compensation a fee equal to the remuneration of a Minister of State including all the corresponding allowances.

Legislative matters

Article 63

Only the following are legislative matters:

1. Those which, by virtue of the Constitution, must be the object of organic constitutional laws;
2. Those which the Constitution subjects to regulation by law;
3. Those which are subject to codification, whether civil, commercial, procedural, criminal or other;
4. Basic matters relative to the legal regimes of labor, the unions, provisional and social security;
5. Those that govern the awarding of public honors to distinguished servants;
6. Those that modify the form or characteristics of the national emblems;
7. Those that authorize the State, its organs and the municipalities to con-

tract loans designed to finance specific projects. The law must indicate the sources of the funds to which the servicing of the debt will be charged. However, a law passed by a qualified quorum shall be required in order to authorize the invitation of tenders for loans whose maturity date exceeds the duration of the term of the respective presidential period.

The provisions in this numeral shall not apply to the Central Bank;

8. Those that authorize any type of operation which may directly or indirectly compromise the credit or financial responsibility of the State, its organs and the municipalities.

This provision shall not apply to the Central Bank;

9. Those that establish the rules determining which State enterprises and those enterprises in which the State holds a share may contract loans, which in no case could be contracted with the State, its organs or enterprises;
10. Those that establish the disposal rules of government property or of municipalities and their tenancy or concession;
11. The establish or modify the division political and administrative the country;
12. Those that indicate the value, type and name currency and the system weights and measures;
13. Those that establish the air, sea and land forces that must be maintained in time of peace or war and the rules for permitting the entry of foreign troops into the territory of the Republic as well as the departure of national troops from the territory;
14. Other than the Constitution designates as laws proposed exclusive of the President of the Republic;
15. Those that authorizing declaration of war, proposal of the President of the Republic;
16. Those that concede general pardons and amnesties and those fix the general rules to which the exercise of the power of the President of the Republic to grant special pardons or ex gratia pensions must comply.
The laws that grant general pardons and amnesties always require a qualified quorum. However, this quorum shall consist of two-thirds (2/3) of the deputies and senators in office when offenses contemplated in Article 9 are condemned;
17. Those that specify the city in which the President of the Republic must reside, where the National Congress must hold its sessions and where the Supreme Court and the Constitutional Tribunal must operate;

18. Those that establish the procedures bases governing the actions of the public administration;
19. The governing operation of lotteries, racetracks and betting general; and
20. Any other norms of general and compulsory adjudication by the essential foundations of a legal system.

Article 64

The President of the Republic may request authorization from the National Congress in order to issue provisions with the force of law during a period not exceeding more than one (1) year on matters which fall within the domain of the law.

This authorization may not extend to nationality, citizenship, elections or plebiscite, or to matters which are part of the constitutional guarantees or which must be the object of organic constitutional laws or of a qualified quorum.

The authorization may not contain provisions that affect the organization, powers and status of the officials of the Judicial Power, the National Congress, the Constitutional Tribunal or the Comptroller-General of the Republic.

The law that grants the aforementioned authorization shall indicate the specific matters to which the delegation of power refers and may establish or determine the limitations, restrictions and formalities deemed appropriate.

Without prejudice to the provisions of the preceding paragraphs, the President of the Republic remains authorized to fix the consolidated, coordinated and systematized text of the laws when this is convenient for their better execution. In the exercise of this power, he/she may introduce the formal changes which are indispensable, without, in any case, altering the laws true meaning and scope.

The office of the Comptroller-General of the Republic shall register these decrees with force of law and must refuse them when they exceed or contravene this authorization.

The decrees with the force of law shall be submitted, with regard to their publication, validity and legal effects, to the same rules which apply to the [statutory] law.

Formation of Laws

Article 65

Laws may originate in the Chamber of Deputies or in the Senate by a message sent by the President of the Republic or by a motion from any of its members. The motions may not be signed by more than ten (10) deputies or by more than five (5) senators.

The laws on taxes, whatever their nature, on the budgets of the Public Administration and on the final accounts may originate in the Chamber of Deputies.

Laws on amnesty and general pardon may only originate in the Senate.

The President of the Republic has the exclusive initiative for legal projects related to the alteration of the political or administrative division of the country or to the financial or budgetary administration of the State, including the amendments to the Budget Law and to the matters specified in numerals 10 and 13 of Article 63.

Likewise, the President of the Republic shall also have the exclusive initiative for:

1. Imposing, suppressing, reducing or approving taxes of any type or nature, establishing exemptions or amending those in existence, and determining their form, proportionality or progression;
2. Creating new public services or remunerated jobs, whether they have a fiscal, semi-fiscal or autonomous character or the character of a State enterprise; suppressing them and determining their functions or attributes;
3. Contracting loans or carrying out any other operations that may compromise the credit or the financial responsibility of the State, of the semi-fiscal entities, autonomous agencies, of the regional governments or of the municipalities, and approving, reducing or amending obligations, interest, and other financial burdens of any nature established on behalf of the National Treasury or of the central organs or entities;
4. Fixing, modifying, granting or increasing wages, retirement payments,

pensions, widows' pensions, rents and any other type of payments, loans or benefits to persons in service or in retirement and to the beneficiaries of the widows' and orphans' allowance of the Public Administration and of the other organizations and entities previously mentioned, as well as the fixing of minimum wages for workers of the private sector, the mandatory increase of their salaries and other economic benefits or the alteration of the bases which serve to determine them; all of this without prejudice to the provisions in the following numerals;

5. Establishing the norms and procedures of collective bargaining and determining the cases where bargaining is not allowed; and
6. Establishing or amending the rules on or regarding social security of both the public and the private sector.

The National Congress may only accept, reduce or reject the services, employments, payments, loans, benefits, expenditures and other initiatives on the matter that the President of the Republic proposes.

Article 66

The legal rules which interpret constitutional provisions require – for their approval, modification or derogation – the vote of three-fifths (3/5) of the deputies and senators in office.

The legal provisions upon which the Constitution confers the character of an organic constitutional law require – for their approval, modification or derogation – the vote of four-sevenths (4/7) of the deputies and senators in office.

The legal provisions requiring a qualified quorum shall be enacted, modified or derogated by an absolute majority of the deputies and senators in office.

The other legal rules shall require the majority of the members present of each Chamber or the majorities applicable in accordance with Article 68 and [the articles] thereafter.

Article 67

The draft of the Budget Law must be presented by the President of the Republic to the National Congress at least three (3) months prior to the date

on which it must start to be effective; and if the Congress does not pass it within sixty (60) days from the date of its submission, the draft submitted by the President of the Republic shall become effective.

The National Congress may not increase nor diminish the estimation of revenues; it may only reduce the expenditures contained in the draft of the Budget Law, except those established by permanent law.

The estimation of the revenue generated by the resources stated in the Budget Law and by the new ones established by any other legislative initiative rests exclusively with the President, after previous information of the respective technical entities.

Congress may not approve any new expenditure by charging them to the funds of the Nation without indicating at the same time the sources of revenue needed in order to meet such expenditure.

If the source of revenue granted by Congress is insufficient to finance any new expenditure that is approved, the President of the Republic, upon promulgating the law, subject to prior favorable information by the service or institution through which the new revenue is collected, as authenticated by the Comptroller-General of the Republic, must proportionally reduce all expenses, whatever their nature.

Article 68

A bill which has been rejected in the Chamber of origin may not be reintroduced until after one (1) year. However, in the case of a bill of his/her initiative, the President of the Republic may request that the message be sent to the other Chamber; if the latter generally approves it by two-thirds (2/3) of the members present, it shall be returned to the Chamber of origin and may only be considered as failed if this Chamber rejects it with the vote of two-thirds (2/3) of its members present.

Article 69

Every bill may be subject to amendments or corrections in the course of its consideration in the Chamber of Deputies as well as in the Senate; but in no

case shall those [amendments or corrections] that do not have a direct connection with the central or fundamental ideas of the draft law be admitted.

A draft law that has been approved in the Chamber of origin shall immediately pass to the other Chamber for discussion.

Article 70

A bill which has been totally rejected by the reviewing Chamber shall be considered by a mixed commission of an equal number of deputies and senators, which shall propose the manner and form of solving the difficulties. The bill drafted by the mixed commission shall be returned to the Chamber of origin and in order to be approved, both in this and in the reviewing Chamber shall require the majority of the members present in each. If the mixed commission does not reach an agreement or if the Chamber of origin rejects the bill of the commission, the President of the Republic may request the Chamber to decide whether it persists with two-thirds ($\frac{2}{3}$) of its members present with the bill which it has approved in the first reading. If the Chamber persists, the bill will be transmitted for the second time to the Chamber which dismissed it and it shall only be deemed to have been rejected if two-thirds ($\frac{2}{3}$) of its members present concur to this effect.

Article 71

A bill which has been subject to additions or amendments by the reviewing Chamber shall be returned to the Chamber of origin and the additions or amendments are deemed to have been approved with the vote of the majority of the members present of the Chamber of origin.

If the additions or amendments are rejected, a mixed commission shall be formed and shall proceed in the same manner as indicated in the previous article. In case the mixed commission does not reach an agreement in order to resolve the differences between both Chambers, or if any of the Chambers rejects the proposition of the mixed commission, the President of the Republic may request that the Chamber of origin consider anew the bill approved in the second reading by the reviewing Chamber. If the Chamber of origin rejects the additions or amendments by two-thirds (%) of its members present, there shall be no law in this part or in its totality, but, if the majority for

the rejection was less than two-thirds (%), the bill will pass to the reviewing Chamber and shall be deemed to have been approved with the vote of two-thirds (%) of the members of the latter present.

Article 72

Approved a project by both Cameras will be sent the President of the Republic, who, if also approves, arrange for its enactment into law.

Article 73

If the President of the Republic disapproves of the bill, it shall be returned to the Chamber of origin with the appropriate observations within a period of thirty (30) days.

In no case shall observations be admitted which do not have a direct relation with the central or fundamental ideas of the bill, unless they had been considered in the respective message.

If the two Chambers reject all or some of the observations, and persist with two-thirds (%) of their members present with the whole or part of the draft approved by them, it shall be returned to the President for its promulgation.

If the two Houses reject all or some of observations and insist, by two thirds of its members present in all or part of the project approved by them, returned to the President for enactment.

Article 74

The President of the Republic may invoke the urgency of a project when presenting it, in one or in all of its readings and in such a case the respective Chamber must make its decision within a maximum period of thirty (30) days.

The qualification of a project as urgent by the President of the Republic is in accordance with the organic constitutional law relating to Congress, which also determines everything in relation with the internal discussion of the law.

Article 75

If the President of the Republic does not return the bill within thirty (30) days, starting with the date of its transmission [by Congress], it is deemed to have been approved by him/her and shall be promulgated as law.

The promulgation shall always be made within a period of ten (10) days, counted from the date of its origin.

The publication shall occur within five (5) working days following the date on which the proceedings of the promulgation decree have been completed.

Chapter VI

JUDICIAL POWER

Article 76

The right to hear civil and criminal cases, to resolve them and to have the judgment enforced is vested exclusively in the courts established by law. Neither the President of the Republic nor the Congress may, in any case, exercise judicial functions, advocate pending causes, revise the grounds for or contents of their decisions or reopen closed proceedings.

If [the court's] intervention is requested in a legal manner and in matters falling within their competence, they may not refuse to exercise their power, not even for the lack of legal provisions which resolve the dispute or case submitted for their decision.

In order to execute their resolutions and to carry out or to have carried out the acts of instructions determined by law, the ordinary and the special courts of justice comprising the Judiciary may issue direct orders to the public authority or use the appropriate means of action at their disposal. The other courts shall do it in the manner determined by law.

The requested authority shall comply without further proceedings with the judicial order, and may not question its justification or appropriateness, nor the equity or legality of the decision to be executed.

Article 77

An organic constitutional law shall determine the organization and competences of the courts which are necessary for the prompt and effective administration of justice in the whole territory of the Republic. The same law shall specify the qualities that the judges must have and the number of years that the persons appointed as court members or career judges must have practiced as lawyers, respectively.

The organic constitutional law relating to the organization and the competences of the courts can only be amended after the Supreme Court has been previously heard in accordance with the provisions of the respective organic constitutional law.

The Supreme Court must issue an opinion within thirty (30) days from the reception of the communication in which it was requested.

However, if the President of the Republic has invoked the urgency procedure in respect of his bill in question, he/she shall communicate this circumstance to the Court.

In such a case, the Court must proceed with the consultation within the period implied by the respective urgency.

If the Supreme Court does not give its opinion within the stated period, the proceedings shall be vacated.

The organic constitutional law of the organization and powers of the courts and procedural laws that regulated the prosecution system may set different dates for entry into force in the various regions of the national territory.

Subject the foregoing, the term for the entry into force of such laws in all the country can not be over four years.

Article 78

With regard to the appointment of judges, the law shall conform to the following general rules:

The Supreme Court shall be composed of twenty-one (21) justices.

The justices and prosecutors of the Supreme Court shall be nominated by the President of the Republic, picking them from a list of five (5) persons who shall be proposed in each case by the Court, and with the approval of the Senate. The latter will adopt the relevant decisions with two-thirds (2/3) of its members in office in a special session convened for that purpose. If the Senate does not approve the proposal of the President of the Republic, the Supreme Court must complement the list of five (5) candidates, proposing a new name in substitution for the rejected one, repeating the proceedings until a name is approved.

Five (5) of the members of the Supreme Court must be lawyers outside the administration of justice, have at least fifteen (15) years of professional experience, be detached from professional or university activity and fulfill the other prerequisites which the respective organic constitutional law provides.

When a post reserved for a member coming from the Judicial Power has to be filled, the Supreme Court will include in the list exclusively members of the latter, and one place of the list has to be occupied by the oldest member of the Court of Appeals who appears on the list of merits. The other four (4) places shall be filled based on the merits of the candidates. If a vacant seat reserved for lawyers outside the administration of justice has to be filled, the list shall be formed only following a public competition with lawyers who fulfill the requirements stated in paragraph four.

The justices and prosecutors of the Courts of Appeal shall be appointed by the President of the Republic, on the basis of a proposal containing three (3) names by the Supreme Court.

Career judges shall be appointed by the President of the Republic, upon a proposal containing three (3) names by the Court of Appeals of the respective jurisdiction.

The most senior career judge in civil or criminal cases of the Court, or the most senior civil or criminal judge in the post immediately below that which has to be filled and who appear, on the list of merits and expresses his/her interest in the task shall have a place on the list. The other two (2) places shall be filled with due regard to the merits of the candidates.

The Supreme Court and the Courts of Appeal, as the case may be, shall draw up the five- (5) and three- (3) member lists in a plenary session especially

convened for that purpose by a single vote in which each of its members shall have the right to vote for three (3) or two (2) persons, respectively. Elected are those [candidates] who obtain the five or three (3) highest numbers of votes, respectively. A tie shall be resolved by means of a drawing of lots.

However, in the case of the appointment of members of the [Supreme] Court called upon to serve as replacements, the designation may be made by the Supreme Court and, in the case of judges, by the respective Court of Appeals. These appointments shall not last more than sixty (60) days and are not extendable. In case the high courts referred to above do not use this option or that the replacement period has lapsed, the vacancies shall be filled in the ordinary manner previously described.

Article 79

Judges are personally liable for bribery, failure to observe substantial legal requirements regulating the proceedings, denial and miscarriage of justice, and in general for any misdemeanor in the performance of their functions.

With regard to the members of the Supreme Court, the law shall determine the conditions and the manner for enforcing this responsibility.

Article 80

Judges shall remain in office while in good standing; but lower-court judges shall perform their respective judicial functions for the period determined by law.

Notwithstanding the preceding, judges shall cease their functions upon attaining seventy-five (75) years of age; or by resignation or legal incapacity, or in the case of being removed from their office for a reason which has been subject to a legal sentence. The rule relating to age shall not apply with regard to the President of the Supreme Court who shall continue in office until the end of his/her term.

In any case, the Supreme Court, by request of the President of the Republic, upon application by an interested party or on its own initiative, may declare that the judges have not shown good behavior and, after having heard the defendant and the respective Court of Appeals, as the case may be, may re-

move him/her from office with the absolute majority of its members. These decisions shall be communicated to the President of the Republic for their implementation.

The Supreme Court, in a plenary session especially convened for this purpose and with the absolute majority of its members in office, may authorize and order in a reasoned decision the transfer of judges and other officials and employees of the Judiciary from one post to another of equal rank.

Article 81

Justices of the higher courts, prosecutors and career judges who are members of the Judiciary may not be apprehended without an order from the competent court, except in the case of a crime or offense in flagrant delicto, and only to be immediately put at the disposal of the court which is to try the matter in conformity with the law.

Article 82

The Supreme Court exercises directing, corrective and economic supervision over all the courts of the Nation. Excepted from this rule are the Constitutional Tribunal, the Elections Tribunal and the regional electoral courts.

The higher courts of justice, in using their disciplinary abilities, may only invalidate jurisdictional decisions in the cases and the manner established by the respective organic constitutional law.

Chapter VII

PUBLIC MINISTRY

Article 83

An autonomous, hierarchical organ with the name of Public Ministry shall exclusively direct the investigation of the facts which constitute an offense, establish the facts that determine culpability of the participants and those that prove the innocence of the defendant and, as the case may be, shall bring

the public criminal action in the form provided for by the law. It is equally competent to adopt the measures for the protection of victims and witnesses. In every case it may exercise jurisdictional functions.

The victim of the offense and other people as determined by the law may also bring the criminal action.

The Public Ministry may impart direct orders to the Forces of Order and Security during the investigation. Nevertheless, the actions that deprive the defendant or third parties of the exercise of the rights that this Constitution guarantees, or which restrict or disturb it shall require previous judicial approval. The requested authority must implement these orders without further proceedings and may not question their foundation, expediency, justice or legality, except to request the presentation of the previous judicial authorization, if applicable.

The exercise of public criminal action and the direction of the investigations of the facts constituting the offense, of those that establish culpability and those that prove the innocence of the defendant in the cases which are heard by the military courts, as well as the adoption of measures in order to protect the victims and witnesses of such facts, shall be the competence – in conformity with the rules of the Code of Military Justice and the respective laws – of the organs and the persons that the Code and those laws determine.

Article 84

An organic constitutional law shall determine the organization and competences of the Public Ministry, shall determine the qualifications and requirements that the public prosecutors must have and meet for their appointment and the grounds for the removal of the adjunct prosecutors, insofar as they are not contemplated in the Constitution. Persons who are appointed public prosecutors may not have any handicap which would prevent them from discharging the functions of a judge. The regional and adjunct public prosecutors shall cease their functions upon the attainment of seventy-five (75) years of age.

An organic constitutional law shall establish the degree of independence and autonomy and the responsibility that the public prosecutors shall have in

the direction of the investigations and in the exercise of the public criminal action in the cases within their competence.

Article 85

The National Prosecutor shall be appointed by the President of the Republic upon a proposal by the Supreme Court containing five (5) names and with the approval of the Senate adopted by two-thirds (2/3) of its members in office in a session especially convened for this purpose. If the Senate does not approve the proposal of the President of the Republic, the Supreme Court shall complement the list, proposing a new name in substitution for the rejected one, repeating the process until an appointment is approved.

The National Prosecutor must have at least ten (10) years of experience as a lawyer, have attained forty (40) years of age and possess the other qualities necessary in order to be a citizen with the right to vote; he/she shall exercise his/her functions for eight (8) years and may not be appointed for the following period.

The rules concerning age limits laid down in the second paragraph of Article 80 apply to the National Prosecutor.

Article 86

There shall be a Regional Prosecutor in each of the regions in which the country is administratively divided unless the population or the geographical extension of the region makes it necessary to nominate more than one.

The regional prosecutors shall be nominated by the National Prosecutor upon a proposal of three names by the Court of Appeals of the respective region. In case the region has more than one Court of Appeals, the list shall be drawn up in a joint plenary meeting of all of them especially convened for this purpose by the President of the Court, as already established.

The regional prosecutors must have at least five (5) years of experience as a lawyer, have attained thirty (30) years of age and possess the other qualities necessary in order to be a citizen with the right to vote; he/she shall stay in office for eight (8) years and may not be appointed as a regional prosecutor

for the following term, which shall not prevent him/her from being nominated to another position in the Public Ministry.

Article 87

The Supreme Court and the Courts of Appeal, as the case may be, shall call for a public competition to fill the five (5) and three (3) member nomination lists which are decided by the absolute majority of their members in office in a plenary meeting especially convened for this purpose. Active or retired members of the Judicial Power may not figure on these lists.

The lists shall be subject to a single vote in which each member of the plenary shall have the right to vote for three (3) or two (2) persons, respectively. Those who obtain the five (5) or three (3) highest number of votes respectively shall be elected. If a tie results, it shall be resolved by a drawing of lots.

Article 88

There shall be adjunct public prosecutors who shall be appointed by the National Prosecutor, upon a proposal containing three (3) names by the respective regional prosecutor, which must be formulated following a public competition in accordance with the organic constitutional law. They must have the title of lawyer and possess the other qualities necessary in order to be a citizen with the right to vote.

Article 89

The National Prosecutor and the regional prosecutors may only be removed by the Supreme Court, at the request of the President of the Republic, of the Chamber of Deputies, or ten (10) of its members, for incapacity, bad behavior or manifest negligence in the exercise of their functions. The Court shall decide on the matter in plenary session specially convened for this purpose and, in order to approve the removal, must obtain the consenting vote of the majority of its members in office.

The removal of the regional prosecutors may also be requested by the National Prosecutor.

Article 90

The provisions of Article 81 shall apply to the National Prosecutor, the regional prosecutors and the adjunct public prosecutors.

Article 91

The National Prosecutor shall exercise the directing, correctional and economic supervision of the Public Ministry in conformity with the respective organic constitutional law.

Chapter VIII

CONSTITUTIONAL TRIBUNAL

Article 92

There shall be a Constitutional Tribunal composed of ten (10) members appointed in the following form:

- a) Three (3) members appointed by the President of the Republic;
- b) Four (4) members elected by the National Congress. Two (2) members shall be appointed directly by the Senate, and two (2) shall be proposed by the Chamber of Deputies for approval or rejection by the Senate. The appointments, or the proposal for appointment, take place by single ballot and require for their approval the favorable vote of two-thirds (2/3) of the senators and deputies in office, as the case may be;
- c) Three (3) members elected by the Supreme Court by secret ballot which shall take place in a session especially convened for this purpose.

The members of the Tribunal shall remain nine (9) years in office and shall be partially replaced every three (3) years. They must have held for at least fifteen (15) years the title of lawyer, have distinguished themselves in their professional, academic or public activity; they may not be prevented by any impediment from discharging the office of a judge, shall be subject to the provisions in Articles 58, 59 and 81, and may not exercise the profession of trial lawyer, including in the judiciary, nor carry out any of the activities referred to in the second and third paragraph of Article 60.

The members of the Constitutional Tribunal shall not be subject to removal and may not be re-elected, with the exception of those who have been elected as replacements and have occupied the office for less than five (5) years. They shall cease their functions upon attaining seventy-five (75) years of age.

In case a member of the Constitutional Tribunal resigns from office, the competent organ provides for his/her replacement in accordance with the first paragraph of this article and for the remaining term of the person to be replaced.

The Tribunal shall sit in plenary or in two (2) separate chambers. In the first case, the quorum for a session shall be at least eight (8) members, and in the second case, four (4) members. The Tribunal shall adopt its decisions by simple majority, save in the cases in which a different quorum is required, and shall render its judgments in accordance with the law. The plenary Tribunal shall adopt final decisions on the matters indicated in numerals 1, 3, 4, 5, 6, 7, 8, 9 and 11 of the following article. For the exercise of its other powers, it may sit in plenary or in chamber in accordance with the provisions of the respective organic constitutional law.

An organic constitutional law shall determine its organization, functioning and procedures and shall establish the structure, the rules concerning salaries and the status of its staff.

Article 93

The powers of the Constitutional Tribunal are:

1. To control the constitutionality of laws interpreting a provision of the Constitution, of constitutional organic laws and of treaty rules relating to matters governed by them [the Constitution and the constitutional organic laws] before their promulgation;
2. To decide on constitutional issues raised by judicial decisions issued by the Supreme Court, the Court of Appeals and the Elections Tribunal;
3. To resolve the issues about constitutionality which arise during the discussion of legislative or constitutional reform bills or of the treaties submitted for approval to Congress;
4. To resolve the issues which arise in respect of the constitutionality of a decree having the force of law;

5. To resolve the issues which arise in respect of the constitutionality of the decision to hold a plebiscite, without prejudice to the competences of the Elections Tribunal;
6. To decide, with the majority of its members in office, on the inapplicability of a legal provision whose application in proceedings before an ordinary or special tribunal would result in a violation of the Constitution;
7. To decide, with the majority of four-fifths (4/5) of its members in office, on the unconstitutionality of a legal provision which has been declared inapplicable in accordance with the preceding numeral;
8. To decide on the complaints in the cases where the President of the Republic does not promulgate a law when he/she is obligated to do so or promulgates a text different from the one which, under the Constitution, he/she ought to promulgate;
9. To decide on the constitutionality of a decree or a decision of the President of the Republic to which the Office of Comptroller-General has objected because it deems it to be unconstitutional, upon request of the President in conformity with Article 99;
10. To declare the unconstitutionality of the organizations and movements or political parties, as well as the liability of the persons which have taken part in the events which gave rise to the declaration of unconstitutionality, in accordance with the provisions of the sixth, seventh and eighth paragraph of numeral 15 of Article 19 of this Constitution. However, if the person concerned is the President of the Republic or the President-elect, the above-mentioned declaration shall, in addition, require the approval of the Senate voted by the majority of its members in office;
11. To inform the Senate in the cases referred to in numeral 7 of Article 53 of this Constitution;
12. To decide on the conflicts of jurisdiction arising between political or administrative authorities and the courts of justice which do not fall within the competence of the Senate;
13. To decide on the constitutional or legal ineligibilities which affect the capacity of a person to be appointed as Minister of State, to remain in that function or to discharge simultaneously other functions;
14. To decide on the ineligibilities, incompatibilities and grounds for resignation concerning the functions of the parliamentarians;

15. To assess the ineligibility invoked by a parliamentarian under the terms of the final paragraph of Article 60 and to decide on the renunciation of his/her functions; and
16. To decide on the constitutionality of the supreme decrees, regardless of the defects invoked, including those which have been issued in the exercise of the autonomous regulatory powers of the President of the Republic, provided that they relate to matters which may be reserved for statutory legislation under the mandate of Article 63.

In the case of numeral 1, the Chamber in which the bill originated sends the respective bill to the Constitutional Tribunal within five (5) days after its discussion has been fully completed by Congress.

In the case of numeral 2, the Tribunal may hear the matter upon request by the President of the Republic, by any of the Chambers or by ten (10) of their members. Similarly, any person being a party to litigation or proceedings pending before an ordinary or special tribunal or from the first stage of the criminal proceedings may request a decision by the Tribunal when he/she is affected in the exercise of his/her fundamental rights by the contents of the respective judicial decision.

In the case of numeral 3, the Tribunal may only hear the matter upon request by the President of the Republic, by any of the Chambers or by one-fourth (1/4) of their members in office, provided that the request is formulated before the promulgation of the law or the transmission of the communication which informs the approval of the treaty by the National Congress and, in all cases, after the fifth (5th) day following the dispatch of the bill or of the above-mentioned communication;

The Tribunal must decide within a period of ten (10) days, starting with the receipt of the request, unless it determines to extend it for another ten (10) days for grave and qualified reasons.

The request does not suspend the [parliamentary] discussion of the bill; but its challenged part may not be promulgated before the expiry of the above-mentioned period, unless the Budget bill or the bill relating to the declaration of war proposed by the President of the Republic is concerned.

In the case of numeral 4, the question may be submitted by the President of the Republic within a period of ten (10) days if the Office of Comptroller-General rejects as unconstitutional a decree having the force of law. It may also be submitted by any of the Chambers or by one-fourth (1/4) of their members in office in case the Office of Comptroller-General has examined a decree having the force of law which is challenged as unconstitutional. This request must be presented within a period of thirty (30) days, starting with the publication of the respective decree having the force of law.

In the case of numeral 5, the issue may be raised by request of the Senate or the Chamber of Deputies, within ten (10) days from the date of publication of the decree which fixes the day of the popular consultation.

The Tribunal establishes in its decision the final text of the popular consultation, if it is upheld.

If, at the time when the decision is written, the holding of the plebiscite is less than thirty (30) days away, the Tribunal sets a new date in the decision between the thirtieth (30th) and the sixtieth (60th) day following the judgment.

In the case of numeral 6, the question may be submitted by any of the parties or by the judge competent to decide the matter. Any of the chambers of the Tribunal is competent, without further appeal, to state the admissibility of the question, provided that it has verified the existence of proceedings pending before an ordinary or special tribunal, that the application of the challenged legal provision could be decisive for the resolution of the case, that the challenge is reasonably argued and that the other requirements established by the law are met. The same chamber is competent to decide on the suspension of the proceedings in which the action of inapplicability for unconstitutionality has originated.

In the case of numeral 7, once the declaration of inapplicability of a legal provision has been made in a prior judgment in accordance with numeral 6 of this article, there will be a public action to request from the Tribunal the declaration of unconstitutionality, without prejudice to the ability of the latter to issue that declaration on its own initiative. The respective constitutional organic law shall establish the conditions of admissibility for cases where

public action is instituted, as well as regulate the proceedings to be followed if the Tribunal acts on its own initiative.

In the case of numeral 8, the issue may be raised by any of the Chambers or by one-fourth (1/4) of their members in office within thirty (30) days following the publication of the challenged text or within sixty (60) days following the date on which the President of the Republic ought to have promulgated the law. If the Tribunal accepts the complaint, it promulgates in its judgment the law which has not been promulgated or rectifies the incorrect promulgation.

In the case of numeral 11, the Tribunal may only hear the matter upon request by the Senate.

There shall be a public action for requesting from the Tribunal a decision with regard to the powers which are conferred upon it by numeral 10 to 13 of this article.

However, if in the case of numeral 10, the person concerned is the President of the Republic or the President-elect, the request must be formulated by the Chamber of Deputies or by one-fourth (1/4) of its members in office.

In the case of number 12, the request must be deduced by either authorities or courts in conflict.

In the case of numeral 14, the Tribunal may only hear the matter upon request by the President of the Republic or by no less than ten (10) parliamentarians in office.

In the case of numeral 16, the Tribunal may only hear the matter upon request by any of the Chambers submitted within thirty (30) days following the publication or notification of the challenged text. In the case of [alleged] defects which are not related to decrees exceeding the autonomous regulatory powers of the President of the Republic, said request may also be presented by one-fourth (1/4) of the members in office.

The Constitutional Tribunal may freely consider the facts when it exercises its powers under numerals 10, 11 and 13, as well as when it decides on the grounds for termination of the functions of a parliamentarian.

In the cases of numerals 10, 13 and in the case of numeral 2, a chamber of the Tribunal is competent, if a party so requests, to make a decision without further appeal on the issue of admissibility.

Article 94

No appeal whatsoever shall lie against the decisions of the Constitutional Tribunal, the possibility notwithstanding that the Tribunal may itself, in conformity with the law, correct the factual errors which it may have made.

The provisions that the Court declared unconstitutional may not become law in the project or decree with force of law in question.

In the case of numeral 16 of Article 93, the challenged supreme decree remains without legal effect solely by virtue of the decision of the Tribunal which accepts the complaint. However, the legal provision declared unconstitutional in conformity with the provisions in numerals 2,4 or 7 of Article 93 are deemed to have been derogated with the publication of the judgment accepting the complaints, which does not produce any retroactive effects, in the Official Journal.

The decisions which declare, wholly or in part, the unconstitutionality of a law, a decree having the force of law, a supreme decree or a judicial order, as the case may be, shall be published in the Official Journal within three (3) days after the sentence.

Chapter IX

ELECTORAL JUSTICE

Article 95

A special court which shall be known as the Elections Tribunal shall examine the general ballot and the regularity of the election for President of the Republic, deputies and senators; it shall resolve complaints which arise and shall proclaim those who are elected. Said Tribunal shall also examine the plebiscites and have the other powers that the law determines.

It shall be composed of five (5) members appointed in the following manner:

- a) Four (4) justices of the Supreme Court appointed by the Supreme Court, by means of a drawing of lots, in the form and manner that the respective organic constitutional law determines; and
- b) A citizen who has exercised the function of President or Vice- President of the Chamber of Deputies or of the Senate for a period of not less than three hundred and sixty-five (365) days, appointed by the Supreme Court in the manner specified in letter a) from among all those who have the indicated qualities.

The appointments referred to in letter b) may not fall upon parliamentary candidates, candidates to elective office, Ministers of State, or a leader of a political party.

Members of this Tribunal shall stay in office for a period of four (4) years, and the provisions of Articles 58 and 59 of this Constitution shall be applicable to them.

The Tribunal proceed as a juror in assessment of the facts and decide with according to law.

A constitutional organic law regulate the organization and operation of this Tribunal.

Article 96

There will be regional electoral tribunals charged with the examination of the general ballot and the qualification of the elections that the law entrusts to them, as well as to resolve the claims to which they give rise and to proclaim the elected candidates. Their resolutions may be appealed before the Elections Tribunal in the manner which the law determines. It is also their duty to examine the regularity of union elections and of those that take place in the intermediate groups determined by law.

These tribunals shall be composed of a justice of the respective Court of Appeals, elected by the latter, and by two (2) members appointed by the Elections Tribunal from among persons who have practiced as a lawyer or served as a justice or lawyer at the Court of Appeals for a period of no less than three (3) years.

The members of these tribunals shall exercise their functions for four (4) years and they shall be subject to the ineligibilities or incompatibilities as determined by law.

The Tribunal proceed as a juror in assessment of the facts and decide with according to law.

The law determines the other functions of these courts and regulate its organization and operation.

Article 97

The Budget Law of the Nation shall allocate annually the funds necessary for the organization and operation of these tribunals; their structure, the rules concerning salaries and the status of their staff shall be established by law.

Chapter X

OFFICE OF COMPTROLLER-GENERAL OF THE REPUBLIC

Article 98

An autonomous body with the name of Comptroller-General of the Republic shall exercise control over the legality of the acts of the Administration, oversee the revenue and the investment of the funds of the National Treasury, the municipalities and the other bodies and services determined by law; examine and judge the accounts of persons who manage assets of such entities; conduct the general accounting of the Nation, and perform the other functions entrusted to it by the respective organic constitutional law.

The Comptroller-General of the Republic must have held the title of lawyer for at least ten (10) years, have attained forty (40) years of age and possess the other qualities necessary to be a citizen with the right to vote. He/she shall be appointed by the President of the Republic with the approval of the Senate by a vote of a three-fifths (3/5) majority of its members in office for a term of eight (8) years and may not be appointed for the following term.

However, upon attaining seventy-five (75) years of age, he/she shall cease his/her functions.

Article 99

In the exercise of the function of control of legality, the Comptroller-General shall register decrees and resolutions which, in conformity with the law, must be processed by the Comptroller-General's Office, or state the illegality by which they could be affected; but he/she must proceed with them when, despite his/her observations [of the potential illegality], the President of the Republic persists with the signature of all his/her Ministers, in which case he/she must send a copy of the respective decrees to the Chamber of Deputies. In no case shall he/she clear decrees on expenditures which exceed the limit set forth in the Constitution; in such cases, he/she shall remit a complete copy of the files to the same Chamber.

The Comptroller-General of the Republic is also required to register decrees having the force of law and to make representations whenever they exceed or contravene the authorizing law or are contrary to the Constitution.

If the representation takes place with respect to a decree promulgating a law or a constitutional amendment for deviating from the approved text, or with respect to a decree or resolution for being contrary to the Constitution, the President of the Republic shall not have the ability to persist; and in case he/she does not comply with the observations of the Office of the Comptroller-General, he/she shall send the files to the Constitutional Tribunal within a period of ten (10) days in order to have the controversy resolved by it.

As to the remaining issues, the organization, operation and competences of the Office of the Comptroller-General of the Republic shall be the object of an organic constitutional law.

Article 100

The Treasuries of the State may not make any payment except by virtue of a decree or resolution issued by a competent authority, in which the law or the chapter of the budget is indicated that authorizes such expenditure.

Payments shall be made, in addition, with regard to the chronological order established by it and the previous budgetary check of the document ordering the payment.

Chapter XI

ARMED FORCES, FORCES OF ORDER AND PUBLIC SECURITY

Article 101

The Armed Forces dependent on the Ministry in charge of National Defense are composed only and exclusively of the Army, the Navy and the Air Force. They exist for the defense of the country (*patria*) and are essential for the security of the Nation.

The Forces of Order and Public Security are composed only of Armed Police Officers (*Carabineros*) and investigation units. They constitute the public force and exist in order to implement the law effectively, to guarantee the public order and the internal public security, in the manner determined by their respective organic laws. They depend of the Ministry in charge of Public Security.

The Armed Forces and Armed Police Officers, as armed bodies, essentially have executive and not decision-making functions. The forces dependent on the Ministries in charge of National Defense and Public Security are, in addition, professional, hierarchical and disciplined.

Article 102

Entry to the posts and grants of the Armed Forces and Armed Police may only take place through their own schools with the exception of the professional ranks and civil servants that the law determines.

Article 103

No person, group or organization may own or possess arms or other similar elements indicated by a law approved by a qualified quorum, without authorization granted in conformity with the latter.

The Ministry in charge of National Defense or a body under its control shall exercise the supervision and control of weapons in the manner determined by law.

Article 104

The Commanders-in-Chief of the Army, Navy and Air Force, and the Director-General of the Armed Police shall be appointed by the President of the Republic from among the five (5) senior generals who meet the qualities that the respective institutional statutes demand for such posts. They shall serve their posts for four (4) years, may not be named for a new term of office and shall be irremovable from their post.

The President of the Republic may, by reasoned decree and after prior information of the Chamber of Deputies and the Senate, confine the Commanders-in-Chief of the Army, the Navy and the Air Force, as the case may be, to retirement before the completion of their respective term.

Article 105

The appointments, promotions and retirements of officials of the Armed Forces and Armed Police shall be effected by a supreme decree, in conformity with the corresponding organic constitutional law, which shall determine the respective basic rules as well as the basic rules relating to professional career, accession to posts, social security, seniority, command, and chain of command of the Armed Forces and Armed Police.

The entrance, appointments, promotions and retirements in the Investigations Department shall be made in accordance with its organic law.

Chapter XII

NATIONAL SECURITY COUNCIL

Article 106

There shall be a National Security Council with the task to assist the President of the Republic on matters related to national security and to discharge the other functions assigned to it by this Constitution. It shall be presided by the Head of State and be composed of the Presidents of the Senate, the Chamber of Deputies and the Supreme Court, by the Commanders-in-Chief of the Armed Forces, by the Director-General of the Police and by the Comptroller-General of the Republic.

In the cases determined by the President of the Republic, the ministers in charge of domestic affairs, national defense, public security, foreign relations and of economy and finance of the country may be present at its meetings.

Article 107

The National Security Council shall meet when it is convened by the President of the Republic and shall require the absolute majority of its members as a quorum for its meetings.

The Council does not adopt decisions other than the regulations to which the last paragraph of the present provision refers. In its meetings, every member may freely express his/her views on any fact, measure or matter related to the institutional foundations [of the State] or national security.

Council Minutes be public, unless most of its members to determine what otherwise.

Regulations which are issued by the Council itself shall establish the other provisions concerning its organization, function and publicity of its debates.

Chapter XIII

CENTRAL BANK

Article 108

There shall exist an autonomous body of a technical character with its own funding under the name of the Central Bank, whose composition, organization, functions and competences shall be determined by an organic constitutional law.

Article 109

The Central Bank may only conduct operations with financial institutions, be they public or private. In no way whatsoever may it act as a guarantor or acquire documents issued by the State, its organs or enterprises.

No public expenditure or loan may be financed by direct or indirect credit of the Central Bank.

Nevertheless, in case of a foreign war or the threat of war, as qualified by the National Security Council, the Central Bank may obtain, grant or finance credits to the State and public or private entities.

The Central Bank may not adopt any decision which represents, in a direct or indirect manner, the establishment of different or discriminatory rules or requirements in relation to persons, institutions or entities that perform transactions of the same nature.

Chapter XIV

GOVERNMENT AND INTERNAL ADMINISTRATION OF THE STATE

Article 110

For the government and the internal administration of the State, the territory of the Republic is divided into regions and these provinces. For the purposes of local administration, the provinces shall be divided into communes.

The creation, suppression and denomination of regions, provinces and communes; the modification of their boundaries, as well as the determination of the capitals of the regions and provinces shall be the object of a constitutional organic law.

Government and Regional Administration

Article 111

The government of each region rests with a superintendent who depends exclusively on the confidence of the President of the Republic. The superintendent shall exercise the functions in accordance with the law and the orders and instructions of the President, who is the natural and direct representative in his/her jurisdictional territory.

The superior administration of each region shall rest with a regional government which has as its objective the social, cultural and economic development of the region.

The regional government shall be constituted by the superintendent and the regional council. In order to exercise its functions, the regional government shall enjoy legal personality under public law and shall have its own funds.

Article 112

The superintendent shall preside over the regional council and is entrusted with the coordination, surveillance and fiscal control of the public services created by law for the fulfillment of administrative functions which operate in the region.

The law shall determine the form in which the superintendent shall exercise these faculties, his/her other competences and the organs that collaborate in the fulfillment of his/her functions.

Article 113

The regional council shall be an organ of rule-making, implementing and supervisory character within the jurisdiction of the regional government, charged with the enforcement of regional citizen participation and exercising the competences that the respective organic constitutional law entrusts to it, which in addition shall regulate its composition and organization.

The regional council shall consist of directors elected by universal suffrage in voting directly, in accordance with the constitutional organic law respectively. Last four years in office and may be reelected. The same law establishes the organization regional council, will determine the number of councilors to integrated and how they replacement, always ensuring that both population and the territory of the region are equally represented.

Relinquish his office the regional adviser during his tenure lose any requirement of eligibility or incurred in any of the disabilities, incompatibilities, disability or other grounds for suspension that organic constitutional law set.

As stated in the preceding paragraphs respect of the regional council and regional councilors applies, so that appropriate, to territories referred special Article 126 bis.

The regional council absolute majority of its members in office elect a president among its members. The Chairman of the Board last four years in office and he shall cease if incurring any of the grounds mentioned in subsection third, by removal agreed by two thirds of the regional directors exercise or waiver approved by a majority thereof.

The organic constitutional law determines the constitutional functions and powers of Chairman of the Board regional.

The regional council shall be competent to approve the development plans of the region and the budget bill of the regional government as adjusted to the national politics of development and the budget of the Nation. Likewise, it shall decide on the use of the resources earmarked for the region in the national fund of regional development on the basis of a proposal which is formulated by the superintendent.

Senators and Deputies representing constituencies and districts of the region may, when they see fit, attend meetings of the regional council and take part in its proceedings without right to vote.

Article 114

The constitutional organic law respective determine the form and how the President of the Republic may transfer one or more regional governments, in temporary or permanent one or more powers of ministries and public services created to fulfill administrative function in land matters, promotion of activities productive and social development and culture.

Article 115

The government and the interior administration of the State to which the present chapter refers shall observe as a basic principle the search for a harmonious and equitable territorial development. The laws that are dictated to this effect must ensure the fulfillment and application of this principle, incorporating also the criteria of solidarity among the regions as well as in their interior with regard to the distribution of public resources.

Without prejudice to the resources that are assigned to the regional governments for their operation in the Budget Law of the Nation and those resulting from the provision of numeral 20 of Article 19, this law shall provide for a proportion of the total public investment costs which it defines as the national fund of regional development.

The Budget Law of the Nation shall also provide for expenses corresponding to sectorial investments of a regional character whose distribution among regions shall correspond to the criteria of equity and efficiency, taking into account the corresponding national investment programs. The assignment of such expenses to the interior of each region shall be a matter for the regional government.

On the initiative of the regional governments or of one or more ministries, annual or pluri-annual meetings on the programming of public investment in the respective region or, in the whole of the regions which agree to form an association for this purpose, may be held.

The law may authorize the regional governments and the public companies to join with natural or legal persons in order to promote activities and initiatives without profit aims which contribute to the regional development. The entities that are established to this effect are governed by the common rules applicable to private persons.

The provision in the previous paragraph shall be without prejudice to what is provided in numeral 21 of Article 19.

Government and Provincial Administration

Article 116

In each province, there shall exist a government that will be a territorially deconcentrated organ of the superintendent. It will be run by a governor who shall be freely appointed and removed by the President of the Republic.

The governor shall exercise, in accordance with the instructions of the superintendent, the supervision of public services existing in the province. The law shall determine the powers that the superintendent may delegate to him/her and the other competences assigned to him/her.

Article 117

Governors may appoint delegates for the exercise of their powers in one or more localities in the cases and manner determined by law.

Communal Administration

Article 118

Local administration of each commune or group of communes as determined by law is vested in a municipality, which shall be composed of the mayor, who is its highest authority, and by the council.

The respective organic constitutional law shall establish the modalities and forms that the participation of the local community in municipal activities shall take.

Mayors may, in the cases and in the manner determined by the respective organic constitutional law, appoint delegates for the exercise of their competences in one or more localities.

Municipalities are autonomous corporations with legal personality under public law and their own funds, whose objective is to satisfy the needs of the local community and to ensure their participation in the economic, social and cultural progress of the commune.

An organic constitutional law shall determine the functions and competences of the municipalities. This law shall specify, in addition, the matters of municipal competence that the mayor, with the agreement of the council or by request of two-thirds (2/3) of the councilors in office, or the proportion of citizens that the law establishes, shall submit to a non-binding consultation or a plebiscite, as well as the relevant dates, the manner in which the electorate is convened, and the effects of the consultation or plebiscite.

The municipalities may form associations among themselves for the achievement of their specific purposes. Likewise, they may establish or join private nonprofit foundations whose objective is the promotion and dissemination of art, culture and sports. Municipal participation in them shall be governed by the respective organic constitutional law.

The municipalities may, in accordance with the respective organic constitutional law, establish within the jurisdiction of the communes or group of

communes territories known as neighborhood units with the objective of promoting a balanced development and adequate forms of citizen participation.

Public services must coordinate their efforts with the municipality when they carry out their activities in the respective communal territory, in conformity with the law.

The law shall determine the form and manner in which the ministers, public services and regional governments may transfer competences to the municipalities, as well as the temporary or final character of the transfer.

Article 119

In each municipality there shall be a council composed of councilors chosen by universal suffrage in conformity with the organic constitutional law on municipalities. Their term of office is four (4) years and they may be re-elected. The same law shall determine the number of councilors and the manner of electing the mayor.

The council shall be an organ in charge of implementing the participation of the local community and shall exercise rule-making, implementing and supervisory functions and other competences that are entrusted to it, in the form determined by the respective organic constitutional law.

The organic law on municipalities shall determine the rules on organization and operation of the council and the matters in which the consultation of the council by the mayor shall be compulsory and those in which the approval of the latter shall be necessarily required. In any case this approval shall be needed for the adoption of the communal development plan, of the municipal budget and of the respective investment projects.

Article 120

The respective organic constitutional law shall regulate the transitory administration of the communes that are created, the procedure for establishing new municipalities, and for the transfer of the municipal staff and the serv-

ices and reinforcements necessary to allow for the use and disposal of the goods that are located in the territories of the new communes.

The organic constitutional law on municipalities must also establish the proceedings that have to be observed in cases of the suppression or the merger of one of the communes.

Article 121

For the fulfillment of their functions, the municipalities may create or terminate employments and fix salaries as well as establish the organs or units that the respective organic constitutional law permits.

These abilities shall be exercised within the limits and conditions that, upon the exclusive initiative of the President of the Republic, the organic constitutional law on municipalities determines.

Article 122

The municipalities shall enjoy autonomy in the administration of their finances. The Budget Law of the Nation may assign to them resources to take care of their expenses, without prejudice to the revenue that is directly transferred to them by law or that is granted to them by the regional governments. An organic constitutional law shall provide for a mechanism of redistribution of their own revenues among the municipalities of the country based on solidarity with the name of the common municipal fund. The rules on distribution of this fund shall be a matter of law.

General Provisions

Article 123

The law shall establish coordination formulas for the administration of all or any of the municipalities, with respect to the problems that are common to them, as well as between the municipalities and the other public services.

Without prejudice to in the previous section, the constitutional organic law respectively regulate the administration of the metropolitan areas, and establish the conditions and formalities permit conferring such certain quality territories.

Article 124

In order to be appointed as superintendent or governor and in order to be elected member of regional council or councilor, it is necessary to be a citizen with the right to vote, to meet the other conditions of aptitude which the law stipulates and to have lived in the region at least during the last two (2) years prior to his/her appointment or election.

The duties of superintendent, governor and member of regional council and councilor shall be incompatible with each other.

No mayor, governor or chairman regional, from the date of its nomination or election as the case may be charged or deprived of their liberty, except in case of in flagrant delictio, if the Court of Appeals for the respective jurisdiction, in full, has previously authorized the charge claiming to be room for prosecution. In this resolution may be appealed before the Supreme Court. Should be arrested a mayor, governor or regional council chairperson in flagrant delictio, be immediately brought provide the respective Court rose, with the corresponding summary information. The Court shall, then, as provided in preceding paragraph.

From the moment is declared, by firm resolution, have resulted in cause formation, is Mayor, Governor or chairman regional accused suspended from office and subject to judge.

Article 125

The respective organic constitutional law shall establish the grounds for the loss of the office of mayors, members of the regional council and councilors.

Article 126

The law shall determine the form for resolving questions of competence which might arise between national, regional, provincial and communal authorities.

It shall also establish the manner to resolve disputes which may arise between the superintendent and the regional council, as well as between the mayor and the council.

Special Provisions

Article 126 bis

The special territories are Easter Island and the Juan Fernandez Archipelago. The Government and administration of these territories are governed by special statutes established by law constitutional organic respective.

The rights to reside, stay and move to and from any Instead of the Republic guaranteed in the paragraph 7 of Article 19, be exercised in such territory in the manner determined by the special laws governing the exercise, which quorum shall be qualified.

Chapter XV

REFORM OF THE CONSTITUTION

Article 127

Bills to amend the Constitution may be initiated by a message of the President of the Republic or by- a motion of any member of the National Congress, with the limitations indicated in the first paragraph of Article 65.

In order to be approved, the reform bill shall require in each Chamber the consent of three-fifths (3/5) of the deputies and senators in office. If the reform has an impact on Chapters I, III, VIII, XI, XII, or XV it shall need, in

each Chamber, the approval of the two-thirds (2/3) of the deputies and senators in office.

In matters not provided for in this Chapter, the rules on the law-making process shall apply to the discussion of constitutional reform bills; in all cases, however, the quorums indicated in the preceding paragraph have to be respected.

Article 128

The project approved both Houses pass the President of the Republic.

If the President of the Republic entirely rejects a reform bill approved by both Chambers and the latter insists upon the proposal in all its parts by two-thirds (2/3) of the members in office of each Chamber, the President shall have to promulgate the proposal unless he/she consults the citizens through a plebiscite.

If the President partially objects to the reform bill approved by both Chambers, the objections shall be understood to have been approved by a supporting vote of three-fifths (3/5) or two-thirds (2/3) of the members in office of each Chamber in conformity with the preceding article, and the bill shall be returned to the President for its promulgation.

In case the Chambers do not approve all or some of the objections made by the President, no constitutional reform shall take place on the issues on which there is disagreement, unless two-thirds (2/3) of the members in office of both Chambers insist upon the part of the bill approved by them. In the latter case, the part of the bill which has been the object of the insisting vote shall be returned to the President for its promulgation, unless the President consults the citizens through a plebiscite with respect to the matters in dispute.

The organic constitutional law relating to Congress shall regulate the remaining matters with regard to the vetoes on reform bills and their discussion in Congress.

Article 129

The convening of the plebiscite must take place within thirty (30) days following the date on which both Chambers have insisted upon the proposal approved by them, and is decided by supreme decree fixing the date on which the plebiscite is to be held, which may not take place earlier than thirty (30) days or later than sixty (60) days after the publication of this decree. If this period expires and the President has not convoked a plebiscite, the proposal approved by Congress shall be promulgated.

The decree of convocation shall contain, as the case may be, the proposal approved by the Plenary Congress and vetoed in total by the President of the Republic, or the parts of the bill on which the Congress has insisted [remain valid]. In the latter case, each of the issues on which there is disagreement shall be voted upon separately in the plebiscite.

The Elections Tribunal shall communicate to the President of the Republic the result of the plebiscite and specify the text of the bill approved by the citizens which shall be promulgated as a constitutional reform within five (5) days following this communication.

Once the bill has been promulgated, and as of the date it enters into force, its provisions shall become a part of the Constitution and shall be regarded as incorporated therein.

TRANSITORY PROVISIONS

First

Until issuance of the provisions which implement the provision in the third paragraph of numeral 1 of Article 19 of this Constitution, the legal provisions presently in force shall continue to apply.

Second

Until issuance of the new Mining Code which shall regulate, among other matters, the form, conditions and effects of mining concessions as referred to in paragraphs seven to ten of numeral 24 of Article 19 of this Political Constitution, the holders of mining rights, in their capacity as concessionaries,

shall be subject to the legislation which applies at the time this Constitution has entered into force.

The mining rights referred to in the preceding paragraph shall subsist under the new Code; however, as regards enjoyment of and levies imposed on such rights, and as far as their termination is concerned, the provisions of the new Mining Code shall prevail. This new code shall grant a delay to concessionaries to comply with the new requirements which may be established in order to provide legal protection.

During the time that lapses between the date on which this Constitution enters into force and that on which the new Mining Code becomes effective, the establishment of mining rights with the character of a concession pursuant to paragraphs seven to ten of numeral 24 of Article 19 of this Constitution, as well as the concessions granted, shall continue to be governed by the current legislation.

Third

The large copper mining industry and the enterprises considered as such, nationalized by virtue of the Transitory Provision 17(a) of the 1925 Political Constitution shall continue to be governed by the constitutional norms in force on the date of the promulgation of this Constitution.

Fourth

The laws currently in force on matters which, according to this Constitution must be objects of organic constitutional laws or be approved by a qualified quorum, fulfill these requirements and shall continue to apply in so far as they are not contrary to the Constitution, until the pertinent legal regimes are established.

Fifth

Notwithstanding the provision in numeral 6 of Article 32, the legal norms which, up to the promulgation date of this Constitution, have regulated matters not covered in Article 63 shall continue to be in force so long as they are not expressly abrogated by law.

Sixth

Without prejudice to what is provided in the third paragraph of numeral 20 of Article 19, the legal provisions which have established appropriation of taxes for a determined purpose shall continue in force so long as they are not expressly abrogated by law.

Seventh

The special pardon shall always proceed with respect to the offenses referred to by Article 9 committed before the 11 th of March 1990. A copy of the respective Decree shall be sent under reservation to the Senate.

Eighth

The provisions of Chapter VII „Public Ministry” shall be applicable upon entry into force of the organic constitutional law on the Public Ministry. This law may establish different dates for the entry into force of its provisions as well as determine its gradual applications in the different matters and regions of the country.

Chapter VII „Public Ministry,” the organic constitutional law on the Public Ministry and the laws that, by complementing said norms, modify the Organic Code on Courts and the Code of Penal Proceedings, shall apply exclusively to the facts that occur after the entry into force of such provisions.

Ninth

Notwithstanding the provisions in Article 87, the Supreme Court and the Court of Appeal may include in the five-names-list and each of the three-names-lists, which are established to fill for the first time the positions of National Prosecutor and regional prosecutors, respectively, an active member of the Judicial Power.

Tenth

The powers granted to the municipalities in Article 121 relating to the modification of the organic structure, staff and salaries shall be applicable when the modalities, conditions and limitations for exercising these new competences are regulated in the respective law.

Eleventh

In the year following the date of publication of the present law of constitutional reform, those who have held the positions of President of the Republic, Deputy, Senator, Minister of State, Superintendent, Governor or Mayor may not appear on the nomination lists for joining the Supreme Court.

Twelfth

The term of the President of the Republic in office shall be six (6) years, without the possibility of being re-elected for the following term.

Thirteenth

The Senate shall be composed only by senators elected in conformity with Article 49 of the Political Constitution of the Republic and the Constitutional Organic Law on Popular Votes and Ballots currently in force.

The modifications of the mentioned Organic Law on Popular Votes and Ballots concerning the number of senators, the existing constituencies and the electoral system in force shall require the consenting vote of three-fifths (3/5) of the deputies and senators in office.

The senators currently in office which have joined the Senate or have been appointed in conformity with the letters a), b), c), d), e) and f) of Article 49, which are derogated, shall continue in their functions until March 10, 2006.

Fourteenth

The replacement of the current judges and the appointment of the new members of the Constitutional Tribunal shall take place in accordance with the following rules:

The current judges appointed by the President of the Republic, the Senate, the Supreme Court and the National Security Council shall be maintained in their functions until the end of their term or until they resign their office.

The President of the Republic is responsible for the replacement of the judges appointed by the National Security Council.

The Senate shall appoint three (3) judges to the Constitutional Tribunal, two (2) directly and the third upon a prior proposal by the Chamber of Deputies. The latter shall remain in office until the same day on which the [judge] currently appointed by the Senate or the one who replaces him/her in accordance with the seventh paragraph of this article ceases his/her functions, and may be re-elected.

The current judges of the Supreme Court, whom in time may become judges of the Constitutional Tribunal, shall be temporarily suspended from the exercise of their functions in said Court for six (6) months after the present constitutional reform has been published and without affecting their rights as public officials. They shall resume their functions at the end of the term for which they have been appointed to the Constitutional Tribunal or when they cease their functions in the latter, for whatever reason.

The Supreme Court shall appoint, in conformity with letter c) of Article 92, the lawyers referred to [therein] in the order in which the corresponding vacancies occur. However, the first one shall be appointed for three (3) years, the-second for six (6) years and the third for nine (9) years. The one which has been appointed for three (3) years may be re-elected.

If any of the current judges not mentioned in the preceding paragraph should cease his/her functions, he/she shall be replaced by the authority referred to in letters a) and b) of Article 92, as the case may be, and the term of the replacement shall last as long as the remaining term of his/her predecessor, with the possibility of being re-elected.

The judges appointed in conformity with this provision must be designated prior to December 11, 2005 and shall assume their functions on January 1, 2006.

Fifteenth

The international treaties approved by the National Congress prior to the entry into force of the present constitutional reform, which concern matters that in conformity with the Constitution have to be approved by the absolute majority or by four-sevenths (4/7) of the deputies and senators in office, are deemed to be in compliance with those requirements.

The conflicts of jurisdiction which are currently pending before the Supreme Court and those which will be brought before it until the entry into force of the amendments to Chapter VIII shall remain on that court's docket until they have been dealt with in full.

Proceedings initiated on its own accord, or upon application of a party, or which will be initiated in the Supreme Court in order to declare the inapplicability of a legal provision for being contrary to the Constitution prior to the application of the reforms of Chapter VIII, shall continue to be subject to the examination and decision by that Court until their complete disposal.

Sixteenth

The reforms introduced in Chapter VIII enter into force six months after the publication of the present constitutional reform with the exception of the provisions in the fourteenth transitory provision.

Seventeenth

The Forces of Order and Public Security shall continue to be dependent on the Ministry in charge of National Defense until the new law creating the Ministry in charge of Public Security is adopted.

Eighteenth

The modifications laid down in Article 57, numeral 2, shall start to apply after the next general parliamentary election.

Nineteenth

Notwithstanding the amendment to Article 16, numeral 2, of this Constitution, the right to vote by persons tried with regard to acts committed prior to June 16, 2005, for offenses which carry a prison sentence or which the law qualifies as terrorist conduct, shall also be suspended.

Twentieth

As long as the special tribunals to which the fourth paragraph of numeral 16 of Article 19 alludes have not been established, the complaints motivated by

the ethical conduct of professionals who do not belong to professional bodies shall be heard by the ordinary courts.

Twenty-first

The reform introduced the section 10 of article 19 in relation to the second transition from level nursery education, take effect gradually, as provided by law.

Twenty-second

As not are effective special statutes referred to Article 126a, the special territories of Easter Island and Juan Fernandez Archipelago will continue governed by the common rules for political- administrative and government and administration.

Twenty-third

The reforms introduced to the articles 15 and 18 on voluntary the vote and incorporation into voter registration by the only of law, governed as it goes the respective effective bill of rights to referred to in subsection Article 18, second to is introduced by these reforms.

Twenty-fourth

The State of Chile may recognize the jurisdiction of the International Criminal Court under the terms of the treaty approved in the city of Rome on July 17, 1998, by the Diplomatic Conference of Plenipotentiaries of the United Nations on the establishment of the Court.

In making this acknowledgment, Chile reaffirms its preferred option to exercise its criminal jurisdiction in relation to the jurisdiction of the Court. The latter is a subsidiary of the first, in the terms foreseen in the Rome Statute that created the International Criminal Court.

The cooperation and assistance between national authorities and the International Criminal Court and the judicial and administrative proceedings that might arise will be subject to the directive of the Chilean law.

The jurisdiction of the ICC, under the terms of its Statute, may only be exercised in respect of the crimes within its jurisdiction which first arose after the entry into force in Chile of the Rome Statute.

Twenty-fifth

The amendment introduced in subsection four of Article 60, take effect one hundred and eighty days from the date of publication of this law in the Official Journal.

TO BE ANNOTATED, CHECKED AND PUBLISHED.

RICARDO LAGOS ESCOBAR, President of the Republic.

EDUARDO DOCKENDORFF VALLEJOS, Minister and Secretary General of the Presidential Office.

FRANCISCO VIDAL SALINAS, Minister of the Interior.

IGNACIO WALKER PRIETO, Minister of Foreign Affairs.

JAIME RAVINET DE LA FUENTE, Minister of National Defense.

JORGE RODRIGUEZ GROSSI, Minister of Economy, Development and Reconstruction and President of the National Energy Commission.

NICOLÁS EYZAGUIRRE, Minister of Finance.

SERGIO BITAR CHACRA, Minister of Education.

LUIS BATES HIDALGO, Minister of Justice.

JAIME ESTÉVEZ VALENCIA, Minister of Public Works, of Transport and Communication

JAIME CAMPOS QUIROGA, Minister of Agriculture.

YERKO LJUBETIC GODOY, Minister of Labor and Social Welfare.

PEDRO GARCIA ASPILLAGA, Minister of Health.

ALFONSO DULANTO RENCORET, Minister of Mining.

SONIA TSCHORNE BERESTECKY, Minister of Housing, Urbanism and National Property.

OSVALDO PUCCIO HUIDOBRO, Minister and Secretary General of the Government.

YASNA PROVOSTE CAMPILLAY, Minister of Planning.

Spanish Constitution

Created – 31.10.1978

Ratified (national constitutional referendum) – 6.12.1978

Came into effect – 29.12.1978

We, don Juan Carlos I, King of Spain, announce to all those who may have knowledge of this: that the Cortes have passed and the Spanish people have ratified the following Constitution:

PREAMBLE

The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the wellbeing of all its members, in the exercise of its sovereignty, proclaims its will to:

Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.

Consolidate a State of Law which ensures the rule of law as the expression of the popular will.

Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.

Promote the progress of culture and of the economy to ensure a dignified quality of life for all.

Establish an advanced democratic society, and

Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.

Therefore, the Cortes pass and the Spanish people ratifies the following.

SPANISH CONSTITUTION

PRELIMINARY TITLE

Section 1

1. Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system .
2. National sovereignty belongs to the Spanish people, from whom all state powers emanate.
3. The political form of the Spanish State is the Parliamentary Monarchy.

Section 2

The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all.

Section 3

1. Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it.
2. The other Spanish languages shall also be official in the respective Self-governing Communities in accordance with their Statutes.
3. The richness of the different linguistic modalities of Spain is a cultural heritage which shall be specially respected and protected.

Section 4

1. The flag of Spain consists of three horizontal stripes: red, yellow and red, the yellow strip being twice as wide as each red stripe.
2. The Statutes may recognize flags and ensigns of the Self-governing Communities. These shall be used together with the flag of Spain on their public buildings and in their official ceremonies.

Section 5

The capital of the State is the city of Madrid.

Section 6

Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic.

Section 7

Trade unions and employers associations contribute to the defence and promotion of the economic and social interests which they represent. Their creation and the exercise of their activities shall be free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic.

Section 8

1. The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order.
2. The basic structure of military organization shall be regulated by an Organic Act in accordance with the principles of the present Constitution.

Section 9

1. Citizens and public authorities are bound by the Constitution and all other legal provisions.
2. It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

3. The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal statutes, the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights, the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities.

PART I

FUNDAMENTAL RIGHTS AND DUTIES

Section 10

1. The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.
2. Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.

Chapter 1

SPANIARDS AND ALIENS

Section 11

1. Spanish nationality shall be acquired, retained and lost in accordance with the provisions of the law.
2. No person of Spanish birth may be deprived of his or her nationality.
3. The State may negotiate dual nationality treaties with Latin-American countries or with those which have had or which have special links with Spain. In these countries Spaniards may become naturalized without losing their nationality of origin, even if those countries do not grant a reciprocal right to their own citizens.

Section 12

Spaniards come legally of age at eighteen years.

Section 13

1. Aliens in Spain shall enjoy the public freedoms guaranteed by the present Part, under the terms to be laid down by treaties and the law.
2. Only Spaniards shall have the rights recognized in section 23, except in cases which may be established by treaty or by law concerning the right to vote and the right to be elected in municipal elections, and subject to the principle of reciprocity. (This text includes the first constitutional reform adopted on 27/08/1992; it just added the words “and the right to be elected” to the paragraph).
3. Extradition shall be granted only in compliance with a treaty or with the law, on reciprocal basis. No extradition can be granted for political crimes; but acts of terrorism shall not be regarded as such.
4. The law shall lay down the terms under which citizens from other countries and stateless persons may enjoy the right to asylum in Spain.

Chapter 2

RIGHTS AND FREEDOMS

Section 14

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

Division 1

Fundamental Rights and Public Freedoms

Section 15

Everyone has the right to life and to physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment. Death penalty is hereby abolished, except as provided for by military criminal law in times of war.

Section 16

1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.
2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs.
3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions.

Section 17

1. Every person has the right to freedom and security. No one may be deprived of his or her freedom except in accordance with the provisions of this section and in the cases and in the manner provided for by the law.
2. Preventive arrest may last no longer than the time strictly necessary in order to carry out the investigations aimed at establishing the events; in any case the person arrested must be set free or handed over to the judicial authorities within a maximum period of seventy-two hours.
3. Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested

person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law.

4. An habeas corpus procedure shall be provided for by law in order to ensure the immediate handing over to the judicial authorities of any person illegally arrested. Likewise, the maximum period of provisional imprisonment shall be determined by law.

Section 18

1. The right to honour, to personal and family privacy and to the own image is guaranteed.
2. The home is inviolable. No entry or search may be made without the consent of the householder or a legal warrant, except in cases of flagrante delicto.
3. Secrecy of communications is guaranteed, particularly regarding postal, telegraphic and telephonic communications, except in the event of a court order.
4. The law shall restrict the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights.

Section 19

Spaniards have the right to freely choose their place of residence, and to freely move about within the national territory. Likewise, they have the right to freely enter and leave Spain subject to the conditions to be laid down by the law. This right may not be restricted for political or ideological reasons.

Section 20

1. The following rights are recognized and protected:
 - a) The right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction;
 - b) The right to literary, artistic, scientific and technical production and creation;
 - c) The right to academic freedom;

- d) The right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.
- 2. The exercise of these rights may not be restricted by any form of prior censorship.
- 3. The law shall regulate the organization and parliamentary control of the masscommunication means under the control of the State or any public agency and shall guarantee access to such means by the significant social and political groups, respecting the pluralism of society and of the various languages of Spain.
- 4. These freedoms are limited by respect for the rights recognized in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and to the protection of youth and childhood.
- 5. The seizure of publications, recordings and other means of information may only be carried out by means of a court order.

Section 21

- 1. The right to peaceful unarmed assembly is granted. The exercise of this right shall not require prior authorization.
- 2. In the case of meetings in public places and of demonstrations, prior notification shall be given to the authorities, who can only forbid them when there are well founded grounds to expect a breach of public order, involving danger to persons or property.

Section 22

- 1. The right of association is granted.
- 2. Associations which pursue ends or use means legally defined as criminal offences are illegal.
- 3. Associations set up on the basis of this section must be entered in a register for the sole purpose of public knowledge.
- 4. Associations may only be dissolved or have their activities suspended by virtue of a court order stating the reasons for it.
- 5. Secret and paramilitary associations are prohibited.

Section 23

1. Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage.
2. They also have the right to accede under conditions of equality to public functions and positions, in accordance with the requirements laid down by the law.

Section 24

1. All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.
2. Likewise, all have the right to the ordinary judge predetermined by law; to defense and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defense; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent.

The law shall specify the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding allegedly criminal offences.

Section 25

1. No one may be convicted or sentenced for actions or omissions which when committed did not constitute a criminal offence, misdemeanour or administrative offence under the law then in force.
2. Punishments entailing imprisonment and security measures shall be aimed at reeducation and social rehabilitation and may not involve forced labour. The person sentenced to prison shall enjoy, during the imprisonment, the fundamental rights contained in this Chapter except those expressly restricted by the content of the sentence, the purpose of the punishment and the penitentiary law. In any case, he or she shall be entitled to paid work and to the appropriate Social Security benefits, as well as to access to cultural opportunities and the overall development of his or her personality.

3. The Civil Administration may not impose penalties which directly or indirectly imply deprivation of freedom.

Section 26

Courts of Honour are prohibited within the framework of the Civil Administration and of professional organizations.

Section 27

1. Everyone has the right to education. Freedom of teaching is recognized.
2. Education shall aim at the full development of human personality with due respect for the democratic principles of coexistence and for basic rights and freedoms.
3. The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions.
4. Elementary education is compulsory and free.
5. The public authorities guarantee the right of all to education, through general education programming, with the effective participation of all sectors concerned and the setting-up of educational centres.
6. The right of individuals and legal entities to set up educational centres is recognized, provided they respect constitutional principles.
7. Teachers, parents and, when appropriate, pupils shall participate in the control and management of all centres supported by the Administration out of public funds, under the terms established by the law.
8. The public authorities shall inspect and standardize the educational system in order to ensure compliance with the laws.
9. The public authorities shall help the educational centres which meet the requirements established by the law.
10. The autonomy of Universities is recognized, under the terms established by the law.

Section 28

1. All have the right to freely join a trade union. The law may restrict or except the exercise of this right in the Armed Forces or Institutes or other

bodies subject to military discipline, and shall lay down the special conditions of its exercise by civil servants. Trade union freedom includes the right to set up trade unions and to join the union of one's choice, as well as the right of trade unions to form confederations and to found international trade union organizations, or to become members thereof. No one may be compelled to join a trade union.

2. The right of workers to strike in defence of their interests is recognized. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services.

Section 29

1. All Spaniards shall have the right to individual and collective petition, in writing, in the manner and subject to the consequences to be laid down by law.
2. Members of the Armed Forces or Institutes or bodies subject to military discipline may only exercise this right individually and in accordance with statutory provisions relating to them.

Division 2

Rights and Duties of Citizens

Section 30

1. Citizens have the right and the duty to defend Spain.
2. The law shall determine the military obligations of Spaniards and shall regulate, with all due guarantees, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a community service in place of military service.
3. A civilian service may be established with a view to accomplishing objectives of general interest.
4. The duties of citizens in the event of serious risk, catastrophe or public calamity may be regulated by law.

Section 31

1. Everyone shall contribute to sustain public expenditure according to their economic capacity, through a fair tax system based on the principles of equality and progressive taxation, which in no case shall be of a confiscatory scope.
2. Public expenditure shall make an equitable allocation of public resources, and its programming and execution shall comply with criteria of efficiency and economy.
3. Personal or property contributions for public purposes may only be imposed in accordance with the law.

Section 32

1. Man and woman have the right to marry with full legal equality.
2. The law shall make provision for the forms of marriage, the age and capacity for concluding it, the rights and duties of the spouses, the grounds for separation and dissolution, and their effects.

Section 33

1. The right to private property and inheritance is recognized.
2. The social function of these rights shall determine the limits of their content in accordance with the law.
3. No one may be deprived of his or her property and rights, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the law.

Section 34

1. The right to set up foundations for purposes of general interest is recognized in accordance with the law.
2. The provisions of subsections 2 and 4 of section 22 shall also be applicable to foundations.

Section 35

1. All Spaniards have the duty to work and the right to work, to the free choice of profession or trade, to advancement through work, and to a sufficient remuneration for the satisfaction of their needs and those of their families. Under no circumstances may they be discriminated on account of their sex.
2. The law shall regulate a Workers' Statute.

Section 36

The law shall regulate the peculiarities of the legal status of Professional Associations and the exercise of degree professions. The internal structure and the functioning of Associations must be democratic.

Section 37

1. The law shall guarantee the right to collective labour bargaining between workers and employers' representatives, as well as the binding force of the agreements.
2. The right of workers and employers to adopt collective labour dispute measures is hereby recognized. The law regulating the exercise of this right shall, without prejudice to the restrictions which it may impose, include the guarantees necessary to ensure the functioning of essential public services.

Section 38

Free enterprise is recognized within the framework of a market economy. The public authorities guarantee and protect its exercise and the safeguarding of productivity in accordance with the demands of the general economy and, as the case may be, of economic planning.

Chapter 3

PRINCIPLES GOVERNING ECONOMIC AND SOCIAL POLICY

Section 39

1. The public authorities ensure social, economic and legal protection of the family.
2. The public authorities likewise ensure full protection of children, who are equal before the law, regardless of their parentage, and of mothers, whatever their marital status. The law shall provide for the possibility of the investigation of paternity.
3. Parents must provide their children, whether born within or outside wedlock, with assistance of every kind while they are still under age and in other circumstances in which the law so establishes.
4. Children shall enjoy the protection provided for in the international agreements safeguarding their rights.

Section 40

1. The public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of regional and personal income within the framework of a policy of economic stability. They shall in particular carry out a policy aimed at full employment.
2. Likewise, the public authorities shall promote a policy guaranteeing professional training and retraining; they shall ensure labour safety and hygiene and shall provide for the need of rest by limiting the duration of working day, by periodic paid holidays, and by promoting suitable centres.

Section 41

The public authorities shall maintain a public Social Security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment. Supplementary assistance and benefits shall be optional.

Section 42

The State shall be especially concerned with safeguarding the economic and social rights of Spanish workers abroad, and shall direct its policy towards their return.

Section 43

1. The right to health protection is recognized.
2. It is incumbent upon the public authorities to organize and watch over public health by means of preventive measures and the necessary benefits and services. The law shall establish the rights and duties of all in this respect.
3. The public authorities shall foster health education, physical education and sports.
Likewise, they shall encourage the proper use of leisure time.

Section 44

1. The public authorities shall promote and watch over access to culture, to which all are entitled.
2. The public authorities shall promote science and scientific and technical research for the benefit of the general interest.

Section 45

1. Everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it.
2. The public authorities shall watch over a rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on an indispensable collective solidarity.
3. For those who break the provisions contained in the foregoing paragraph, criminal or, where applicable, administrative sanctions shall be imposed, under the terms established by the law, and they shall be obliged to repair the damage caused.

Section 46

The public authorities shall guarantee the preservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and of the property of which it consists, regardless of their legal status and their ownership. The criminal law shall punish any offences against this heritage.

Section 47

All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies.

Section 48

The public authorities shall promote conditions for the free and effective participation of young people in political, social, economic and cultural development.

Section 49

The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialized care they require, and affording them special protection for the enjoyment of the rights granted by this Part to all citizens.

Section 50

The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise, and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure.

Section 51

1. The public authorities shall guarantee the protection of consumers and users and shall, by means of effective measures, safeguard their safety, health and legitimate economic interests.
2. The public authorities shall promote the information and education of consumers and users, foster their organizations, and hear them on those matters affecting their members, under the terms established by law.
3. Within the framework of the provisions of the foregoing paragraphs, the law shall regulate domestic trade and the system of licensing commercial products.

Section 52

The law shall regulate the professional organizations which contribute to the defence of their own economic interests. Their internal structure and their functioning must be democratic.

Chapter 4

GUARANTEE OF FUNDAMENTAL RIGHTS AND FREEDOMS

Section 53

1. The rights and freedoms recognized in Chapter 2 of the present Part are binding on all public authorities. Only by an act which in any case must respect their essential content, could the exercise of such rights and freedoms be regulated, which shall be protected in accordance with the provisions of section 161(1) a).
2. Any citizen may assert a claim to protect the freedoms and rights recognized in section 14 and in division 1 of Chapter 2, by means of a preferential and summary procedure before the ordinary courts and, when appropriate, by lodging an individual appeal for protection (*recurso de amparo*) to the Constitutional Court. This latter procedure shall be applicable to conscientious objection as recognized in section 30.
3. Recognition, respect and protection of the principles recognized in Chapter 3 shall guide legislation, judicial practice and actions by the public

authorities. They may only be invoked before the ordinary courts in accordance with the legal provisions implementing them.

Section 54

An organic act shall regulate the institution of the Defender of the People (Defensor del Pueblo) as high commissioner of the Cortes Generales, appointed by them to defend the rights contained in this Part; for this purpose he or she may supervise the activity of the Administration and report thereon to the Cortes Generales. (Senate Standing Orders, section 183).

Chapter 5

SUSPENSION OF RIGHTS AND FREEDOMS

Section 55

1. The rights recognized in sections 17 and 18, subsections 2 and 3, sections 19 and 20, subsection 1, paragraphs a) and d), and subsection 5; sections 21 and 28, subsection 2, and section 37, subsection 2, may be suspended when a state of emergency or siege (martial law) is declared under the terms provided in the Constitution. Subsection 3 of section 17 is excepted from the foregoing provisions in the event of the declaration of a state of emergency.
2. An organic act may determine the manner and the circumstances in which, on an individual basis and with the necessary participation of the courts and proper parliamentary control, the rights recognized in section 17, subsection 2, and 18, subsections 2 and 3, may be suspended for specific persons in connection with investigations of the activities of armed bands or terrorist groups.

Unwarranted or abusive use of the powers recognized in the foregoing organic act shall give rise to criminal liability as a violation of the rights and freedoms recognized by the laws.

PART II

THE CROWN

Section 56

1. The King is the Head of State, the symbol of its unity and permanence. He arbitrates and moderates the regular functioning of the institutions, assumes the highest representation of the Spanish State in international relations, especially with the nations of its historical community, and exercises the functions expressly conferred on him by the Constitution and the laws.
2. His title is that of King of Spain, and he may use the other titles appertaining to the Crown.
3. The person of the King is inviolable and shall not be held accountable. His acts shall always be countersigned in the manner established in section 64. Without such countersignature they shall not be valid, except as provided under section 65(2).

Section 57

1. The Crown of Spain shall be inherited by the successors of H. M. Juan Carlos I de Borbón, the legitimate heir of the historic dynasty. Succession to the throne shall follow the regular order of primogeniture and representation, the first line always having preference over subsequent lines; within the same line, the closer grade over the more remote; within the same grade, the male over the female, and in the same sex, the elder over the younger.
2. The Crown Prince, from his birth or from the time he acquires the claim, shall hold the title of Prince of Asturias and the other titles traditionally held by the heir to the Crown of Spain.
3. Should all the lines designated by law become extinct, the Cortes Generales shall provide for succession to the Crown in the manner most suitable to the interests of Spain.
4. Those persons with a right of succession to the throne who marry against the express prohibition of the King and the Cortes Generales, shall be excluded from succession to the Crown, as shall their descendants.

5. Abdications and renunciations and any doubt in fact or in law that may arise in connection with the succession to the Crown shall be settled by an organic act.

Section 58

The Queen consort, or the consort of the Queen, may not assume any constitutional functions, except in accordance with the provisions for the Regency.

Section 59

1. In the event of the King being under age, the King's father or mother or, in default thereof, the oldest relative of legal age who is nearest in succession to the Crown, according to the order established in the Constitution, shall immediately assume the office of Regent, which shall exercise during the King's minority.
2. If the King becomes unfit for the exercise of his authority, and this incapacity is recognized by the Cortes Generales, the Crown Prince shall immediately assume the Regency, if he is of age. If he is not, the procedure outlined in the foregoing paragraph shall apply until the coming of age of the Crown Prince.
3. If there is no person entitled to assume the Regency, it shall be appointed by the Cortes Generales and shall be composed of one, three or five persons.
4. In order to exercise the Regency, it is necessary to be Spaniard and legally of age.
5. The Regency shall be exercised by constitutional mandate, and always on behalf of the King.

Section 60

1. The guardian of the King during his minority shall be the person appointed in the will of the deceased King, provided that he or she is of age and Spaniard by birth. If a guardian has not been appointed, the father or the mother shall be guardian, as long as they remain widowed. In default thereof, the guardian shall be appointed by the Cortes Generales, but the offices of

Regent and Guardian may not be held by the same person, except by the father, mother or direct ancestors of the King.

2. Exercise of the guardianship is also incompatible with the holding of any office or political representation.

Section 61

1. The King, on being proclaimed before the Cortes Generales, will swear to faithfully carry out his duties, to obey the Constitution and the laws and ensure that they are obeyed, and to respect the rights of citizens and the Self-governing Communities.
2. The Crown Prince, on coming of age, and the Regent or Regents, on assuming office, will swear the same oath as well as that of loyalty to the King.

Section 62

It is incumbent upon the King:

- a) To sanction and promulgate the laws;
- b) To summon and dissolve the Cortes Generales and to call for elections under the terms provided for in the Constitution;
- c) To call for a referendum in the cases provided for in the Constitution;
- d) To propose a candidate for President of the Government and, as the case may be, appoint him or her or remove him or her from office, as provided in the Constitution;
- e) To appoint and dismiss members of the Government on the President of the Government's proposal;
- f) To issue the decrees approved in the Council of Ministers, to confer civil and military positions and award honours and distinctions in conformity with the law;
- g) To be informed of the affairs of State and, for this purpose, to preside over the meetings of the Council of Ministers whenever, he sees fit, at the President of the Government's request;
- h) To exercise supreme command of the Armed Forces;
- i) To exercise the right of clemency in accordance with the law, which may not authorize general pardons;
- j) To exercise the High Patronage of the Royal Academies.

Section 63

1. The King accredits ambassadors and other diplomatic representatives. Foreign representatives in Spain are accredited before him.
2. It is incumbent upon the King to express the State's assent to international commitments through treaties, in conformity with the Constitution and the laws.
3. It is incumbent upon the King, following authorization by the Cortes Generales, to declare war and to make peace.

Section 64

1. The King's acts shall be countersigned by the President of the Government and, when appropriate, by the competent ministers. The nomination and appointment of the President of the Government and the dissolution provided for under section 99, shall be countersigned by the Speaker of the Congress.
2. The persons countersigning the King's acts shall be liable for them.

Section 65

1. The King receives an overall amount from the State Budget for the maintenance of his Family and Household and distributes it freely.
2. The King freely appoints and dismisses civil and military members of his Household.

PART III

THE CORTES GENERALES

Chapter 1

HOUSES OF PARLIAMENT

Section 66

1. The Cortes Generales represent the Spanish people and shall consist of the Congress and the Senate.
2. The Cortes Generales exercise the legislative power of the State and adopt its Budget, control the action of the Government and have the other competences assigned by the Constitution.
3. The Cortes Generales are inviolable.

Section 67

1. No one may be a member of both Houses simultaneously, or be a representative in the Assembly of a Self-governing Community and a Member of Congress at the same time.
2. Members of the Cortes Generales shall not be bound by any compulsory mandate.
3. Meetings of members of Parliament which are held without having been called in the statutory manner, shall not be binding on the Houses, and members may not exercise their functions nor enjoy their privileges.

Section 68

1. The Congress shall consist of a minimum of three hundred and a maximum of four hundred Members, elected by universal, free, equal, direct and secret suffrage, under the terms to be laid down by the law.
2. The electoral constituency is the province. The cities of Ceuta and Melilla shall be represented by one Member each. The total number of Members shall be distributed in accordance with the law, each constituency being

allotted a minimum initial representation and the remainder being distributed in proportion to the population.

3. The election in each constituency shall be conducted on the basis of proportional representation.
4. The Congress is elected for four years. The term of office of Members thereof ends four years after their election or on the day on which the Congress is dissolved.
5. All Spaniards entitled to the full exercise of their political rights shall be electors and may be elected.
The law shall recognize and the State shall facilitate the exercise of the right of vote by Spaniards who are outside Spanish territory.
6. Elections shall take place between thirty and sixty days after the end of the previous term of office. The Congress so elected must be convened within twenty-five days following the holding of elections.

Section 69

1. The Senate is the House of territorial representation.
2. In each province, four Senators shall be elected by the voters thereof by universal, free, equal, direct and secret suffrage, under the terms to be laid down by an organic act.
3. In the insular provinces, each island or group of islands with a Cabildo or insular Council shall be a constituency for the purpose of electing Senators; there shall be three Senators for each of the major islands – Gran Canaria, Mallorca and Tenerife – and one for each of the following islands or groups of islands: Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote and La Palma.
4. The cities of Ceuta and Melilla shall elect two Senators each.
5. The Self-governing Communities shall, in addition, appoint one Senator and a further Senator for every million inhabitants in their respective territories. The appointment shall be incumbent upon the Legislative Assembly or, in default thereof, upon the Selfgoverning Community's highest corporate body as provided for by its Statute which shall, in any case, guarantee adequate proportional representation.
6. The Senate is elected for four years. The Senators' term of office shall end four years after their election or on the day on which the House is dissolved.

Section 70

1. The Electoral Act shall establish grounds for ineligibility and incompatibility for Members of Congress and Senators, which shall in any case include those who are:
 - a) Members of the Constitutional Court;
 - b) High officers of the State Administration as laid down by law, with the exception of the members of the Government;
 - c) The Defender of the People;
 - d) Magistrates, Judges and Public Prosecutors when in office;
 - e) Professional soldiers and members of the Security and Police Forces and Corps in active service;
 - f) Members of the Electoral Commissions.
2. The validity of the certificates of election and credentials of members of each House shall be subject to judicial control, under the terms to be laid down in the Electoral Act.

Section 71

1. Members of Congress and Senators shall enjoy freedom of speech for opinions expressed in the exercise of their functions.
2. During their term of office, Members of Congress and Senators shall likewise enjoy freedom from arrest and may be arrested only in the event of flagrante delicto. They may be neither indicted nor tried without prior authorization of their respective House.
3. In criminal proceedings brought against Members of Congress and Senators, the competent court shall be the Criminal Section of the Supreme Court.
4. Members of Congress and Senators shall receive a salary to be determined by the respective House.

Section 72

1. The Houses lay down their own Standing Orders, adopt their budgets autonomously and, by common agreement, regulate the Personnel Statute of the Cortes Generales. The Standing Orders and their reform shall be subject to a final vote over the whole text, which shall require the overall majority.

2. The Houses elect their respective Speakers and the other members of their Bureaus. Joint sittings shall be presided over by the Speaker of the Congress and shall be governed by the Standing Orders of the Cortes Generales approved by the overall majority of members of each House.
3. The Speakers of the Houses shall exercise on their behalf all administrative powers and disciplinary functions within its premises.

Section 73

1. The Houses shall meet annually for two ordinary periods of sessions: the first from September to December, and the second from February to June.
2. The Houses may meet in extraordinary sessions at the request of the Government, of the Permanent Deputation or of the overall majority of members of either of the two Houses. Extraordinary sessions must be convened with a specific agenda and shall be adjourned once this has been dealt with.

Section 74

1. The Houses shall meet in joint session in order to exercise the non-legislative powers expressly conferred upon the Cortes Generales by Part II.
2. The decisions of the Cortes Generales specified in sections 94(1), 145(2) and 158(2) shall be taken by a majority vote of each of the Houses. In the first case, the procedure shall be initiated by the Congress, and in the remaining two by the Senate. In any case, if an agreement is not reached between the Senate and the Congress, an attempt to reach agreement shall be made by a Mixed Committee consisting of an equal number of Members of Congress and Senators. The Committee shall submit a text which shall be voted on by both Houses. If this is not approved in the established manner, the Congress shall decide by overall majority.

Section 75

1. The Houses shall convene in Plenary sittings and in Committees.
2. The Houses may delegate to Standing Legislative Committees the approval of Government or non-governmental bills. However, the Plenary sitting

may at any time demand that any Government or non-governmental bill that has been so delegated be debated and voted upon by the Plenary itself.

3. Excluded from the provisions of the foregoing paragraph are constitutional reform, international affairs, organic and basic acts and the Budget.

Section 76

1. The Congress and the Senate and, when appropriate, both Houses jointly, may appoint enquiry committees on any matter of public interest. Their conclusions shall not be binding on the Courts, nor shall they affect judicial decisions, but the results of investigations may be referred to the Public Prosecutor for the exercise of appropriate action whenever necessary.
2. It shall be compulsory to appear when summoned by the Houses. The law shall regulate penalties to be imposed for failure to comply with this obligation.

Section 77

1. The Houses may receive individual and collective petitions, always in writing; direct submission by citizens' demonstrations is prohibited.
2. The Houses may refer such petitions to the Government. The Government shall provide an explanation regarding their content, when required to do so by the Houses.

Section 78

1. In each House there shall be a Permanent Deputation (Diputación Permanente) consisting of a minimum of twenty-one members who shall represent the parliamentary groups in proportion to their numerical importance.
2. The Permanent Deputation shall be presided over by the Speaker of the respective House and their functions shall be that provided in section 73, that of assuming the powers of the Houses in accordance with sections 86 and 116 in case that the latter have been dissolved or their terms have expired, and that of safeguarding the powers of the Houses when they are not in session.

3. On the expiration of the term or in case of dissolution, the Permanent Deputations shall continue to exercise their functions until the constitution of the new Cortes Generales.
4. When the House concerned meets, the Permanent Deputation shall report on the matters dealt with and on its decisions.

Section 79

1. In order to adopt agreements, the Houses must meet in statutory manner, with the majority of their members present.
2. In order to be valid, such agreements must be approved by the majority of the members present, without prejudice to the special majorities that may be required by the Constitution or the organic acts and those which are provided for by the Standing Orders of the Houses for the election of persons.
3. The vote of Senators and Members of Congress shall be personal and may not be delegated.

Section 80

Plenary meetings of the Houses shall be public, except when otherwise decided by each House by overall majority, or in accordance with the Standing Orders.

Chapter 2

DRAFTING OF BILLS

Section 81

1. Organic acts are those relating to the implementation of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and other laws provided for in the Constitution.
2. The approval, amendment or repeal of organic acts shall require the overall majority of the Members of Congress in a final vote on the bill as a whole.

Section 82

1. The Cortes Generales may delegate to the Government the power to issue rules with the force of an act of the Parliament on specific matters not included in the foregoing section.
2. Legislative delegation must be granted by means of act of basic principles when its purpose is to draw up texts in sections, or by an ordinary act when it is a matter of consolidating several legal statutes into one.
3. Legislative delegation must be expressly granted to the Government for a concrete matter and with a fixed time limit for its exercise. The delegation shall expire when the Government has made use of it through the publication of the corresponding regulation. It may not be construed as having been granted implicitly or for an indeterminate period. Nor shall sub-delegation to authorities other than the Government itself be authorized.
4. Acts of basic principles shall define precisely the purpose and scope of legislative delegation, as well as the principles and criteria to be followed in its exercise.
5. Authorization for consolidating legal texts shall determine the legislative scope implicit in the delegation, specifying if it is restricted to the mere drafting of a single text or whether it includes regulating, clarifying and harmonizing the legal statutes to be consolidated.
6. The acts of delegation may provide for additional control devices in each case, without prejudice to the jurisdiction of the Courts.

Section 83

The acts of basic principles may in no case:

- a) Authorize the modification of the act itself;
- b) Grant power to enact retroactive regulations.

Section 84

In the event that a non-governmental bill or an amendment is contrary to a currently valid legislative delegation, the Government may oppose its processing. In this case, a nongovernmental bill may be submitted for the total or partial repeal of the delegation act.

Section 85

Government provisions containing delegated legislation shall bear the title of "Legislative Decrees".

Section 86

1. In case of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws and which may not affect the legal system of the basic State institutions, the rights, duties and freedoms of the citizens contained in Part 1, the system of Self-governing Communities, or the general electoral law.
2. Decree-laws must be immediately submitted for debate and voting by the entire Congress, which must be summoned for this purpose if not already in session, within thirty days of their promulgation. The Congress shall adopt an specific decision on their ratification or repeal in the said period, for which purpose the Standing Orders shall contemplate a special summary procedure.
3. During the period referred to in the foregoing subsection, the Cortes may process them as Government bills by means of the urgency procedure.

Section 87

1. Legislative initiative belongs to the Government, the Congress and the Senate, in accordance with the Constitution and the Standing Orders of the Houses.
2. The Assemblies of Self-governing Communities may request the Government to adopt a bill or may refer a non-governmental bill to the Bureau of Congress and delegate a maximum of three Assembly members to defend it.
3. An organic act shall lay down the manner and the requirements of the popular initiative for submission of non-governmental bills. In any case, no less than 500.000 authenticated signatures shall be required. This initiative shall not be allowed on matters concerning organic acts, taxation, international affairs or the prerogative of pardon.

Section 88

Government bills shall be approved by the Council of Ministers which shall refer them to the Congress, attaching a statement setting forth the necessary grounds and facts to reach a decision thereon.

Section 89

1. The reading of non-governmental bills shall be regulated by the Standing Orders of the Houses in such a way that the priority attached to Government bills shall not prevent the exercise of the right to propose legislation under the terms laid down in section 87.
2. Non-governmental bills which, in accordance with section 87, are taken under consideration in the Senate, shall be referred to the Congress for reading.

Section 90

1. An organic act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution.
2. Within two months after receiving the text, the Senate may, by a message stating the reasons for it, adopt a veto or approve amendments thereto. The veto must be adopted by overall majority. The bill may not be submitted to the King for assent unless, in the event of veto, the Congress has ratified the initial text by overall majority or by single majority if two months have elapsed since its introduction, or has reached a decision as to the amendments, accepting them or not by single majority.
3. The period of two months allowed to the Senate for vetoing or amending a bill shall be reduced to twenty calendar days for bills declared by the Government or by the Congress to be urgent.

Section 91

The King shall, within a period of fifteen days, give his assent to bills drafted by the Cortes Generales, and shall promulgate them and order their publication forthwith.

Section 92

1. Political decisions of special importance may be submitted to all citizens in a consultative referendum.
2. The referendum shall be called by the King on the President of the Government's proposal after previous authorization by the Congress.
3. An organic act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution.

Chapter 3

INTERNATIONAL TREATIES

Section 93

Authorization may be granted by an organic act for concluding treaties by which powers derived from the Constitution shall be transferred to an international organization or institution. It is incumbent on the Cortes Generales or the Government, as the case may be, to ensure compliance with these treaties and with resolutions originating in the international and supranational organizations to which such powers have been so transferred.

Section 94

1. The giving of the consent of the State to enter any commitment by means of treaty or agreement, shall require prior authorization of the Cortes Generales in the following cases:
 - a) Treaties of a political nature;
 - b) Treaties or agreements of a military nature;
 - c) Treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties established under Part 1;
 - d) Treaties or agreements which imply financial liabilities for the Public Treasury;
 - e) Treaties or agreements which involve amendment or repeal of some law or require legislative measures for their execution.
2. The Congress and the Senate shall be informed forthwith of the conclusion of any other treaties or agreements.

Section 95

1. The conclusion of an international treaty containing stipulations contrary to the Constitution shall require prior constitutional amendment.
2. The Government or either House may request the Constitutional Court to declare whether or not such a contradiction exists.

Section 96

1. Validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system. Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law.
2. The procedure provided for in section 94 for entering into international treaties and agreements shall be used for denouncing them.

PART IV

GOVERNMENT AND ADMINISTRATION

Section 97

The Government shall conduct domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority and the power of statutory regulations in accordance with the Constitution and the laws.

Section 98

1. The Government shall consist of the President, Vice-Presidents, when appropriate, Ministers and other members as may be created by law.
2. The President shall direct the Governments' action and coordinate the functions of the other members thereof, without prejudice to the competence and direct responsibility of the latter in the discharge of their duties.
3. Members of the Government may not perform representative functions other than those derived from their parliamentary mandate, nor any other

public function not deriving from their office, nor engage in any professional or commercial activity whatsoever.

4. The status and incompatibilities of members of the Government shall be laid down by law.

Section 99

1. After each renewal of the Congress and in the other cases provided for under the Constitution, the King shall, after consultation with the representatives appointed by the political groups with parliamentary representation, and through the Speaker of the Congress, nominate a candidate for the Presidency of the Government.
2. The candidate nominated in accordance with the provisions of the foregoing subsection shall submit to the Congress the political programme of the Government he or she intends to form and shall seek the confidence of the House.
3. If the Congress, by vote of the overall majority of its members, grants to said candidate its confidence, the King shall appoint him or her President. If overall majority is not obtained, the same proposal shall be submitted for a fresh vote forty-eight hours after the previous vote, and confidence shall be deemed to have been secured if granted by single majority.
4. If, after this vote, confidence for the investiture has not been obtained, successive proposals shall be voted upon in the manner provided for in the foregoing paragraphs.
5. If within two months of the first vote for investiture no candidate has obtained the confidence of the Congress, the King shall dissolve both Houses and call for new elections, with the countersignature of the Speaker of the Congress.

Section 100

The other members of the Government shall be appointed and dismissed by the King at the President's proposal.

Section 101

1. The Government shall resign after the holding of general elections, in the event of loss of parliamentary confidence as provided in the Constitution, or on the resignation or death of the President.
2. The outgoing Government shall continue as acting body until the new Government takes office.

Section 102

1. The President and other members of the Government shall be held criminally liable, should the occasion arise, before the Criminal Section of the Supreme Court.
2. If the charge were treason or any offence against the security of the State committed in the discharge of office, it may only be brought against them on the initiative of one quarter of Members of Congress and with the approval of the overall majority thereof.
3. The Royal prerogative of pardon shall not apply any of the cases provided for under the present section.

Section 103

1. The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law.
2. The organs of State Administration are set up, directed and coordinated in accordance with the law.
3. The law shall lay down the status of civil servants, the entry into the civil service in accordance with the principles of merit and ability, the special features of the exercise of their right to union membership, the system of incompatibilities and the guarantees regarding impartiality in the discharge of their duties.

Section 104

1. The Security Forces and Corps serving under the Government shall have the duty to protect the free exercise of rights and freedoms and to guarantee the safety of citizens.
2. An organic act shall specify the duties, basic principles of action and statutes of the Security Forces and Corps.

Section 105

The law shall make provision for:

- a) The hearing of citizens, directly, or through the organizations and associations recognized by the law, in the process of drawing up the administrative provisions which affect them;
- b) The access of citizens to administrative files and records, except to the extent that they may concern the security and defence of the State, the investigation of crimes and the privacy of persons;
- c) The procedures for the taking of administrative action, with due safeguards for the hearing of interested parties when appropriate.

Section 106

1. The Courts shall check the power to issue regulations and ensure that the rule of law prevails in administrative action, and that the latter is subordinated to the ends which justify it.
2. Private individuals shall, under the terms laid down by law, be entitled to compensation for any harm they may suffer in any of their property and rights, except in cases of force majeure, whenever such harm is the result of the operation of public services.

Section 107

The Council of State is the supreme consultative body of the Government. An organic act shall make provision for its membership and its terms of reference.

PART V
RELATIONS BETWEEN THE GOVERNMENT AND THE COR-
TES GENERALES

Section 108

The Government is jointly accountable before the Congress for its conduct of political business.

Section 109

The Houses and their Committees may, through their respective Speaker, request any kind of information and help they may need from the Government and Government Departments and from any authorities of the State and Selfgoverning Communities.

Section 110

1. The Houses and their Committees may summon members of the Government.
2. Members of the Government are entitled to attend meetings of the Houses and their Committees and to be heard in them and may request that officials from their Departments are allowed to report to them.

Section 111

1. The Government and each of its members are subject to interpellations and questions put to them in the Houses. The Standing Orders shall set aside a minimum weekly time for this type of debate.
2. Any interpellation may give rise to a motion in which the House states its position.

Section 112

The President of the Government, after deliberation by the Council of Ministers, may ask the Congress for a vote of confidence in favour of his or her

programme or of a general policy statement. Confidence shall be deemed to have been obtained when a single majority of the Members of Congress vote in favour.

Section 113

1. The Congress may require political responsibility from the Government by adopting a motion of censure by overall majority of its Members.
2. The motion of censure must be proposed by at least one tenth of the Members of Congress and shall include a candidate for the office of the Presidency of the Government.
3. The motion of censure may not be voted until five days after it has been submitted. During the first two days of this period, alternative motions may be submitted.
4. If the motion of censure is not adopted by the Congress, its signatories may not submit another during the same period of sessions.

Section 114

1. If the Congress withholds its confidence from the Government, the latter shall submit its resignation to the King, whereafter the President of the Government shall be nominated in accordance with the provisions of section 99.
2. If the Congress adopts a motion of censure, the Government shall submit its resignation to the King, and the candidate proposed in the motion of censure shall be deemed to have the confidence of the House for the purposes provided in section 99. The King shall appoint him or her President of the Government.

Section 115

1. The President of the Government, after deliberation by the Council of Ministers, and under his or her sole responsibility, may propose the dissolution of the Congress, the Senate or the Cortes Generales, which shall be proclaimed by the King. The decree of dissolution shall set a date for the elections.

2. The proposal for dissolution may not be submitted while a motion of censure is pending.
3. There shall be no further dissolution until a year has elapsed since the previous one, except as provided for in section 99, subsection 5.

Section 116

1. An organic act shall make provision for the states of alarm, emergency and siege (martial law) and the powers and restrictions attached to each of them.
2. A state of alarm shall be proclaimed by the Government, by means of a decree agreed in Council of Ministers, for a maximum period of fifteen days. The Congress shall be informed and must meet immediately, and without its authorization the said period may not be extended. The decree shall specify the territory to which the effects of the proclamation apply.
3. A state of emergency shall be proclaimed by the Government by decree agreed in Council of Ministers, after prior authorization by the Congress. The authorization for and proclamation of a state of emergency must specifically state the effects thereof, the territory to which it is to apply and its duration, which may not exceed thirty days, subject to extension for a further thirty-day period, with the same requirements.
4. A state of siege (martial law) shall be proclaimed by overall majority of Congress solely on the Government's proposal. Congress shall determine its territorial extension, duration and terms.
5. The Congress may not be dissolved while any of the states referred to in the present section remains in force, and if the Houses are not in session, they shall be automatically convened. Their functioning, as well as that of the other constitutional State authorities, may not be interrupted while any of these states is in force.

If, in the event that the Congress has been dissolved or its term has expired, a situation giving rise to any of these states should occur, the powers of the Congress shall be assumed by its Permanent Deputation.
6. Proclamation of states of alarm, emergency and siege shall not affect the principle of liability of the Government or its agents as recognized in the Constitution and the laws.

PART VI

JUDICIAL POWER

Section 117

1. Justice emanates from the people and is administered on behalf of the King by judges and magistrates members of the Judicial Power who shall be independent, shall have fixity of tenure, shall be accountable for their acts and subject only to the rule of law.
2. Judges and magistrates may only be dismissed, suspended, transferred or retired on the grounds and subject to the safeguards provided for by the law.
3. The exercise of judicial authority in any kind of action, both in ruling and having judgments executed, is vested exclusively in the courts and tribunals laid down by the law, in accordance with the rules of jurisdiction and procedure which may be established therein.
4. Judges and courts shall not exercise any powers other than those indicated in the foregoing subsection and those which are expressly allocated to them by law as a guarantee of any right.
5. The principle of jurisdictional unity is the basis of the organization and operation of the courts. The law shall make provision for the exercise of military jurisdiction strictly within military framework and in cases of state of siege (martial law), in accordance with the principles of the Constitution.
6. Courts of exception are prohibited.

Section 118

It is compulsory to comply with sentences and other final resolutions of judges and courts, as well as to pay them such assistance as they may require in the course of trials and for the execution of judgments.

Section 119

Justice shall be free when thus provided for by law, and shall in any case be so in respect of those who have insufficient means to sue in court.

Section 120

1. Judicial proceedings shall be public, with the exceptions contemplated in the laws on procedure.
2. Proceedings shall be predominantly oral, especially in criminal cases.
3. Judgments shall always specify the grounds therefore, and they shall be delivered in a public hearing.

Section 121

Damages caused by judicial error as well as those arising from irregularities in the administration of justice shall give rise to a right to compensation by the State, in accordance with the law.

Section 122

1. The Organic Act of the Judicial Power shall make provision for the setting up, operation and internal administration of courts and tribunals as well as for the legal status of professional judges and magistrates, who shall form a single body, and of the staff serving in the administration of justice.
2. The General Council of the Judicial Power is its governing body. An organic act shall lay down its status and the system of incompatibilities applicable to its members and their functions, especially in connection with appointments, promotions, inspection and the disciplinary system.
3. The General Council of the Judicial Power shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year period, of which twelve shall be judges and magistrates of all judicial categories, under the terms provided for by the organic act; four nominated by the Congress and four by the Senate, elected in both cases by three-fifths of their members amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional practice.

Section 123

1. The Supreme Court, with jurisdiction over the whole of Spain, is the highest judicial body in all branches of justice, except with regard to provisions concerning constitutional guarantees.

2. The President of the Supreme Court shall be appointed by the King, on the General Council of the Judicial Power proposal in the manner to be laid down by the law.

Section 124

1. The Office of Public Prosecutor, without prejudice to functions entrusted to other bodies, has the task of promoting the operation of justice in the defence of the rule of law, of citizens' rights and of the public interest as safeguarded by the law, whether ex officio or at the request of interested parties, as well as that of protecting the independence of the courts and securing before them the satisfaction of social interest.
2. The Office of Public Prosecutor shall discharge its duties through its own bodies in accordance with the principles of unity of operation and hierarchical subordination, subject in all cases to the principles of the rule of law and of impartiality.
3. The organic statute of the Office of the Public Prosecutor shall be laid down by law.
4. The State's Public Prosecutor shall be appointed by the King on the Government's proposal after consultation with the General Council of the Judicial Power.

Section 125

Citizens may engage in popular action and take part in the administration of justice through the institution of the jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts.

Section 126

The judicial police shall report to the judges, the courts and the Public Prosecutor when discharging their duties of crime investigation and the discovery and arrest of offenders, under the terms to be laid down by the law.

Section 127

1. Judges and magistrates as well as public prosecutors, whilst actively in office, may not hold other public office nor belong to political parties or unions. The law shall make provision for the system and methods of professional association for judges, magistrates and prosecutors.
2. The law shall make provision for the system of incompatibilities for members of the Judicial Power, which must ensure their total independence.

PART VII**ECONOMY AND FINANCE**

Section 128

1. The entire wealth of the country in its different forms, irrespective of ownership, shall be subordinated to the general interest.
2. Public initiative in economic activity is recognized. Essential resources or services may be reserved by law to the public sector especially in the case of monopolies. Likewise, State intervention in companies may be imposed when the public interest so demands.

Section 129

1. The law shall establish the forms of participation of the persons concerned in Social Security and in the activities of those public bodies whose operation directly affects quality of life or general welfare.
2. The public authorities shall efficiently promote the various forms of participation in the enterprise and shall encourage cooperative societies by means of appropriate legislation.
They shall also establish means to facilitate access by workers to ownership of the means of production.

Section 130

1. The public authorities shall promote the modernization and development of all economic sectors and, in particular, of agriculture, livestock raising, fishing and handicrafts, in order to bring the standard of living of all Spaniards up to the same level.
2. For the same purpose, special treatment shall be given to mountain areas.

Section 131

1. The State shall be empowered to plan general economic activity by an act in order to meet collective needs, to balance and harmonize regional and sectorial development and to stimulate the growth of income and wealth and their more equitable distribution.
2. The Government shall draft planning projects in accordance with forecasts supplied by Self-governing Communities and with the advice and cooperation of unions and other professional, employers' and financial organizations. A council shall be set up for this purpose, whose membership and duties shall be laid down by the law.

Section 132

1. The law shall lay down the rules governing public and communal property, on the basis that it shall be inalienable, exempt from prescription and cannot be attached under any circumstances, and it shall also provide for the case of disaffectation from public purpose.
2. The goods of the State's public property shall be that established by law and shall, in any case, include the foreshore beaches, territorial waters and the natural resources of the exclusive economic zone and the continental shelf.
3. The State's Domain and the National Heritage, as well as their administration, protection and preservation, shall be regulated by law.

Section 133

1. The primary power to raise taxes is vested exclusively in the State by means of law.
2. Self-governing Communities and local Corporations may impose and levy taxes, in accordance with the Constitution and the laws.

3. Any fiscal benefit affecting State taxes must be established by virtue of law.
4. Public Administrations may only contract financial liabilities and incur expenditures in accordance with the law.

Section 134

1. It is incumbent upon the Government to draft the State Budget and upon the Cortes Generales to examine, amend and adopt it.
2. The State Budget shall be drafted annually and shall include the entire expenditure and income of the State public sector and a specific mention shall be made of the amount of the fiscal benefits affecting State taxes.
3. The Government must submit the draft State Budget to the Congress at least three months before the expiration of that of the previous year.
4. If the Budget Bill is not passed before the first day of the corresponding financial year, the Budget of the previous financial year shall be automatically extended until the new one is approved.
5. Once the Budget Bill has been adopted, the Government may submit bills involving increases in public expenditure or decreases in the revenue corresponding to the same financial year.
6. Any non-governmental bill or amendment which involves an increase in appropriations or a decrease in budget revenue shall require previous approval by the Government before its passage.
7. The Budget Act may not establish new taxes. It may modify them, whenever a tax law of a substantive nature so provides.

Section 135

(This text includes the second constitutional reform adopted on 27 september 2011).

1. All public administrations will conform to the principle of budgetary stability.
2. The State and the Self-governing Communities may not incur a structural deficit that exceeds the limits established by the European Union for their member states.

An Organic Act shall determine the maximum structural deficit the state and the Self-governing Communities may have, in relation to its gross domestic product. Local authorities must submit a balanced budget.

3. The State and the Self-governing Communities must be authorized by Act in order to issue Public Debt bonds or to contract loans.
Loans to meet payment on the interest and capital of the State's Public Debt shall always be deemed to be included in budget expenditure and their payment shall have absolute priority. These appropriations may not be subject to amendment or modification as long as they conform to the terms of issue.
The volume of public debt of all the public administrations in relation to the State's gross domestic product may not exceed the benchmark laid down by the Treaty on the Functioning of the European Union.
4. The limits of the structural deficit and public debt volume may be exceeded only in case of natural disasters, economic recession or extraordinary emergency situations that are beyond the control of the State and significantly impair either the financial situation or the economic or social sustainability of the State, as appreciated by an absolute majority of the members of the Congress of Deputies.
5. An Organic Act shall develop the principles referred to in this article, as well as participation in the respective procedures of the organs of institutional coordination between government fiscal policy and financial support. In any case, the Organic Act shall address:
 - a) The distribution of the limits of deficit and debt among the different public administrations, the exceptional circumstances to overcome them and the manner and time in which to correct the deviations on each other;
 - b) The methodology and procedure for calculating the structural deficit;
 - c) The responsibility of each public administration in case of breach of budgetary stability objectives.
6. The Self-governing Communities, in accordance with their respective laws and within the limits referred to in this article, shall take the appropriate procedures for effective implementation of the principle of stability in their rules and budgetary decisions.

Section 136

1. The Auditing Court is the supreme body charged with auditing the State's accounts and financial management, as well as those of the public sector. It shall be directly accountable to the Cortes Generales and shall discharge

its duties by delegation of the same when examining and verifying the General State Accounts.

2. The State Accounts and those of the State's public sector shall be submitted to the Auditing Court and shall be audited by the latter.

The Auditing Court, without prejudice to its own jurisdiction, shall send an annual report to the Cortes Generales informing them, where applicable, of any infringements that may, in its opinion, have been committed, or any liabilities that may have been incurred.

3. Members of the Auditing Court shall enjoy the same independence and fixity of tenure and shall be subject to the same incompatibilities as judges.
4. An organic act shall make provision for membership, organization and duties of the Auditing Court.

PART VIII

TERRITORIAL ORGANIZATION OF THE STATE

Chapter 1

GENERAL PRINCIPLES

Section 137

The State is organized territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy selfgovernment for the management of their respective interests.

Section 138

1. The State guarantees the effective implementation of the principle of solidarity proclaimed in section 2 of the Constitution, by endeavouring to establish a fair and adequate economic balance between the different areas of the Spanish territory and taking into special consideration the circumstances pertaining to those which are islands.
2. Differences between Statutes of the different Self-governing Communities may in no case imply economic or social privileges.

Section 139

1. All Spaniards have the same rights and obligations in any part of the State territory.
2. No authority may adopt measures which directly or indirectly hinder freedom of movement and settlement of persons and free movement of goods throughout the Spanish territory.

Chapter 2

LOCAL GOVERNMENT

Section 140

The Constitution guarantees the autonomy of municipalities. These shall enjoy full legal personality. Their government and administration shall be vested in their Town Councils, consisting of Mayors and councillors. Councillors shall be elected by residents of the municipality by universal, equal, free, direct and secret suffrage, in the manner provided for by the law. The Mayors shall be elected by the councillors or by the residents. The law shall lay down the terms under which an open council of all residents may proceed.

Section 141

1. The province is a local entity, with its own legal personality, arising from the grouping of municipalities, and a territorial division designed to carry out the activities of the State. Any alteration of provincial boundaries must be approved by the Cortes Generales in an organic act.
2. The government and autonomous administration of the provinces shall be entrusted to Provincial Councils (Diputaciones) or other Corporations that must be representative in character.
3. Groups of municipalities other than provinces may be formed.
4. In the archipelagos, each island shall also have its own administration in the form of Cabildo or Insular Council.

Section 142

Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Selfgoverning Communities.

Chapter 3

SELF-GOVERNING COMMUNITIES

Section 143

1. In the exercise of the right to self-government recognized in section 2 of the Constitution, ordering provinces with common historic, cultural and economic characteristics, insular erritories and provinces with a historic regional status may accede to self-government and form Self-governing Communities (Comunidades Autónomas) in conformity with he provisions contained in this Part and in the respective Statutes.
2. The right to initiate the process towards self-government lies with all the Provincial ouncils concerned or with the corresponding inter-island body and with two thirds of he municipalities whose population represents at least the majority of the electorate of ach province or island. These requirements must be met within six months from the nitial agreement reached to this aim by any of the local Corporations concerned.
3. If this initiative is not successful, it may be repeated only after five years have elapsed.

Section 144

The Cortes Generales may, in the national interest, and by an organic act:

- a) Authorize the setting-up of a Self-governing Community, where its territory does not exceed that of a province and does not possess the characteristics outlined in section 143, paragraph 1;
- b) Authorize or grant, as the case may be, a Statute of Autonomy to territories which are not integrated into the provincial organization;

- c) Take over the initiative of the local Corporations referred to in section 143, paragraph 2.

Section 145

1. Under no circumstances shall a federation of Self-governing Communities be allowed.
2. Statutes of Autonomy may provide for the circumstances, requirements and terms under which Self-governing Communities may reach agreements among themselves for the management and rendering of services in matters pertaining to them, as well as for the nature and effects of the corresponding notification to be sent to the Cortes Generales. In all other cases, cooperation agreements among Self-governing Communities shall require authorization by the Cortes Generales.

Section 146

The draft Statute of Autonomy shall be drawn up by an assembly consisting of members of the Provincial Council or inter-island body of the provinces concerned, and the respective Members of Congress and Senators elected in them, and shall be sent to the Cortes Generales for its drafting as an Act.

Section 147

1. Within the terms of the present Constitution, Statutes of Autonomy shall be the basic institutional rule of each Self-governing Community and the State shall recognize and protect them as an integral part of its legal system.
2. The Statutes of Autonomy must contain:
 - a) The name of the Community which best corresponds to its historic identity;
 - b) Its territorial boundaries;
 - c) The name, organization and seat of its own autonomous institutions;
 - d) The powers assumed within the framework laid down by the Constitution and the basic rules for the transfer of the corresponding services.

3. Amendment of Statutes of Autonomy shall conform to the procedure established therein and shall in any case require approval of the Cortes Generales through an organic act.

Section 148

1. The Self-governing Communities may assume competences over the following matters:
 1. Organization of their institutions of self-government.
 2. Changes in municipal boundaries within their territory and, in general, functions appertaining to the State Administration regarding local Corporations, whose transfer may be authorized by legislation on local government.
 3. Town and country planning and housing.
 4. Public works of interest to the Self-governing Community, within its own territory.
 5. Railways and roads whose routes lie exclusively within the territory of the Selfgoverning Community and transport by the above means or by cable fulfilling the same conditions.
 6. Ports of haven, recreational ports and airports and, in general, those which are not engaged in commercial activities.
 7. Agriculture and livestock raising, in accordance with general economic planning.
 8. Woodlands and forestry.
 9. Management of environmental protection.
10. Planning, construction and exploitation of hydraulic projects, canals and irrigation of interest to the Self-governing Community; mineral and thermal waters.
11. Inland water fishing, shellfish industry and fishfarming, hunting and river fishing.
12. Local fairs.
13. Promotion of economic development of the Self-governing Community within the objectives set by national economic policy.
14. Handicrafts.
15. Museums, libraries and music conservatories of interest to the Self-governing Community.

16. The Self-governing Community's monuments of interest.
 17. The promotion of culture and research and, where applicable, the teaching of the Selfgoverning Community's language.
 18. The promotion and planning of tourism within its territorial area.
 19. The promotion of sports and the proper use of leisure.
 20. Social assistance.
 21. Health and hygiene.
 22. The supervision and protection of its buildings and installations. Coordination and other powers relating to local police forces under the terms to be laid down by an organic act.
2. After five years, the Self-governing Communities may, by amendment of their Statutes of Autonomy, progressively enlarge their powers within the framework laid down in section 149.

Section 149

1. The State shall have exclusive competence over the following matters:
 1. Regulation of basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties.
 2. Nationality, immigration, emigration, status of aliens, and right of asylum.
 3. International relations.
 4. Defence and the Armed Forces.
 5. Administration of Justice.
 6. Commercial, criminal and penitentiary legislation; procedural legislation, without prejudice to the necessary specialities in these fields arising from the peculiar features of the substantive law of the Self-governing Communities.
 7. Labour legislation, without prejudice to its execution by bodies of the Self-governing Communities.
 8. Civil legislation, without prejudice to the preservation, modification and development by the Self-governing Communities of their civil law, foral or special, whenever these exist, and traditional charts. In any event rules for the application and effectiveness of legal provisions, civil relations arising from the forms of marriage, keeping of records and drawing up to public instruments, bases of contractual liability, rules

for resolving conflicts of law and determination of the sources of law in conformity, in this last case, with the rules of traditional charts or with those of foral or special laws.

9. Legislation on copyright and industrial property.
10. Customs and tariff regulations; foreign trade.
11. Monetary system: foreign currency, exchange and convertibility; bases for the regulations concerning credit, banking and insurance.
12. Legislation on weights and measures and determination of the official time.
13. Basic rules and coordination of general economic planning.
14. General financial affairs and State Debt.
15. Promotion and general coordination of scientific and technical research.
16. External health measures; basic conditions and general coordination of health matters; legislation on pharmaceutical products.
17. Basic legislation and financial system of Social Security, without prejudice to implementation of its services by the Self-governing Communities.
18. Basic rules of the legal system of Public Administrations and the status of their officials which shall, in any case, guarantee that all persons under said administrations will receive equal treatment; the common administrative procedure, without prejudice to the special features of the Self-governing Communities' own organizations; legislation on compulsory expropriation; basic legislation on contracts and administrative concessions and the system of liability of all Public Administrations.
19. Sea fishing, without prejudice to the powers which, in regulations governing this sector, may be vested to the Self-governing Communities.
20. Merchant navy and registering of ships; lighting of coasts and signals at sea; general interest ports; general-interest airports; control of the air space, air traffic and transport; meteorological services and aircraft registration.
21. Railways and land transport crossing through the territory of more than one Self-governing Community; general system of communications; motor vehicle traffic; Post Office services and telecommunications; air and underwater cables and radiocommunications.
22. Legislation, regulation and concession of hydraulic resources and development where the water-streams flow through more than one Self-governing Community, and authorization for hydro-electrical power plants

- whenever their operation affects other Communities or the lines of energy transportation are extended over other Communities.
23. Basic legislation on environmental protection, without prejudice to powers of the Self-governing Communities to take additional protective measures; basic legislation on woodlands, forestry and cattle trails.
 24. Public works of general benefit or whose execution affects more than one Self-governing Community.
 25. Basic regulation of mining and energy.
 26. Manufacturing, sale, possession and use of arms and explosives.
 27. Basic rules relating to organization of the press, radio and television and, in general, all mass-communications media without prejudice to powers vested in the Self-governing Communities for their development and implementation.
 28. Protection of Spain's cultural and artistic heritage and national monuments against exportation and spoliation; museums, libraries, and archives belonging to the State, without prejudice to their management by the Self-governing Communities.
 29. Public safety, without prejudice to the possibility of creation of police forces by the Self-governing Communities, in the manner to be provided for in their respective Statutes of Autonomy and within the framework to be laid down by an organic act.
 30. Regulation of the requirements for obtention, issue and standardization of academic degrees and professional qualifications and basic rules for implementation of section 27 of the Constitution, in order to guarantee the fulfilment of the duties of public authorities in this matter.
 31. Statistics for State purposes.
 32. Authorization of popular consultations through the holding of referendums.
2. Without prejudice to the competences that may be assumed by the Self-governing Communities, the State shall consider the promotion of culture a duty and an essential function and shall facilitate cultural communication among the Self-governing Communities, in cooperation with them.
 3. Matters not expressly assigned to the State by this Constitution may fall under the jurisdiction of the Self-governing Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of Autonomy shall fall with the State, whose laws shall prevail, in case of con-

flict, over those of the Self-governing Communities regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. State law shall in any case be suppletory of that of the Self-governing Communities.

Section 150

1. The Cortes Generales, in matters of State jurisdiction, may confer upon all or any of the Self-governing Communities the power to pass legislation for themselves within the framework of the principles, bases and guidelines laid down by a State act. Without prejudice to the jurisdiction of the Courts, each enabling act shall make provision for the method of supervision by the Cortes Generales over the Communities' legislation.
2. The State may transfer or delegate to the Self-governing Communities, through an organic act, some of its powers which by their very nature can be transferred or delegated. The law shall, in each case, provide for the appropriate transfer of financial means, as well as specify the forms of control to be retained by the State.
3. The State may enact laws laying down the necessary principles for harmonizing the rulemaking provisions of the Self-governing Communities, even in the case of matters over which jurisdiction has been vested to the latter, where this is necessary in the general interest. It is incumbent upon the Cortes Generales, by overall majority of the members of each House, to evaluate this necessity.

Section 151

1. It shall not be necessary to wait for the five-year period referred to in section 148, subsection 2, to elapse when the initiative for the autonomy process is agreed upon within the time limit specified in section 143, subsection 2, not only by the corresponding Provincial Councils or inter-island bodies but also by three-quarters of the municipalities of each province concerned, representing at least the majority of the electorate of each one, and said initiative is ratified in a referendum by the overall majority of electors in each province, under the terms to be laid down by an organic act.
2. In the case referred to in the foregoing paragraph, procedure for drafting the Statute of Autonomy shall be as follows:

1. The Government shall convene all Members of Congress and Senators elected in the constituencies of the territory seeking self-government, in order that they may set themselves up as an Assembly for the sole purpose of drawing up a Statute of Autonomy, to be adopted by the overall majority of its members.
2. Once the draft Statute has been passed by the Parliamentarians' Assembly, it is to be sent to the Constitutional Committee of the Congress which shall examine it within two months with the cooperation and assistance of a delegation from the Assembly which has proposed it, in order to decide by common agreement upon its final form.
3. If such agreement is reached, the resulting text shall be submitted in a referendum to the electorate in the provinces within the territory to be covered by the proposed Statute.
4. If the draft Statute is approved in each province by the majority of validly cast votes, it shall be referred to the Cortes Generales. Each House, in plenary sitting, shall decide upon the text by means of a vote of ratification. Once the Statute been passed, the King shall give his assent and promulgate it as an act.
5. If the agreement referred to in paragraph ii) of this subsection is not reached, the legislative process for the draft Statute in the Cortes Generales shall be the same as that for a bill. The text passed by the latter shall be submitted to a referendum of the electorate of the provinces within the territory to be covered by the draft Statute. In the event that it is approved by the majority of validly cast votes in each province, it shall be promulgated as provided in the foregoing paragraph.
3. In the cases described in paragraphs iv) and v) of the foregoing subsection, failure by one or several of the provinces to ratify the draft Statute shall not prevent constitution of the remaining provinces into a Self-governing Community in the manner to be provided for by the organic act contemplated in subsection 1 of this section.

Section 152

1. In the case of Statutes passed by means of the procedure referred to in the foregoing section, the institutional self-government organization shall be based on a Legislative Assembly elected by universal suffrage under a system of proportional representation which shall also assure the rep-

resentation of the various areas of the territory; an Executive Council with executive and administrative functions and a President elected by the Assembly among its members and appointed by the King. The President shall assume leadership of the Executive Council, the supreme representation of the Community and the State's ordinary representation in the latter. The President and the members of the Executive Council shall be politically accountable to the Assembly.

A High Court of Justice, without prejudice to the jurisdiction of the Supreme Court, shall be the head of Judicial Power in the territory of the Self-governing Community. The Statutes of Autonomy may make provision for the circumstances and the manner in which the Community is to take part in the setting-up of the judicial districts of the territory. Provided that they must conform to the provisions of the Organic Act on the Judicial Power and to the principles of unity and independence of the judicial power.

Without prejudice to the provisions of section 123, successive proceedings, if any, shall be held before judicial bodies located in the same territory of the Self-governing Community in which the Court having jurisdiction in the first instance is located.

2. Once the Statutes have received the Royal Assent and been promulgated, they may be amended only by the procedure provided for therein and a referendum of registered electors in the Self-governing Community.
3. By grouping bordering municipalities together, the Statutes may set up their own territorial constituencies which shall enjoy full legal personality.

Section 153

Control over the bodies of the Self-governing Communities shall be exercised by:

- a) The Constitutional Court, in matters pertaining to the constitutionality of their regulatory provisions having the force of law;
- b) The Government, after the handing down by the Council of State of its opinion, regarding the exercise of delegated functions referred to in section 150, subsection 2;
- c) Jurisdictional bodies of administrative litigation with regard to autonomous administration and its regulations;
- d) The Auditing Court, with regard to financial and budgetary matters.

Section 154

A delegate appointed by the Government shall be responsible for the State administration in the territory of each Self-governing Community and shall coordinate it, when necessary, with the Community's own administration.

Section 155

1. If a Self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the abovementioned general interest.
2. With a view to implementing the measures provided for in the foregoing paragraph, the Government may issue instructions to all the authorities of the Self-governing Communities.

Section 156

1. The Self-governing Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards.
2. The Self-governing Communities may act as delegates or agents of the State for the collection, management and assessment of the latter's tax resources, in conformity with the law and their Statutes.

Section 157

1. The resources of the Self-governing Communities shall consist of:
 - a) Taxes wholly or partially made over to them by the State; surcharges on State taxes and other shares in State revenue;
 - b) Their own taxes, rates and special levies;
 - c) Transfers from an inter-territorial compensation fund and other allocations to be charged to the State Budget;

- d) Revenues accruing from their property and private law income;
 - e) Interest from loan operations.
2. The Self-governing Communities may under no circumstances introduce measures to raise taxes on property located outside their territory or likely to hinder the free movement of goods or services.
 3. Exercise of the financial powers set out in subsection 1 above, rules for settling the conflicts which may arise, and possible forms of financial co-operation between the Selfgoverning Communities and the State may be laid down by an organic act.

Section 158

1. An allocation may be made in the State Budget to the Self-governing Communities in proportion to the amount of State services and activities for which they have assumed responsibility and to guarantee a minimum level of basic public services throughout Spanish territory.
2. With the aim of redressing interterritorial economic imbalances and implementing the principle of solidarity, a compensation fund shall be set up for investment expenditure, the resources of which shall be distributed by the Cortes Generales among the Selfgoverning Communities and provinces, as the case may be.

PART IX

The Constitutional Court

Section 159

1. The Constitutional Court shall consist of twelve members appointed by the King. Of these, four shall be nominated by the Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judicial Power.
2. Members of the Constitutional Court shall be appointed among magistrates and prosecutors, university professors, public officials and lawyers,

all of whom must have a recognized standing with at least fifteen years' practice in their profession.

3. Members of the Constitutional Court shall be appointed for a period of nine years and shall be renewed by thirds every three years.
4. Membership of the Constitutional Court is incompatible with any position of a representative nature, any political or administrative office, a management position in a political party or a trade union as well as any employment in their service, active service as a judge or prosecutor and any professional or business activity whatsoever.
Incompatibilities for members of the Judicial Power shall also apply to members of the Constitutional Court.
5. Members of the Constitutional Court shall be independent and enjoy fixity of tenure during their term of office.

Section 160

The President of the Constitutional Court shall be appointed by the King among its members, on the proposal of the full Court itself, for a term of three years.

Section 161

1. The Constitutional Court has jurisdiction over the whole Spanish territory and is entitled to hear:
 - a) Against the alleged unconstitutionality of acts and statutes having the force of an act. A declaration of unconstitutionality of a legal provision having the force of an act and that has already been applied by the Courts, shall also affect the case-law doctrine built up by the latter, but the decisions handed down shall not lose their status of *res judicata*;
 - b) Individual appeals for protection (*recursos de amparo*) against violation of the rights and freedoms contained in section 53(2) of the Constitution, in the circumstances and manner to be laid down by law;
 - c) Conflicts of jurisdiction between the State and the Self-governing Communities or between the Self-governing Communities themselves;
 - d) Other matters assigned to it by the Constitution or by organic acts.
2. The Government may appeal to the Constitutional Court against provisions and resolutions adopted by the bodies of the Self-governing Commu-

nities, which shall bring about the suspension of the contested provisions or resolutions, but the Court must either ratify or lift the suspension, as the case may be, within a period of not more than five months.

Section 162

1. The following are entitled to:
 - a) Lodge an appeal of unconstitutionality: the President of the Government, the Defender of the People, fifty Members of Congress, fifty Senators, the Executive body of a Self-governing Community and, where applicable, its Assembly;
 - b) Lodge an individual appeal for protection (*recurso de amparo*): any individual or body corporate with a legitimate interest, as well as the Defender of the People and the Public Prosecutor's Office.
2. In all other cases, the organic act shall determine which persons and bodies shall have right of appeal to the Court.

Section 163

If a judicial body considers, when hearing a case, that a regulation having the force of an act which is applicable thereto and upon the validity of which the judgment depends, might be contrary to the Constitution, it may bring the matter before the Constitutional Court in the circumstances, manner and subject to the consequences to be laid down by law, which shall in no case have a suspensive effect.

Section 164

1. The judgments of the Constitutional Court shall be published in the Official State Gazette (*Boletín Oficial del Estado*), with the dissenting opinions, if any. They have the force of *res judicata* from the day following their publication, and no appeal may be brought against them. Those declaring the unconstitutionality of an act or of a statute with the force of an act and all those which are not limited to the acknowledgment of an individual right, shall be fully binding on all persons.
2. Unless the judgment rules otherwise, the part of the act not affected by unconstitutionality shall remain in force.

Section 165

An organic act shall make provision for the functioning of the Constitutional Court, the status of its members, the procedure to be followed before it, and the conditions governing actions brought before it.

PART X

CONSTITUTIONAL AMENDMENT

Section 166

The right to propose a constitutional amendment shall be exercised under the provisions of section 87, subsections 1 and 2.

Section 167

1. Bills on constitutional amendments must be approved by a majority of three- fifths of members of each House. If there is no agreement between the Houses, an effort to reach it shall be made by setting up a Joint Committee of an equal number of Members of Congress and Senators which shall submit a text to be voted on by the Congress and the Senate.
2. If approval is not obtained by means of the procedure outlined in the foregoing subsection, and provided that the text has been passed by the overall majority of the members of the Senate, the Congress may pass the amendment by a two-thirds vote in favour.
3. Once the amendment has been passed by the Cortes Generales, it shall be submitted to ratification by referendum, if so requested by one tenth of the members of either House within fifteen days after its passage.

Section 168

1. If a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Introductory Part, Chapter II, Division 1 of Part I, or Part II, the principle of the proposed reform shall be approved by a two-thirds majority of the members of each House, and the Cortes Generales shall immediately be dissolved.

2. The Houses elected thereupon must ratify the decision and proceed to examine the new constitutional text, which must be passed by a two-thirds majority of the members of each House.
3. Once the amendment has been passed by the Cortes Generales, it shall be submitted to ratification by referendum.

Section 169

The process of constitutional amendment may not be initiated in time of war or under any of the states contemplated in section 116.

ADDITIONAL PROVISIONS

One

The Constitution protects and respects the historic rights of the territories with traditional charts (fueros). The general updating of historic rights shall be carried out, where appropriate, within the framework of the Constitution and of the Statutes of Autonomy.

Two

The provision of section 12 of this Constitution regarding the coming of age, shall not be prejudicial to cases in which traditional charts are applicable within the sphere of private law.

Three

Any change in the financial and tax system of the Canary Islands shall require a previous report from the Self-governing Community or, as the case may be, from the provisional selfgovernment body.

Four

In Self-governing Communities where more than one Court of Appeal (Audiencia Territorial) holds jurisdiction, the Statutes of Autonomy may maintain the existing Courts and share out jurisdiction among them, provided this is

done in accordance with the provisions of the Organic Act on the Judicial Power and in conformity with the unity and independence of the latter.

TRANSITIONAL PROVISIONS

One

In territories with a provisional self-government regime, their higher corporate bodies may, by means of a resolution adopted by the overall majority of their members, assume for themselves the initiative for autonomy which section 143, subsection 2, confers upon the Provincial Councils or corresponding inter-island bodies.

Two

The territories which in the past have, by plebiscite, approved draft Statutes of Autonomy and which at the time of the promulgation of this Constitution, have provisional self-government regimes, may proceed immediately in the manner contemplated in section 148, subsection 2, if agreement to do so is reached by the overall majority of their pre self- government higher corporate bodies, and the Government shall be duly informed. The draft Statutes shall be drawn up in accordance with the provisions of section 151, subsection 2, where so requested by the pre Self-government assembly.

Three

The right to initiate the process towards self-government conferred on local authorities or their members, provided in section 143, subsection 2, shall be postponed for all purposes until the first local elections have taken place, once the Constitution has come into force.

Four

1. In the case of Navarra, and for the purpose of its integration into the General Basque Council or into the autonomous Basque institutions which may replace it, the procedure contemplated by section 143 of this Constitution shall not apply. The initiative shall lie instead with the appropriate historic institution (órgano foral), whose decision must be taken by the

majority of its members. The initiative shall further require for its validity the ratification by a referendum expressly held to this end and approval by the majority of votes validly cast.

2. If the initiative does not succeed, it may only be repeated during a further term of office of the competent Foral body and, in any case, after the minimum period laid down in section 143 has elapsed.

Five

The cities of Ceuta and Melilla may set themselves up as Self-governing Communities if their respective City Councils so decide in a resolution adopted by the overall majority of their members and if the Cortes Generales so authorize them by an organic act, under section 144.

Six

Where several draft Statutes are referred to the Constitutional Committee of the Congress, they shall be considered in the order in which they are received. The two month period referred to in section 151 shall be counted from the moment in which the Committee completes its study of the draft or of the drafts that it has successively examined.

Seven

The provisional self-government bodies shall be considered to be dissolved in the following cases:

- a) Once the bodies provided for by the Statutes of Autonomy passed in conformity with the Constitution have been set up.
- b) In the event that the initiative for the obtention of autonomy status should not be successful for non-compliance with the requirements of section 143.
- c) If the relevant body has not exercised the right recognized in the First Transitional Provision within a period of three years.

Eight

1. Once the present Constitution has come into force, the Houses that have adopted it shall assume the functions and powers set out therein for the

Congress and the Senate respectively. Provided that under no circumstances shall their term of office continue beyond June 15, 1981.

2. With regard to the provisions of section 99, the promulgation of the Constitution shall be considered as creating the constitutional basis for the subsequent application of those provisions. To this end, there shall be a thirty day period, as from the date of the promulgation, for implementing the provisions contained in said section.

During this period, the current President of the Government assuming the functions and powers vested by the Constitution for this office, may decide to use the authority conferred by section 115 or, through resignation, leave the way open for application of section 99. In the latter case, the situation as regards the President shall be that provided in subsection 2 of section 101.

3. In the event of dissolution, in accordance with section 115, and if the provisions contained in sections 68 and 69 have not been enacted, the rules previously in force shall apply to the ensuing elections, except for causes of ineligibility and incompatibilities, to which section 70, subsection 1, paragraph b), of this Constitution shall be directly applicable, as well as its provisions concerning voting age and those of section 69, subsection 3.

Nine

Three years after the election of the members of the Constitutional Court of the first tie, lots shall be drawn to choose a group of four members of the same electoral origin who are to resign and be replaced. The two members appointed following proposal by the Government and the two appointed following proposal by the General Council of the Judicial Power shall be considered as members of the same electoral origin exclusively for this purpose. After three years have elapsed, the same procedure shall be carried out with regard to the two groups not affected by the aforementioned drawing of lots. Thereafter, the provisions contained in subsection 3 of section 159 shall apply.

REPEALS

1. Act 1/1977, of January 4, for Political Reform, is hereby repealed, as well as the following, in so far as they were not already repealed by the above-mentioned Act: the Act of the Fundamental Principles of National Movement of May 17, 1958; the Chart of the Spanish People (Fuero de los

Espanoles) of July 17, 1945; the Labour Chart of March 9, 1938; the Act of Constitution of the Cortes of July 17, 1942; the Act of Succession to the Head of State of July 26, 1947, all of them as amended by the Organic Act of the State of January 10, 1967. The last mentioned Act and that of the National Referendum of October 22, 1945, are likewise repealed.

2. To the extent that it may still retain some validity, the Act of October 25, 1839 shall be definitively repealed in so far as it applies to the provinces of Alava, Guipúzcoa and Vizcaya.

Subject to the same terms, the Act of July 21, 1876 shall be deemed to be definitively repealed.

3. Likewise, any provisions contrary to those contained in the Constitution are hereby repealed.

FINAL PROVISION

This Constitution shall come into force on the day of publication of its official text in the Official State Gazette (Boletín Oficial del Estado). It shall also be published in the other languages of Spain.

WHEREFORE,

WE ORDER ALL SPANIARDS, WHETHER INDIVIDUALS OR AUTHORITIES, TO ABIDE BY THIS CONSTITUTION AND ENSURE THAT IT IS OBSERVED AS A FUNDAMENTAL LAW OF THE STATE.

PALACIO DE LAS CORTES, THE TWENTY-SEVENTH OF DECEMBER OF NINETEEN HUNDRED AND SEVENTY-EIGHTH.

JUAN CARLOS

THE PRESIDENT OF THE CORTES

Antonio Hernández Gil

THE SPEAKER OF THE CONGRESS

Fernando Alvarez de Miranda y Torres

THE SPEAKER OF THE SENATE

Antonio Fontán Pérez

The Constitution of the Republic of South Africa

Created – 8.05.1996

Ratified (promulgated by the President) – 10.12.1996

Come into effect – 4.02.1997

Last amendment – 1.02.2013

The Constitution of the Republic of South Africa, 1996

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

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 Sev-
enth Amendment Act of 2001 Constitution Eighth Amendment Act of 2002
Constitution Ninth Amendment Act of 2002 Constitution Tenth Amend-
ment Act of 2003 Constitution Eleventh Amendment Act of 2003 Constitu-
tion 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

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 Devel-
opment.

ACT

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

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

Republic of South Africa

1. 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.

Supremacy of Constitution

2. 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.

Citizenship

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

National anthem

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

National flag

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

Languages

6. (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, Telugu and Urdu; and
 - (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

Chapter 2

BILL OF RIGHTS

Rights

7. (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.

Application

8. (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.

Equality

9. (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.

Human dignity

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

Life

- 11. Everyone has the right to life.

Freedom and security of the person

- 12. (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.

Slavery, servitude and forced labour

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

Privacy

14. 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.

Freedom of religion, belief and opinion

15. (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.

Freedom of expression

16. (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.

Assembly, demonstration, picket and petition

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

Freedom of association

18. Everyone has the right to freedom of association.

Political rights

19. (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.

Citizenship

20. No citizen may be deprived of citizenship.

Freedom of movement and residence

21. (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.

Freedom of trade, occupation and profession

22. 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.

Labour relations

23. (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).

Environment

24. 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.

Property

25. (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).

Housing

26. (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.

Health care, food, water and social security

27. (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.

Children

28. (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.

Education

29. (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.

Language and culture

30. 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.

Cultural, religious and linguistic communities

31. (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.

Access to information

32. (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.

Just administrative action

33. (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.

Access to courts

34. 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.

Arrested, detained and accused persons

35. (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.

Limitation of rights

36. (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.

States of emergency

37. (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	Slavery, servitude and forced labour	With respect to slavery and servitude
28	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:
- 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.
 - A notice must be published in the national Government Gazette within five days of the person being detained, stating the detain-

- ee'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.

Enforcement of rights

38. 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.

Interpretation of Bill of Rights

39. (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

Government of the Republic

40. (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.

Principles of co-operative government and intergovernmental relations

41. (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

Composition of Parliament

42. (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

Legislative authority of the Republic

43. 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.

National legislative authority

44. (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.

Joint rules and orders and joint committees

45. (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

Composition and election

46. (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.

Membership

47. (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.
- (4) Vacancies in the National Assembly must be filled in terms of national legislation.

Oath or affirmation

48. 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.

Duration of National Assembly

49. (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.
- (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.

Dissolution of National Assembly before expiry of its term

50. (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.

Sittings and recess periods

51. (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.
- (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.

Speaker and Deputy Speaker

52. (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.
 - (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.

Decisions

53. (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.

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

54. 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.

Powers of National Assembly

55. (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.

Evidence or information before National Assembly

56. 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.

**Internal arrangements, proceedings and procedures
of National Assembly**

57. (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.

Privilege

58. (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.

Public access to and involvement in National Assembly

59. (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.

National Council of Provinces

Composition of National Council

60. (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.

Allocation of delegates

61. (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.
- (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.

Permanent delegates

62. (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..
- (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 in circumstances 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.

Sittings of National Council

- 63. (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.

Chairperson and Deputy Chairpersons

- 64. (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.
- (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.

Decisions

65. (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.

Participation by members of national executive

66. (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.

Participation by local government representatives

67. 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.

Powers of National Council

68. 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
 - (a) 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.

Evidence or information before National Council

69. 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.

**Internal arrangements, proceedings and procedures
of National Council**

70. (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.

Privilege

71. (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.

Public access to and involvement in National Council

72. (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

All Bills

73. (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.
 - (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.
 - (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.

Bills amending the Constitution

74. (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.

Ordinary Bills not affecting provinces

75. (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.

Ordinary Bills affecting provinces

76. (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.
- (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.

Money Bills

77. (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.

Mediation Committee

78. (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.

Assent to Bills

79. (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.

Application by members of National Assembly to Constitutional Court

80. (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.

Publication of Acts

81. 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.

Safekeeping of Acts of Parliament

82. 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

The President

83. 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.

Powers and functions of President

84. (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 reprieving offenders and remitting any fines, penalties or forfeitures; and
 - (k) conferring honours.

Executive authority of the Republic

85. (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.

Election of President

86. (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.
- (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.

Assumption of office by President

87. 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.

Term of office of President

88. (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.

Removal of President

89. (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.

Acting President

90. (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.

Cabinet

91. (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.

Accountability and responsibilities

92. (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.

Deputy Ministers

93. (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.

Continuation of Cabinet after elections

94. 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.

Oath or affirmation

95. 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.

Conduct of Cabinet members and Deputy Ministers

96. (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.

Transfer of functions

97. 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.

Temporary assignment of functions

98. 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.

Assignment of functions

99. 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.

National intervention in provincial administration

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

100. (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 ex-

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

Executive decisions

101. (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.

Motions of no confidence

102. (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**Provinces**

103. (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.
- (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.
- (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, obliga-

tions, duties or liabilities may only be transferred in terms of that Act after that amendment to the Constitution takes effect.

Provincial Legislatures

Legislative authority of provinces

104. (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.

Composition and election of provincial legislatures

105. (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.
- (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.

Membership

106. (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.
- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

Oath or affirmation

107. 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.

Duration of provincial legislatures

108. (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.
 - (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.

Dissolution of provincial legislatures before expiry of term

109. (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.

Sittings and recess periods

110. (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.
- (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.

Speakers and Deputy Speakers

111. (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.
- (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.

Decisions

112. (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.

Permanent delegates' rights in provincial legislatures

113. 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.

Powers of provincial legislatures

114. (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.

Evidence or information before provincial legislatures

115. 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.

Internal arrangements, proceedings and procedures of provincial legislatures

116. (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.

Privilege

117. (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.

Public access to and involvement in provincial legislatures

118. (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.

Introduction of Bills

119. 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.

Money Bills

120. (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.

Assent to Bills

121. (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.

Application by members to Constitutional Court

122. (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.

Publication of provincial Acts

123. 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.

Safekeeping of provincial Acts

124. 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

Executive authority of provinces

125. (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.

Assignment of functions

126. 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.

Powers and functions of Premiers

127. (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.

Election of Premiers

128. (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.
- (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.

Assumption of office by Premiers

129. 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.

Term of office and removal of Premiers

130. (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.

Acting Premiers

131. (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.

Executive Councils

132. (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.

Accountability and responsibilities

133. (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.

Continuation of Executive Councils after elections

134. 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.

Oath or affirmation

135. 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.

Conduct of members of Executive Councils

136. (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.

Transfer of functions

137. 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.

Temporary assignment of functions

138. 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.

Provincial intervention in local government

139. (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 abili-

- ty 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.

Executive decisions

140. (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

er 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.

Motions of no confidence

- 141. (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

Adoption of provincial constitutions

- 142. 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.

Contents of provincial constitutions

- 143. (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.

Certification of provincial constitutions

144. (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.

Signing, publication and safekeeping of provincial constitutions

145. (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

Conflicts between national and provincial legislation

146. (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.

Other conflicts

147. (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.

Conflicts that cannot be resolved

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

Status of legislation that does not prevail

149. 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.

Interpretation of conflicts

150. 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

Status of municipalities

151. (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.

Objects of local government

152. (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).

Developmental duties of municipalities

153. 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.

Municipalities in co-operative government

154. (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.

Establishment of municipalities

155. (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.
- (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).

Powers and functions of municipalities

156. (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.

Composition and election of Municipal Councils

157. (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.
- (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.
- (4) 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.
- (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.

Membership of Municipal Councils

158. (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. Vacancies in a Municipal Council must be filled in terms of national legislation.

Terms of Municipal Councils

159. (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.

Internal procedures

160. (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.

Privilege

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

Publication of municipal by-laws

162. (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.

Organised local government

163. 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).

Other matters

164. 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

Judicial authority

165. (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.

Judicial system

166. The courts are —

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- (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 Courts or the Magistrates' Courts.

Constitutional Court

167. (1) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.
- (2) A matter before the Constitutional Court must be heard by at least eight judges.
- (3) The Constitutional Court —
- (a) is the highest court in all constitutional matters;
 - (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and
 - (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.
- (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, a High Court, or a court of similar status, before that order has any force.
- (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.

Supreme Court of Appeal

168. (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.
- (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.
- (3) The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only —
- (a) appeals;
 - (b) issues connected with appeals; and
 - (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

High Courts

169. A High Court may decide —
- (a) any constitutional matter except a matter that —
 - (i) only the Constitutional Court may decide; or
 - (ii) is assigned by an Act of Parliament to another court of a status similar to a High Court; and

- (b) any other matter not assigned to another court by an Act of Parliament.

Magistrates' Courts and other courts

170. Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a High Court may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

Court procedures

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

Powers of courts in constitutional matters

172. (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, a High Court 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.
- (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.

Inherent power

173. The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

Appointment of judicial officers

174. (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.
- (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.
- (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.

Acting judges

175. (1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge 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.
- (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.

Terms of office and remuneration

176. (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.
- (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.

Removal

177. (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).

Judicial Service Commission

178. (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;
 - (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 High Court, the Judge President of that Court and the Premier of the province concerned, or an alternate designated by each of them.
- (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.
- (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.

Prosecuting authority

179. (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.

Other matters concerning administration of justice

180. 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****Establishment and governing principles**

181. (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

Functions of Public Protector

182. (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.

Tenure

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

South African Human Rights Commission

Functions of South African Human Rights Commission

184. (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

Functions of Commission

185. (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.

Composition of Commission

186. (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

Functions of Commission for Gender Equality

187. (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

Functions of Auditor-General

188. (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. The Auditor-General has the additional powers and functions prescribed by national legislation.

Tenure

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

Electoral Commission

Functions of Electoral Commission

190. (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.

Composition of Electoral Commission

191. 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

Broadcasting Authority

192. 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

Appointments

193. (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).

Removal from office

194. (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

Basic values and principles governing public administration

195. (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.

Public Service Commission

196. (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.
- (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.

Public Service

197. (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

Governing principles

198. 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.

Establishment, structuring and conduct of security services

199. (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

Defence force

- 200. (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.

Political responsibility

- 201. (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.

Command of defence force

202. (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.

State of national defence

203. (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.

Defence civilian secretariat

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

Police

Police service

205. (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.

Political responsibility

206. (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 co-ordination 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.

Control of police service

207. (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.

Police civilian secretariat

208. 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

Establishment and control of intelligence services

209. (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.

Powers, functions and monitoring

210. 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

Recognition

211. (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.

Role of traditional leaders

212. (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

National Revenue Fund

213. (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.

Equitable shares and allocations of revenue

214. (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.

National, provincial and municipal budgets

215. (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.

Treasury control

216. (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.
- (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.
- (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.

Procurement

217. (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.

Government guarantees

- 218. (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]

Remuneration of persons holding public office

- 219. (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 re-

ferred 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

Establishment and functions

220. (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).

Appointment and tenure of members

221. (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.
- (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).
- (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.

Reports

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

Central Bank

Establishment

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

Primary object

224. (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.

Powers and functions

225. 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

Provincial Revenue Funds

226. (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.

National sources of provincial and local government funding

227. (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.

Provincial taxes

228. (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.
- (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.

Municipal fiscal powers and functions

229. (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) 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.

Provincial loans

230. (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.

Municipal loans

- 230A. (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.

Chapter 14

GENERAL PROVISIONS

International Law

International agreements

231. (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.

Customary international law

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

Application of international law

233. 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

Charters of Rights

234. 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.

Self-determination

235. 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.

Funding for political parties

236. 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.

Diligent performance of obligations

237. All constitutional obligations must be performed diligently and without delay.

Agency and delegation

238. 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.

Definitions

239. 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.

Inconsistencies between different texts

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

Transitional arrangements

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

Repeal of laws

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

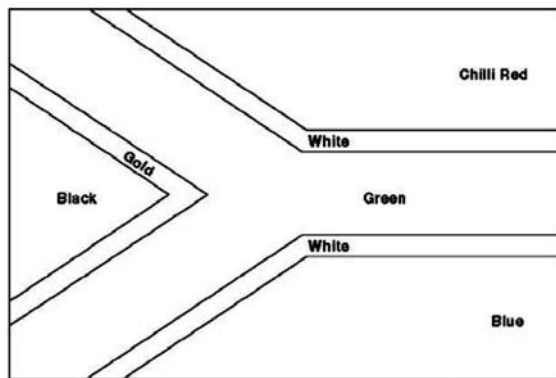
Short title and commencement

243. (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 2

Oaths and Solemn Affirmations

Oath or solemn affirmation of President and Acting President

1. 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.)

Oath or solemn affirmation of Deputy President

2. 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.)

Oath or solemn affirmation of Ministers and Deputy Ministers

3. 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.)

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

4. (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.

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

5. 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 oth-

er 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.)

Oath or solemn affirmation of Judicial Officers

6. (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

Part A

Election Procedures for Constitutional Office-Bearers

Application

1. The procedure set out in this Schedule applies whenever – the National Assembly meets to elect the President, or the Speaker or Deputy Speak-

er of the Assembly; the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

Nominations

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

Formal requirements

3. (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.

Announcement of names of candidates

4. 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.

Single candidate

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

Election procedure

6. 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.

Elimination procedure

- 7. (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.

Further meetings

- 8. (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.

Rules

- 9. (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.
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.

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 waste- water 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.]

Definitions

1. 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).

Continuation of existing law

2. (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.

Interpretation of existing legislation

3. (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.

National Assembly

4. (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.

Unfinished business before Parliament

5. (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.

Elections of National Assembly

6. (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.

National Council of Provinces

7. (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
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

PROVINCE	PERMANENT DELEGATES	SPECIAL DELEGATES
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
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.

Former senators

- 8. (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.

National executive

- 9. (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.

Provincial legislatures

10. (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.

Elections of provincial legislatures

11. (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.

Provincial executives

12. (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.

Provincial constitutions

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

Assignment of legislation to provinces

14. (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.

Existing legislation outside Parliament's legislative power

- 15. (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.

Courts

- 16. (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) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.
- (3) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.
- (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.

Cases pending before courts

17. 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.

Prosecuting authority

18. (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).

Oaths and affirmations

19. 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.

Other constitutional institutions

20. (1) In this section “constitutional institution” means —
- (a) the Public Protector;
 - (b) the South African Human Rights Commission;
 - (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.

Enactment of legislation required by new Constitution

21. (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.

National unity and reconciliation

22. (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”.

Bill of Rights

23. (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.

Public administration and security services

24. (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.

Additional disqualification for legislatures

25. (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.

Local government

26. (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 re-

placing 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

- (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.
- (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.

Safekeeping of Acts of Parliament and Provincial Acts

27. 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.

Registration of immovable property owned by the state

28. (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 to-

tal 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;” and

- (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 – 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 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

REPUBLIC OF SOUTH AFRICA**Vol. 572 Cape Town 1 February 2013 No. 36128****Constitution Seventeenth Amendment Act, 2012****GENERAL EXPLANATORY NOTE:**

Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to further define the role of the Chief Justice as the head of the judiciary; to provide for a single High Court of South Africa; to provide that the Constitutional Court is the highest court in all matters; to further regulate the jurisdiction of the Constitutional Court and the Supreme Court of Appeal; to provide for the appointment of an Acting Deputy Chief Justice; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts, as follows:

Amendment of section 165 of Constitution

1. Section 165 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the addition of the following⁵ subsection:

“(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”.

Amendment of section 166 of Constitution

2. Section 166 of the Constitution is hereby amended —

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) the [High Courts, including] High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from [High Courts] any court of a status similar to the High Court of South Africa;” and

(b) by the substitution for paragraph (e) of the following paragraph:

“(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 Courts] High Court of South Africa or the Magistrates’ Courts”.

Amendment of section 167 of Constitution, as amended by section 11 of Constitution Sixth Amendment Act of 2001

3. Section 167 of the Constitution is hereby amended —

(a) by the substitution for subsection (3) of the following subsection:

“(3) The Constitutional Court —

(a) is the highest court [in all constitutional matters] of the Republic; and

(b) may decide [only] —

(i) constitutional matters[, and issues connected with decisions on 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 [a constitutional matter or whether an issue is connected with a decision on a constitutional matter] within its jurisdiction”; and

(b) by the substitution for subsection (5) of the following subsection:

“(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, [a] the High Court of South Africa, or a court of similar status, before that order has any force”.

**Amendment of section 168 of Constitution, as amended by section 12
of Constitution Sixth Amendment Act of 2001**

4. Section 168 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

“(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 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”.

Substitution of section 169 of Constitution

5. The following section is hereby substituted for section 169 of the Constitution:

“High [Courts] Court of South Africa

169. (1) [A] The High Court of South Africa may decide —

(a) any constitutional matter except a matter that —

(i) [only] the Constitutional Court [may decide] 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 [a] 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 more seats in a Division; and

(b) the assigning of jurisdiction to a Division or a seat within 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”.

Substitution of section 170 of Constitution

6. The following section is hereby substituted for section 170 of the Constitution:

“[Magistrates’ Courts and other] Other courts

170. [Magistrates’ Courts and all 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 [a] 15 the High Court of South Africa may not enquire into or rule on the constitutionality of any legislation or any conduct of the President”.

Amendment of section 172 of Constitution

7. Section 172 of the Constitution is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) The Supreme Court of Appeal, [a] 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”.

Substitution of section 173 of Constitution

8. The following section is hereby substituted for section 173 of the Constitution:

“Inherent power 173

The Constitutional Court, the Supreme Court of Appeal and the High [Courts have] Court of South Africa each has the inherent power to 30 protect and regulate their own process, and to develop the common law, taking into account the interests of justice”.

Substitution of section 175 of Constitution, as amended by section 14 of Constitution Sixth Amendment Act of 2001

9. The following section is hereby substituted for section 175 of the Constitution:

“[Acting] Appointment of acting judges 175

- (1) The President may appoint a woman or man to [be] 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 [a judge] the person holding such an office is absent. The appointment must be made on the recommendation of 40 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 45 must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve”.

Amendment of section 178 of Constitution, as amended by section 2 of Constitution Second Amendment Act of 1998 and section 16 of Constitution Sixth Amendment Act of 2001

10. Section 178 of the Constitution is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph:
“(k) when considering matters relating to a specific Division of the High Court of South Africa, the Judge President of that [Court] Division and the Premier of the province concerned, or an alternate designated by each of them”.

Short title and commencement

11. This Act is called the Constitution Seventeenth Amendment Act of 2012, and takes 10 effect on a date determined by the President by proclamation in the *Gazette*.

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