

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

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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.

- (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.

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.

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

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) Other privileges and immunities of the National Council of Provinces, delegated 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.

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

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

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

- (4) Only a member of a 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

- (4) A Bill must be dealt with in accordance with the procedure established by subsection (1) if it provides for legislation—
- (a) envisaged in section 44(2) or 220(3); or
 - (b) envisaged in Chapter 13, and which includes any provision affecting the financial interests of the provincial sphere of government.

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

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

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.

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.

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

- (c) provides for a minimum voting age of 18 years; and
- (d) results, in general, in proportional representation.

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

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

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.

Evidence or information from 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.

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

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

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.

- (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.

- (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislating and 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.

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

- (5) The Commission is accountable to the National Assembly.
- (6) The Commission must report at least once a year in terms of subsection (4)(e)—
 - (a) to the National Assembly; and
 - (b) in respect of its activities in a province, to the legislature of that province.
- (7) The Commission has the following 14 commissioners appointed by the President:
 - (a) Five commissioners approved by the National Assembly in accordance with subsection (8)(a); and
 - (b) one commissioner for each province nominated by the Premier of the province in accordance with subsection (8)(b).
- (8) (a) A commissioner appointed in terms of subsection (7)(a) must be—
 - (i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly; and
 - (ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.
- (b) A commissioner nominated by the Premier of a province must be—
 - (i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature; and
 - (ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members.
- (9) An Act of Parliament must regulate the procedure for the appointment of commissioners.
- (10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is—

- (a) a South African citizen; and
 - (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.
- (11) A commissioner may be removed from office only on—
- (a) the ground of misconduct, incapacity or incompetence;
 - (b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province; and
 - (c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.
- (12) The President must remove the relevant commissioner from office upon—
- (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
 - (b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal.
- (13) Commissioners referred to in subsection (7)(b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation.

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.

- (8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services and matters 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.

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.

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.

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

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;

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—
- in terms of an appropriation by a provincial Act; or
 - 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 provincial Act may in terms of subsection (2)(b) authorise the withdrawal of money as a direct charge against a Provincial Revenue Fund; and
 - revenue allocated through a province to local government in that province in terms of subsection (3) must be paid to municipalities in the province.

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

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

National sources of provincial and local government funding

227. (1) Local government and each province—
- 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
 - 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

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.

SCHEDULE 3

Election Procedures

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

Part A

Election Procedures for Constitutional Office-Bearers

Application

1. The procedure set out in this Schedule applies whenever—
 - (a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly;
 - (b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or
 - (c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

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.

- 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

- (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

- (2) A provincial legislature 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.

ANNEXURE A

Amendments to Schedule 2 to the previous Constitution

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

- (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.

4. The amendment of section 22 of the previous Constitution by replacing subsection (2) with the following subsection:

“(2) The National Defence Force shall exercise its powers and perform its functions solely in the national interest in terms of Chapter 11 of the Constitution of the Republic of South Africa, 1996.”

5. The amendment of section 236 of the previous Constitution—

(a) by replacing subsection (1) with the following subsection—

“(1) A public service, department of state, administration or security service which immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as “the new Constitution”), performed governmental functions, continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution.”;

(b) by replacing subsection (6) with the following subsection:

“(6) (a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2) or any class of such persons.

(b) The commission may reverse or alter a contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case.”; and

(c) by replacing “this Constitution”, wherever this occurs in section 236, with “the new Constitution”.

6. The amendment of section 237 of the previous Constitution—

(a) by replacing paragraph (a) of subsection (1) with the following paragraph:

“(a) The rationalisation of all institutions referred to in section 236(1), excluding military forces referred to in section 224(2), shall after the commencement of the Constitution of the Republic of South Africa, 1996, continue, with a view to establishing—

- (i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere; and
- (ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government.”; and

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