

EMBARGOED UNTIL TABLING IN THE  
NEGOTIATING COUNCIL

**NINTH REPORT OF THE TECHNICAL COMMITTEE ON  
CONSTITUTIONAL ISSUES TO THE NEGOTIATING COUNCIL  
10TH AUGUST 1993**

1. We have continued working on the draft outline of the Constitution for the transitional period. We are in the process of preparing detailed texts for the entire Constitution. We have ready for consideration by the Negotiating Council detailed texts of chapters 1, 2, 4, 5, and 9. These texts are now at a more advanced stage than the texts which were attached to our Eighth Report. Although a final edit has not yet been completed, the texts are in a form in which they can be made the subject of a detailed debate both in regard to the principles which they contain and the terminology used. Chapters 4, 5 and 9 have been developed in the light of the debate which took place in the Negotiating Council on our Eighth Report. Changes of detail have been made in chapters 4 and 5, formal provisions which were not included in the first draft outline have been introduced into these chapters, and certain of the formulations have been refined. Chapter 9 has been restructured, with a new formulation dealing with the distribution of the powers and functions of the SPRs, and a proposal concerning a legal framework to ensure administrative and legal continuity during the complicated process which will have to take place when the administrations of the provinces, the self-governing territories and those TBVC states that are reincorporated, are restructured into the new government structures at national and SPR levels established in terms of the Constitution.
2. We have also developed preliminary texts for chapters 6, 7, 8 and 10 of the Constitution. We have not annexed these preliminary texts to this report because they are still under discussion in our committee and need to go through a further discussion

and editing process before they are in a form in which they can be made the subject of detailed debate. We hope to have these chapters in a suitable form for debate when we next report to the Negotiating Council.

3. We plan from now onwards to refine the texts of the completed chapters in the light of the debates which take place in the Negotiating Council, and in this way to build up a core document which will contain detailed provisions covering all aspects of the framework identified in the draft outline attached to our Eighth Report. As changes are made in the detailed texts in the light of the debate, these will be reflected in the core document, and marked up for easy identification in the same way as is being done in the development of the core document dealing with constitutional principles.
4. A number of matters were raised during the debate in the Negotiating Council on our Eighth Report on which different views were expressed. We need greater clarification from the Council in regard to these issues than we could derive from that debate. These include, in particular:

- 4.1 the deadlock breaking mechanism set out in chapter 5.

- 4.2 SPR constitutions

- 4.3 Whether the CMB will have the power to alter the number, boundaries and powers of SPRs as set out in the Constitution for the transitional period.

5. There was also discussion concerning the role of traditional leaders. We made no provision in the draft outline, for traditional leaders to have any specific role in the national legislature, constitution making body, or SPR legislatures. The draft outline reflects Constitutional Principles XVI and XVII which require legislative structures at all levels to be democratic. The saving made in Principle XVI is relevant to the role of traditional leaders in local government, and we plan to make provision for that in our chapter dealing with local government. That decision was, however, questioned during

the course of the debate, and was left over for discussion between the participants. It was not made the subject of detailed debate.

6. A number of other issues of detail were raised during the debate. Some concerned terminology and formulation, others suggested changes which would result in a change of meaning of the draft provisions. None were the subject of detailed debate or decisions. In the circumstances we are not able without greater clarification than we presently have from the Negotiating Council to deal further with these matters at this stage. We have accordingly made no changes to the provisional texts dealing with these issues or with the issues raised in paragraph 4 and 5 and request clarification from the Negotiating Council as to how these matters, which call essentially for political decisions, should be dealt with.
7. During the course of the debate in the Negotiating Council on the powers and functions of SPRs terms such as "original powers", "exclusive powers", "concurrent powers" and "constitutional continuity" were used. There did not appear to us to be a common understanding of the meaning of these terms. To achieve greater clarity in the debate we give our understanding of the meaning of these terms in the context of the Constitutional principles which will be binding on the CMB.
8. Original powers are powers derived directly from the Constitution. They differ from delegated powers which are derived from a higher legislative authority, and as such can be altered or withdrawn by that authority. Moreover, the exercise of delegated powers is subject to much stricter scrutiny by a court. Under a system of constitutional supremacy the exercise of both original and delegated powers are subject to review by the court if they are exercised in a manner that is inconsistent with the requirements of the Constitution. Delegated powers are, however, open to challenge on additional grounds in which, inter alia, the motive, procedure and to some extent the reasoning of the authority that has exercised the power can be challenged. These additional grounds cannot be invoked in respect of the exercise of original powers. Put simply, original powers vested in SPRs which are derived from the Constitution cannot be withdrawn by

the national government, nor can they be changed without amending the Constitution itself. They are stronger and less open to challenge than delegated powers.

9. "Exclusive powers" refer to those powers which are essentially within the primary legislative competence of the authority in whom they are vested. Ordinarily an authority with "exclusive powers" is the only authority with the competence to enact legislation in the field of such powers. It can do so itself, or it can delegate its authority to a lower level of Government. That power is, however, subject to limitations imposed by the Constitution itself. First, there is the limitation applicable to all forms of legislation, imposed by the "bill of rights" and procedural provisions contained in the Constitution. Secondly, they are subject to limitations arising out of overlapping competencies. The national government has competence in matters of overriding national interest such as national security etc. This overriding national interest, when it exists, is a cross-cutting competence, relevant to all fields of government, which permits the National Government to intervene in all fields affected by it. The constitutional principles address the circumstances in which the National Government would be entitled to make such interventions, and these provisions have been incorporated into our draft of the Constitution for the transitional period. Put simply, the National Government may not legislate in the field of "exclusive powers" reserved for the SPRs save in the special circumstances identified in the Constitution, and then only to the extent that the Constitution permits such intervention.

10. Concurrent powers are those in which two or more legislative authorities have legislative competence. Either may enact legislation in these fields, and in accordance with Constitutional Principle XXIV (11) where there is a clear conflict between the legislation of the National authority, and the SPR authority, the legislation of the National authority prevails. We have however, made this subject to the limitation recognised in the Constitutional Principles, namely, that the National Government may not use its powers so as to encroach upon the geographic, functional or institutional integrity of the SPRs or in a manner which would deprive an SPR substantially of any of its concurrent

competencies. Put simply, the National Government may not use its powers so as to negate the powers given to the SPRs in the Constitution. It cannot occupy the whole field itself and must leave legitimate scope for the exercise of power by the SPRs in such matters. Should there be a dispute between the National government and SPR governments in regard to the exercise of concurrent powers, a court will decide whether or not the National Government has gone too far and encroached upon the integrity of the SPR.

11. "Constitutional continuity" implies that there should at all times be a legal framework within which Government can be conducted and the powers of the different organs of the state ascertained. Under a system of separation of powers this means that the powers of the legislature, the executive and the judiciary must be certain, and changes in such powers must be made in a way which does not leave a void in which no authority has power or in which there is no effective administration. The Constitution for the transitional period which we are preparing will make provision for a transfer from existing legislative, executive (including administrative) and judicial authorities at all levels of Government, to the new legislative, executive and judicial authorities to be constituted under the Constitution. At no time will there be an hiatus in which no authority exists. It was precisely for this reason that we originally formulated chapter 9 of our draft outline of the Constitution in the way that we did. We saw this as a simple and possibly the easiest and most coherent way of transferring existing authorities, and establishing new authorities at SPR level without disrupting government and administration. In the light of the debate, however, we have made it clear that SPR legislatures and governments will be vested with definite powers from the moment that the Constitution comes into force, whilst at the same time, making provision on a transitional basis, for the way in which administration will be handled and supervised until the necessary co-ordination and rationalisation has been completed.
12. We attach to this report detailed drafts of chapters 1, 2, 4, 5, and 9. We suggest that for the purposes of the debate in the Negotiating Council it might be convenient to deal with our report by allowing us to begin by presenting each of these component parts

sequentially. We will draw attention during the oral presentation to the changes we have made in the draft outline attached to our Eighth Report, and to issues which call for decisions of principle to be taken. In this way we would be able to draw attention at the time of presentation to the aspects of our report which are relevant to the particular part of the Constitution which is under discussion. In the light of greater clarification secured as a result of the debate we would, where necessary, and as instructed by the Council, refine or amend the text and present it to the Council in an amended form in the further draft at the time of our next report.

**CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**  
**1993**  
(Draft Outline: 6 August 1993)

**PREAMBLE**

**CHAPTER I**  
**Formal and Constituent Provisions**

**The New Republic of South Africa**

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

**National symbols**

2. (1) The design of the national flag of South Africa shall be as set out in Schedule 2.

(2) The national anthem of South Africa shall be.....

(3) The national coat of arms of South Africa shall be in accordance with the description set out in Schedule 3.

(4) The national seal of South Africa shall be in accordance with the description set out in Schedule 4.

### **Languages**

3. [The text of this provision will be formulated after the committee of the MPNP has reported]

### **The supremacy of the Constitution**

4. (1) This Constitution shall be the supreme law of the land and any law inconsistent with its

provisions shall, to the extent of its inconsistency, be of no force or effect.

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

## **CHAPTER 2**

### **Citizenship and the Franchise**

#### **Citizenship**

5. (1) Every person who is a South African citizen in terms of legislation applicable on the date of the coming into operation of this Constitution, shall retain such citizenship.

(2) The acquisition, loss and restoration of South African citizenship shall be regulated by  
Act of Parliament.

(3) A South African citizen shall not be deprived of his or her citizenship other than as provided for by Act of Parliament.

## **The franchise**

6. Every person who is -

- (a) a South African citizen;
- (b) of or over the age of 18 years; and

(c) not subject to any of the disqualifications set out in the Electoral Act, 1993, shall, subject to the provisions of the Electoral Act, 1993, be entitled to vote in any election for members of the National Assembly, the Legislatures of the SPRs and local governments.

## **CHAPTER 3**

### **Fundamental Rights**

[The wording has been taken from the Seventh Report of the Technical Committee on Fundamental Rights during the Transition, which is still under discussion in the Negotiating Council.]

### **Application**

7. (1) The provisions of this Chapter shall -

- (a) bind the legislative, executive and, where appropriate, the judicial branches of government at all levels as well as all statutory bodies and functionaries;
- (b) bind, where just and equitable, other bodies and persons; and
- (c) be enforced by the [designated authority].

(2) In the case of an infringement of any provision of this Chapter, the [designated authority] may, where appropriate, put any body or person referred to in subsection (1)(a) or (b) on terms as to how and within what period such infringement should be remedied.



(3) All provisions of this Chapter shall apply to all laws in force and all administrative decisions taken during the period of operation of this Chapter.

(4) All juristic persons shall be entitled to the rights contained in this Chapter to the extent that the nature of these rights permit.

(5) (a) Every person who alleges that his or her rights or every association which alleges that its members' rights entrenched in this Chapter, have been infringed or are threatened, shall be entitled to apply to a competent [designated authority] for appropriate relief, which may include a declaration of rights.

(b) Nothing in this subsection shall prevent a person from applying for relief on behalf of a group or class of persons whose rights entrenched in this Chapter are alleged to have been infringed or are threatened.

## **Equality**

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

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

(3) This section shall permit measures aimed at the adequate protection and advancement of persons disadvantaged by discrimination in order to enable their full and equal enjoyment of all rights and freedoms.

(4) In any action in which unfair discrimination is alleged, prima facie proof of such discrimination shall be sufficient to bring it within the class of conduct contemplated in subsection (2), until the contrary is established.

### **Life**

9. Every person shall have the right to life.

### **Human Dignity**

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

### **Freedom and Security of the Person**

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

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

### **Servitude and Forced Labour**

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

### **Privacy**

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

### **Religion and Belief**

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion.

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

### **Freedom of Expression**

15. Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.

### **Assembly, Demonstration and Petition**

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

### **Freedom of Association**

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

(2) Without derogating from the generality of the provisions of section 2(2), nothing in this section shall permit discrimination on the ground of race.

### **Freedom of Movement**

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

### **Residence**

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

### **Citizen's Rights**

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

### **Political Rights**

21. (1) Every person shall have the right -
- (a) to form, to participate in the activities of and to recruit members for a political party;
  - (b) to campaign for a political party or cause; and
  - (c) freely to make political choices.
- (2) Every citizen of voting age shall have the right to vote in secret and to stand for election to public office.

### **Access to Court**

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

### **Access to Information**

23. Every person shall have the right of access to all information necessary for the protection or exercise of his or her rights.

### **Administrative Decisions**

24. (1) Every person shall have the right to lawful and procedurally fair administrative decisions.

(2) Every person shall have the right to be furnished with reasons in writing for an administrative decision which affects his or her rights or interests.

### **Detained, Arrested and Accused Persons**

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

to be informed promptly in a language which he or she understands of the reason for his or her detention;

- (b) to be detained under conditions consonant with human dignity, including at least the provision of adequate nutrition, reading material and medical treatment at State expense;
- (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State; and
- (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse, next-of-kin, religious counsellor and a medical practitioner of his or her choice.

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

- (a) to be informed promptly, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b) to be brought before an ordinary court of law, as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released; and
- (c) to be released from detention with or without bail, unless the interests of justice require otherwise.

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

## **Eviction**

26. No person shall be removed from his or her home, except by order of a court of law after taking into account all relevant factors, which may include the availability of appropriate alternative accommodation and the lawfulness of the occupation.

### **Economic Activity**

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

(2) Nothing in this section shall preclude legislation aimed at the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such legislation is justifiable in a free, open and democratic society based on the principle of equality.

### **Labour Relations**

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

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

(3) Workers shall have the right to take collective action, including the right to strike, and employers shall have the right to lock out workers.

### **Property**

29. (1) Every person shall have the right to acquire, hold and dispose of rights in property.

(2) Expropriation of property by the State shall be permissible in the public interest and shall be subject either to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into

account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, the value of the owner's investment in it and the interests of those affected.

(3) Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating persons who have been dispossessed of rights in land as a consequence of any racially discriminatory policy, where such restoration or compensation is feasible.

### **Environment**

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

### **Children**

31. Every child shall have the right to security, basic nutrition and basic health services and not to be subject to neglect, abuse or child labour.

### **Language and Culture**

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

### **Education**

33. Every person shall have the right -

- (a) to basic education and to equal access to educational institutions;
- (b) to instruction in the language of his or her choice where this is reasonably practicable; and



- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race or colour.

### **Limitation**

34. (1) The rights entrenched in this Chapter may be limited by a law applying generally and not solely to an individual case, provided that such limitation -

- (a) shall be permissible only to the extent that it is -
  - (i) reasonable; and
  - (ii) justifiable in a free, open and democratic society based on the principle of equality; and
- (b) shall not negate the essential content of the right in question.

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

### **Suspension**

35. (1) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency proclaimed prospectively under an Act of Parliament and only to the extent demanded by the situation.

- (2) Any such suspension shall comply with the following requirements:

- (a) A state of emergency may be declared only where the security of the State is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster, and if such declaration is necessary to restore peace or order.
  - (b) The declaration of a state of emergency and any action, whether a regulation or otherwise, taken in consequence of that declaration, shall cease to be valid in law unless the declaration is ratified by a majority of the total number of the directly elected members of Parliament within fourteen days of the declaration.
  - (c) No state of emergency shall endure for longer than six months provided that it may be renewed, subject to the ratification of such renewal in the manner referred to in paragraph (b).
  - (d) The Supreme Court shall be competent to enquire into the validity of any declaration of a state of emergency, any renewal thereof, and any action, whether a regulation or otherwise, taken under such declaration.
- (3) Neither the enabling legislation which provides for the declaration of a state of emergency, nor any action taken in consequence thereof, shall permit or authorise -
- (a) the creation of retrospective crimes;
  - (b) the indemnification of the State or persons acting under its authority for unlawful actions taken during the state of emergency; or
  - (c) the suspension of this section.
- (4) Any person detained under a state of emergency shall have at least the following

rights:

- (a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;
- (b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Government Gazette within five days of their detention;
- (c) the detention of a detainee shall, as soon as is reasonably possible but not later than ten days after his or her detention, be reviewed by a court of law, which may order the release of such a detainee if satisfied that such detention is not necessary to restore peace or order. The State shall submit written reasons to justify the detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review;
- (d) a detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;
- (e) a detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;
- (f) a detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and
- (g) if detained for longer than ten days, the detainee shall be entitled to apply to a court of law for his or her release from detention at any stage after the expiry of a period of ten days from the date of determination of the review procedure provided for in paragraph (c).

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

### **Interpretation**

36. (1) In interpreting the provisions of this Chapter the [designated authority] shall promote the values which underlie a free, open and democratic society based on the principle of equality.

(2) Save as provided for in this Chapter, no rule of the common law, custom or legislation shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights included in this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised and conferred by common law, custom or legislation.

(4) A law limiting a right entrenched in this Chapter shall be presumed constitutionally valid until the contrary is proved: Provided that a law limiting -

(a) a right entrenched in section 21; or

(b) a right entrenched in sections 15, 16, 17, 18, 23 or 24, insofar as such right relates to the expression of free and fair political activity,

shall be strictly construed for constitutional validity.

(5) No law existing at the commencement of this Chapter which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used prima facie exceeds the permissible limits imposed in this Chapter,

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

### **Duration**

37. This Chapter shall be of full force and effect until a Bill of Rights duly enacted by the elected constitution-making body has come into effect.

## **CHAPTER 4**

### **The Legislature**

#### **Legislative authority**

38. (1) The legislative authority of the Republic shall, subject to the provisions of this Constitution, be vested in the Parliament of the Republic, which shall consist of the National Assembly and the Senate and shall have the power to make laws for the Republic.

(2) Parliament shall be competent to delegate by law any matter within its powers to the legislature of an SPR or of a local government.

#### **Duration of Parliament**

39. (1) Parliament shall continue until it is dissolved under Chapter 5 or until a new Parliament is constituted in terms of the new constitutional text adopted in accordance with the provisions of Chapter 5.

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

(3) Notwithstanding the dissolution of Parliament in terms of Chapter 5, the National Assembly and the Senate shall remain competent to perform their functions until a new National Assembly and a new Senate have been elected.

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

### **Composition of the National Assembly**

40. (1) The National Assembly shall consist of 400 members elected according to a system of proportional representation, of whom 200 shall be elected on national and 200 on SPR party lists as provided for in Schedule 5.

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

### **Speaker of the National Assembly**

41. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected National Assembly, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the Speaker, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the National Assembly.

(2) The National Assembly shall thereafter elect a Deputy Speaker from amongst its members, and the Deputy Speaker shall act as Speaker whenever the Speaker is not available, and for that purpose shall have all the powers vested in the Speaker.

(3) The Speaker or in his or her absence the Deputy Speaker, shall preside over meetings of the National Assembly.

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

(5) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly shall in like manner elect a member to fill the vacancy.

(6) Where neither the Speaker nor the Deputy Speaker is available, the National Assembly, with the Secretary of Parliament acting as Chairperson, shall elect a member to act as Speaker during such absence.

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

### **Qualification of Members of the National Assembly**

42. (1) No persons may be nominated or become members of the National Assembly if -

- (a) at the date of such nomination or election they are serving a sentence of imprisonment of more than twelve months without the option of a fine; or
- (b) at any time after the adoption of this Constitution, they are convicted of an offence in South Africa or outside of South Africa if such conduct would have constituted an offence within South Africa, and for which they have been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon; or
- (c) they are unrehabilitated insolvents; or
- (d) they are of unsound mind and have been so declared by a competent court; or
- (e) they are remunerated employees of any public service within the Republic.

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

### **Vacation of Seats**

43. (1) Members of the National Assembly shall vacate their seats if they:
- (a) cease to be eligible for membership of the National Assembly; or
  - (b) cease to be members of the political party which nominated them to sit in the National Assembly; or
  - (c) resign their seats in writing addressed to the Speaker; or



(d) absent themselves voluntarily from the National Assembly for 30 consecutive sitting days, without having obtained leave in the manner and on grounds specified in the rules and standing orders of the National Assembly; or

(e) become members of the Senate, an SPR Legislature or of a local government.

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

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

### **Quorum**

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

### **Oath or Affirmation by Members of the National Assembly**

45. Every member of the National Assembly shall, before taking his or her seat, make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

## **Sessions of the National Assembly**

46. (1) The National Assembly shall sit:

- (a) at the Houses of Parliament in Cape Town, unless the Speaker directs otherwise on the grounds of public interest, security or convenience;
- (h) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the National Assembly and not later than 10 days after such election, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (c) in ordinary session on such dates as the National Assembly may determine by resolution, and such session shall terminate on such date as the National Assembly may determine by resolution;
- (d) in such special sessions as may be directed by proclamation in the Government Gazette. by the President from time to time.

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

(3) The President may alter the date of commencement of any session directed in terms of subsections (1) (c) or (1) (d) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.

(4) There shall be a session of the National Assembly at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

## **Composition of the Senate**

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

(2) Candidates for the election of the Senate shall be nominated by a party represented in the SPR legislature and the election shall be conducted according to the principle of proportional representation, as set out in Schedule 5.

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

### **President of the Senate**

48. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected Senate, with the Chief Justice or a judge designated by him or her acting as Chairperson, shall elect one of its members to be the President of the Senate, who shall be vested with all powers, duties and functions assigned to him or her in terms of this Constitution and by the rules and orders of the Senate.

(2) The President of the Senate shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.

(3) In the absence of the President of the Senate, a person shall be elected by Senators from amongst their number to preside at their meetings during such absence.

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

(5) If the office of the President of the Senate

(6) The President of the Senate or the person presiding becomes vacant, the Senate shall in like manner fill the vacancy at a meeting of the Senate shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

### **Qualification of members of the Senate**

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

### **Quorum**

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

### **Oath or affirmation by Senators**

52. Every Senator, before taking his or her seat, shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

### **Vacation of Seats by Senators**

53. (1) Senators shall vacate their seats if they:
- (a) cease to be eligible for membership of the Senate; or
  - (b) resign their seats in writing addressed to the President of the Senate; or
  - (c) absent themselves voluntarily from the Senate for 30 consecutive sitting days, without having obtained the leave of the Senate on grounds specified in its rules and standing orders; or

(d) become members of the National Assembly, an SPR legislature or a local government.

(2) If a seat of a member of the Senate is vacated in terms of subsection (1), the political party which nominated that Senator shall nominate a person to fill the vacancy.

### **Sessions of the Senate**

54. (1) The Senate shall sit:

(a) at the Houses of Parliament in Cape Town, unless the President of the Senate directs otherwise on the grounds of public interest, security or convenience;

(b) in a session convened by the Chief Justice to be held as soon as reasonably possible after the election of the Senate and not later than 10 days after such election, and such session shall terminate on such date as the Senate may determine by resolution;

(c) in ordinary session on such dates as the Senate may determine by resolution, and such session shall terminate on such date as the Senate may determine by resolution;

(d) in such special sessions as may be directed by proclamation in the Government Gazette by the President from time to time.

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

(3) The President may alter the date of commencement of any session directed in terms of subsections (1) (c) or (1) (d) if he or she is requested to do so by the President of the Senate on the grounds of public interest or convenience.

(4) There shall be a session of the Senate at least once in every year, so that a period of 13 months shall not intervene between the commencement of the one session and the commencement of the next session.

## **Privileges and immunities of members of Parliament**

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

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

## **Public access to Parliament**

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

## **Parliamentary procedure**

### **Rules and orders and committees**

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

(2) For the purposes of exercising their powers and performing their functions any committee of the National Assembly or Senate established in terms of subsection (1) shall have

the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.

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

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

### **Ordinary legislation**

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

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

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

### **Finance Bills**

59. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly and after they have been considered and reported on by a joint

committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

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

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

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

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

### **Bills concerning specified SPR matters**

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

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

### **Amendment of the Constitution**



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

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 7.

### **Requisite Majorities**

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

### **Assent to Bills**

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

### **Signature and Enrolments Acts**

64. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the Government Gazette shall be lodged in the office of the Registrar of the Appellate Division of the Supreme Court and such copy shall be conclusive evidence of the provisions of the Act.

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

Provision should further be made for the following matters:

- Resolution of conflicts between texts in different official languages
- Rights and obligations of President and Ministers regarding speaking, sitting and voting in the Houses of Parliament.

## **CHAPTER 5**

### **The Adoption of the new Constitution**

#### **The Constitution-making Body**

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

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

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

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

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

(6) The CMB may make rules of procedure for the conduct of its business and proceedings, and also make rules for the establishing, functioning and procedures of committees and formulate such standing orders, including restrictions on access to such

committees as may appear to it to be expedient or necessary, having regard to the business of such committees.

### **Constitutional Principles**

66. (1) In undertaking its task of drafting a new constitutional text, the CMB shall comply with the Constitutional Principles contained in Schedule 7.

(2) During the course of the drafting of the new constitutional text, any constitutional proposal pertaining to such drafting shall be referred to the Constitutional Court by the Chairperson after being petitioned by one third of the members of the CMB to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would comply with the Constitutional Principles.

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

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

### **Appointment of commissions, committees and advisory bodies**

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

(2) The CMB shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five persons being recognised constitutional experts not holding

office in any political party, to advise it and the Chairperson on constitutional matters and to perform such other tasks as are provided for in this Constitution.

### **Adoption of a new constitutional text**

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

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

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

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

(5) The President shall refer a constitutional text accepted in terms of subsection (4) after it has been certified by the Constitutional Court to be in compliance with the Constitutional Principles set out in Schedule 7, to a national referendum.

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

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

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

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

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

### **Amendment of this Chapter**

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

- (a) the Constitutional Principles set out in Schedule 7;
- (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

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

**CHAPTER 6**  
**The Executive Power**

[Sections 70 - 85]

**CHAPTER 7**  
**The Judicial Power**

[Sections 86 - 91]

**CHAPTER 8**  
**The Ombudsman and the Human Rights Commission**

[Sections 92 - 99]

**CHAPTER 9**

**SPRs**

**Establishment of SPRs**

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

**SPR legislatures**

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

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

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

### **Sessions of SPR Legislatures**

102. (1) An SPR legislature shall sit:

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

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

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

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

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

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

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

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

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



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

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

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

### **Requisite Majorities**

106. (1) Save as provided in this Constitution, a majority of votes cast shall be, sufficient for the passing of any Bill, or the taking of any decision or resolution by an SPR legislature.

(2) The Chairperson of the SPR legislature or the person presiding at a meeting of the SPR legislature shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

### **Rules and orders and committees**

107. (1) An SPR legislature may make rules of procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate standing orders, including restrictions on access to such committees.

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

#### **Privileges and immunities of SPR legislatures**

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

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

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

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

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

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

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

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

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

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

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

### **SPR executives**

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

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

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

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

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

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

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

### **Functioning of SPR executives**

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

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

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

- (a) The appropriation of SPR revenue and moneys for financing the government and services of the SPR

- (h) SPR planning and development
- (c) Town planning
- (d) Firefighting, ambulance services and other civil protection services
- (e) Language policy and languages for official use in the SPR
- (f) SPR cultural affairs
- (g) Traditional authorities and indigenous law.
- (h) Markets and pounds
- (i) Road traffic
- (j) Delivery of water, electricity and other essential services
- (k) SPR tourism and recreation
- (l) SPR public media
- (m) SPR roads
- (n) SPR public transport
- (o) Casinos, racing and gambling

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

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

- (a) it is necessary for the setting of minimum standards or effective exercise of control over the quality and delivery of services: or
- (h) it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the

prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole; or

- (c) uniformity of minimum standards across the nation is required regarding a matter falling within such functional area; or
- (d) it may be necessary for the determination of national economic policies, the promotion of inter-SPR commerce and the protection of the common market in respect of the mobility of goods, services, capital and labour.

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

- (a) Subject to the provisions of section 121, taxation for SPR purposes
- (b) Local government
- (c) Housing
- (d) Education
- (e) Health services
- (f) Welfare services
- (g) Agriculture
- (h) Fish and game preservation
- (i) The environment
- (j) Public works
- (k) SPR and local policing
- (l) SPR correctional services.

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

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

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

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

**Continuation, transfer and consolidation of existing administrative responsibility**

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

- (a) Administrative institutions and structures of Provincial Governments, selfgoverning territories, and Transkei, Bophuthatswana, Venda and Ciskei, if reincorporated, which immediately before the coming into force of this Constitution were established within the boundaries of an SPR, and performed functions within such boundaries, shall continue to perform such functions:
- (b) Personnel of the administrative institutions and structures referred to in subparagraph (a) shall continue in the posts they occupied immediately before the coming into operation of this Constitution, and shall continue to perform the functions which they previously performed;

- (c) The Government of the SPR concerned shall be responsible for and shall exercise control over the performance of those functions which fall within the scope of the functional areas referred to in sections 118(1) and 118(4), and the National Government shall be responsible for and exercise control over the performance of all other functions referred to in subparagraph (b);
- (d) Administrative structures and institutions which immediately before the coming into force of this Constitution formed part of a department of state of the Republic of South Africa referred to in section 24(1) of the *Republic of South Africa Constitution Act, 1983*, and which were at such time responsible for the performance of functions within the boundaries of an SPR, shall continue to be responsible for the performance of such functions;
- (e) The National Government shall be responsible for the performance of and shall exercise control over the functions referred to in subparagraph 11);
- (f) The personnel referred to in subparagraph (h), who perform functions in terms of that paragraph on the instructions of an SPR government, shall be deemed to be in the employ of, and shall be entitled to be remunerated by it on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of that SPR government:
- (g) The personnel referred to in subparagraph (b) who perform functions in terms of that subparagraph on the instructions of the National Government, shall be deemed to be in the employ of and shall be entitled to be remunerated by the National Government, on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of the National Government;
- (h) The National Government and SPR governments shall co-operate with each other, and shall, each within their respective areas of competence, rationalise the administrations and institutions referred to in subparagraph (b), and establish administrative structures and institutions, and employ the personnel needed for



the performance of functions undertaken by them, within their areas of competence;

- (i) The National Government and SPR governments in rationalising and/or consolidating administrations and institutions as contemplated in subparagraph (h) shall, in the event of any disagreement between them, have regard to the advice and recommendations of the Commission on SPR Government established in terms of section 127 of this Constitution.

### **Administration of existing laws**

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

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

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

## **SPR finance and fiscal affairs**

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

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

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

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

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

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

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

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

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

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

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

### **Recommendations to Parliament**

123. An SPR legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

### **SPR Constitutions**

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

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

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

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

(5) An SPR constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the CMB passed by two thirds of its members.

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

(7) An SPR constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

### **Development of constitutional provisions regarding SPR Government**

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

(2) The Commission's recommendations to the CMB regarding any matter that falls within the ambit of its objects in terms of section 128 shall include draft provisions for the national Constitution.

(3) The CMB shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the CMB, shall lapse except if a majority of the members of the CMB present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the CMB, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

### **Election of new SPR Governments**

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

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

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

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

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

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

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

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

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

- (f) the powers and functions of local governments; and
- (g) any matter which the Commission considers to be relevant or ancillary to its functions.

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

- (a) The provisions of this Constitution;
- (b) All Constitutional Principles enumerated in Schedule 7;
- (c) Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability; Developmental potential;
- (k) Cultural and language realities.

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

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

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

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

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

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

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

### **Chairperson and deputy chairperson**

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

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

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

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



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

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

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

### **Meetings of the Commission**

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

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

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

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

### **Committees**

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

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

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

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

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

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

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

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

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

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

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

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

## **Appointment of Staff**

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

## **Regulations**

137. The President may make regulations regarding -

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

## **CHAPTER 10**

### **Local Government**

General provisions regarding the powers, functions and structures of local government:

The comprehensive powers, functions and other features of local government shall be set

out in parliamentary statutes and/or SPR legislation.

## **CHAPTER 11**

### **Finance**

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

## **CHAPTER 12**

### **General and transitional provisions**

Provisions relating to:

The legal system (continuation of statutory and common law subject to the Constitution,  
unification of provincial ordinances, TBVC laws and laws of the self-governing  
territories  
with national and SPR law, recognition of indigenous law);  
the status of international law;  
the independence and impartiality of the Commission for Administration and the security  
forces;

civil society;

method of publication of notices, etc.;

affirmation in lieu of oath;

construction of certain references;

definitions and terminology;

short title, commencement and duration of the Constitution.

## **SCHEDULE 1**

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

## **SCHEDULE 2**

**Design of the National Flag**

## **SCHEDULE 3**

**The National Coat of Arms**

**SCHEDULE 4**

**The National Seal**

**SCHEDULE 5**

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

**SCHEDULE 6**

**Oaths and Affirmations of Office**

## **SCHEDULE 7**

### **Constitutional Principles**

#### **I**

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

#### **II**

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

#### **III**

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

#### **IV**

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

## **V**

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

## **VI**

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

## **VII**

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

## **VIII**

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

## **IX**

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



## **X**

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

## **XI**

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

## **XII**

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

## **XIII**

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

## **XIV**

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

#### **XV**

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

#### **XVI**

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

#### **XVII**

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

#### **XVIII**

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

composed of SPR representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

## **XIX**

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

## **XX**

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

## **XXI**

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

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

## **XXII**

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

### **XXIII**

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

### **XXIV**

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

- 1 . The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.

3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.
5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.
8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

9. SPR governments shall have powers, either exclusively or concurrently with the national government, inter alia -
  - 9.1 for the purposes of SPR planning and development and the delivery of services;  
and
  - 9.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the SPR.
  
10. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
  
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.
  
12. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments.

## **XXV**

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

## **XXVI**

The independence and impartiality of a Commission for Administration, a Reserve Bank, and Auditor-General and Ombudsman shall be provided for and safeguarded by the Constitution in

the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

## **XXVII**

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