

The Constitution of South Africa

adopted on: 8 May 1996

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

Chapter 1 Founding Provisions

Section 1 Republic of South Africa

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

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

Section 2 Supremacy of Constitution

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

Section 3 Citizenship

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

Section 4 National anthem

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

Section 5 National flag

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

Section 6 Languages

(1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) National and provincial governments may use particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances, and the balance of the needs and preferences of the population as a whole or in respective provinces; provided that no national or provincial government may use only one official language. Municipalities must take into consideration the language usage and preferences of their residents.

(4) National and provincial governments, by legislative and other measures, must regulate and monitor the use by those governments of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) The Pan South African Language Board must -

(a) promote and create conditions for the development and use of

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language.

(b) promote and ensure respect for languages, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu, Urdu, and others commonly used by communities in South Africa, and Arabic, Hebrew, Sanskrit and others used for religious purposes.

Chapter 2 Bill of Rights

Section 7 Rights

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote, and fulfil the rights in the Bill of Rights.

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

Section 8 Application

(1) The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary, and all organs of state.

(2) A provision of the Bill of Rights binds natural and juristic persons if, and to the extent that, it is applicable, taking into account the nature of the right and of any duty imposed by the right.

(3) In applying the provisions of the Bill of Rights to natural and juristic persons in terms of subsection (2), a court -

(a) in order to give effect to a right in the Bill, must apply, or where necessary, develop, the

common law to the extent that legislation does not give effect to that right; and
(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) Juristic persons are entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and of the juristic persons.

Section 9 Equality

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Section 10 Human dignity

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

Section 11 Life

Everyone has the right to life.

Section 12 Freedom and security of the person

(1) Everyone has the right to freedom and security of the person, which includes the right -

(a) not to be deprived of freedom arbitrarily or without just cause;

(b) not to be detained without trial;

(c) to be free from all forms of violence from both public and private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right -

(a) to make decisions concerning reproduction;

(b) to security in and control over their body; and

(c) not to be subjected to medical or scientific experiments without their informed consent.

Section 13 Slavery, servitude and forced labour

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

Section 14 Privacy

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

(a) their person or home searched;

(b) their property searched;

(c) their possessions seized; or

(d) the privacy of their communications infringed.

Section 15 Freedom of religion, belief and opinion

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions provided that -
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising -
 - (i) marriages concluded under any tradition or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Section 16 Freedom of expression

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

Section 17 Assembly, demonstration, picket and petition

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

Section 18 Freedom of association

Everyone has the right to freedom of association.

Section 19 Political rights

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

Section 20 Citizenship

No citizen may be deprived of citizenship.

Section 21 Freedom of movement and residence

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

Section 22 Freedom of trade, occupation and profession

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

Section 23 Labour relations

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right -
 - (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union; and
 - (c) to strike.
- (3) Every employer has the right -
 - (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right -
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise;
 - (c) to bargain collectively; and
 - (d) to form and join a federation.
- (5) The provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements.

Section 24 Environment

Everyone has the right -

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

Section 25 Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application -
 - (a) for public purposes or in the public interest; and
 - (b) subject to compensation, the amount, timing, and manner of payment, of which must be agreed, or decided or approved by a court.
- (3) The amount, timing, and manner of payment, of compensation must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant factors, including -

- (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section -
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsections (6).

Section 26 Housing

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

Section 27 Health care, food, water, and social security

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

Section 28 Children

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

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

Section 29 Education

- (1) Everyone has the right -
- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state must take reasonable measures to make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -
- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory law and practice.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -
- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Section 30 Language and culture

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

Section 31 Cultural, religious and linguistic communities

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of their community, to -
- (a) enjoy their culture, practise their religion and use their language; and
- (b) form, join and maintain cultural, religious and linguistic associations and other organs of

civil society.

(2) This right may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Section 32 Access to information

(1) Everyone has the right of access to -

(a) any information held by the state; and
(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Section 33 Just administrative action

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must -

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
(b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
(c) promote an efficient administration.

Section 34 Access to courts

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

Section 35 Arrested, detained and accused persons

(1) Everyone who is arrested for allegedly committing an offence has the right-

(a) to remain silent;
(b) to be informed promptly -
(i) of the right to remain silent; and
(ii) of the consequences of not remaining silent;
(c) not to be compelled to make any confession or admission that could be used in evidence against that person;
(d) to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest, but if that period expires outside ordinary court hours, to be brought before a court on the first court day after the end of that period;
(e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
(f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

(2) Everyone who is detained, including every sentenced prisoner, has the right-

(a) to be informed promptly of the reason for being detained;
(b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
(c) to have a legal practitioner assigned to the detained person by the state, and at state

expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

(d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

(e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material, and medical treatment; and

(f) to communicate with, and be visited by, that person's -

(i) spouse or partner;

(ii) next of kin;

(iii) chosen religious counsellor; and

(iv) chosen medical practitioner.

(3) Every accused has a right to a fair trial, which includes the right -

(a) to be informed of the charge with sufficient details to answer it;

(b) to have adequate time and facilities to prepare a defence;

(c) to a public trial in an ordinary court;

(d) to have their trial begin and conclude without unreasonable delay;

(e) to be present when being tried;

(f) to choose, and be represented by, a legal practitioner, and to be informed of this right;

(g) to have a legal practitioner assigned to the accused by the state, and at state expense, if substantial injustice would otherwise result, and to be informed of this right;

(h) to be presumed innocent, to remain silent, and not to testify during the proceedings;

(i) to adduce and challenge evidence;

(j) not to be compelled to give self-incriminating evidence;

(k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;

(l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;

(m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(o) of appeal to, or review by, a higher court.

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

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

Section 36 Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including-

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

- (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Section 37 States of emergency

- (1) A state of emergency may be declared only in terms of an Act of Parliament and only when -
 - (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency; and
 - (b) the declaration is necessary to restore peace and order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only -
 - (a) prospectively from the date of the declaration; and
 - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The National Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution supported by a majority of the members of the National Assembly. Any subsequent extension must be by a resolution supported by at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
- (3) Any competent court may decide on the validity of -
 - (a) a declaration of a state of emergency;
 - (b) any extension of a declaration of a state of emergency; or
 - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (4) Any legislation enacted in consequence of a declared state of emergency may derogate from the Bill of Rights only to the extent that -
 - (a) the derogation is strictly required by the emergency; and
 - (b) the legislation -
 - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
 - (ii) conforms to subsection (5); and
 - (iii) is published in the national Government Gazette as soon as reasonably possible after being enacted.
- (5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise -
 - (a) indemnifying the state, or any person, in respect of any unlawful act;
 - (b) any derogation from this section; or
 - (c) any derogation from a section mentioned in column 1 of the Table of Non- Derogable Rights, to the extent indicated opposite that section in column 3 of that table.

Table of Non-Derogable Rights		
Section Number	Section Title	Extent to which the right is non-derogable
9	Equality	With respect to race and sex only

10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsection (1)(d), and (e) and (2)(c) only
13	Slavery, servitude and forced labour	With respect to slavery and servitude only
28	Children	With respect to subsection (1)(d), (1)(e) and to the rights in subparagraphs (1)(g)(i) and (ii) only
35	Arrested, detained and accused persons	With respect to the following subsections only: (1)(a), (b) and (c); (2)(d); (3)(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (o); (4)

(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

(a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and told that the person has been detained.

(b) A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.

(c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.

(d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.

(e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.

(f) A detainee who is not released in terms of paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention any time more than 10 days after the previous review, and in either case, the court must release the detainee unless it is necessary to continue the detention to restore peace and order.

(g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.

(h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

(8) Subsections (6) and (7) do not apply to persons who are not citizens of the Republic and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of those persons.

Section 38 Enforcement of rights

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

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

Section 39 Interpretation of Bill of Rights

(1) When interpreting the Bill of Rights, a court, tribunal or forum -

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider international law; and
- (c) may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport, and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

Chapter 3 Co-operative Government

Section 40 Government of the Republic

(1) In the Republic, government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated.

(2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.

Section 41 Principles of co-operative government and intergovernmental relations

(1) All spheres of government and all organs of state within each sphere must -

- (a) preserve the peace, national unity and the indivisibility of the Republic;
- (b) secure the well-being of the people of the Republic;
- (c) implement effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to the Constitution, the Republic, and its people;
- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
- (f) not assume any power or function except those conferred on them in terms of the Constitution;
- (g) exercise their powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) co-operate with each other in mutual trust and good faith by -
 - (i) fostering friendly relations;
 - (ii) assisting and supporting each other;
 - (iii) informing each other and consulting on matters of common interest;

- (iv) co-ordinating their actions and legislation with each other;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against each other.
- (2) An Act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations.
- (3) An Act of Parliament must provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (4) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (5) If a court is not satisfied that the requirements of subsection (4) have been met, it may refer a dispute back to the organs of state involved.

Chapter 4 Parliament

Composition of Parliament

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

Section 43 Legislative authority of Republic

In the Republic, the legislative authority -

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

Section 44 National legislative authority

- (1) The national legislative authority as vested in Parliament -
- (a) confers on the National Assembly the power -
 - (i) to amend the Constitution;
 - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within the functional areas listed in Schedule 5; and
 - (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any

legislative body in another sphere of government; and

(b) confers on the National Council of Provinces the power -

- (i) to participate in amending the Constitution, in accordance with section 74;
- (ii) to pass legislation in accordance with section 76, with regard to any matter within a functional area listed in Schedule 4, and any other matter required by the Constitution to be passed in accordance with section 76; and
- (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.

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

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

(3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.

(4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

Section 45 Joint rules and orders

The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders -

- (a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
- (b) to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75;
- (c) to establish a joint committee to review the Constitution at least annually; and
- (d) to regulate the business of -
 - (i) the joint rules committee;
 - (ii) the Mediation Committee;
 - (iii) the constitutional review committee; and
 - (iv) any joint committees established in terms of paragraph (b).

Section 46 Composition and election, The National Assembly

(1) The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that -

- (a) is prescribed by national legislation;
- (b) is based on the national common voters roll;
- (c) provides for a minimum voting age of 18 years; and
- (d) results, in general, in proportional representation.

(2) An Act of Parliament must provide a formula for determining the number of members of the National Assembly.

Section 47 Membership

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

Section 48 Oath or affirmation

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

Section 49 Duration of National Assembly

- (1) The National Assembly is elected for a term of five years.
- (2) If the National Assembly is dissolved in terms of section 50, or when its term expires, the President, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved, or its term expired.
- (3) If the result of an election of the National Assembly is not declared within the period established in terms of section 190 or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) The National Assembly remains competent to function from the time it is dissolved, or its term expires, until the day before the first day of polling for the next Assembly.

Section 50 Dissolution of National Assembly before expiry of its term

- (1) The President must dissolve the National Assembly if -
 - (a) the Assembly has adopted a resolution to dissolve, supported by a majority of its members; and
 - (b) three years have passed since the Assembly was elected.

- (2) The Acting-President must dissolve the National Assembly if -
- (a) there is a vacancy in the office of President; and
 - (b) the Assembly fails to elect a new President within 30 days of the vacancy occurring.

Section 51 Sittings and recess periods

- (1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.

Section 52 Speaker and Deputy Speaker

- (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.
- (2) The President of the Constitutional Court must preside over the election of the Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.
- (5) In terms of its rules and orders, the National Assembly may elect from among its members other presiding officers to assist the Speaker and Deputy Speaker.

Section 53 Decisions

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

Section 54 Rights of certain Cabinet members in National Assembly

The President and any member of the Cabinet who is not a member of the National Assembly may attend, and may speak in, the Assembly, but may not vote.

Section 55 Powers of National Assembly

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

Section 56 Evidence or information before National Assembly

The National Assembly or any its committees may -

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

Section 57 Internal arrangements, proceedings and procedures of National Assembly

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

Section 58 Privilege

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

Section 59 Public access to and involvement in National Assembly

The National Assembly must -

- (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public; but, reasonable measures may be taken to regulate public access, including access of the media, to the Assembly and its committees; and to provide for the search of any person and, where appropriate, the refusal of entry or the removal of any person.

Section 60 National Council of Provinces, Composition of National Council

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

Section 61 Allocation of delegates

- (1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3.
- (2) Within 30 days after the result of an election of a provincial legislature is declared, the legislature, to ensure the participation of minority parties in the Council in a manner consistent with democracy, must -
 - (a) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
 - (b) appoint the permanent delegates in accordance with the nominations of the parties.
- (3) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the National Council of Provinces, must designate special delegates, as required from time to time, from among the members of the legislature.

Section 62 Permanent delegates

- (1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.
- (2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.
- (3) Permanent delegates are appointed for a term that expires immediately before the first sitting of the provincial legislature after its next election.
- (4) A person ceases to be a permanent delegate if that person -
 - (a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate;
 - (b) has been appointed to the Cabinet;
 - (c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person;

- (d) ceases to be a member of the party that nominated that person and is recalled by that party;
or
- (e) is absent from the National Council of Provinces without permission in circumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate.
- (5) Vacancies among the permanent delegates must be filled in terms of national legislation.
- (6) Before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

Section 63 Sitzings of National Council

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

Section 64 Chairperson and Deputy Chairpersons

- (1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.
- (2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their term as a delegate expires earlier.
- (3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.
- (4) The President of the Constitutional Court must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.
- (5) The procedure set out in Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.
- (6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.

Section 65 Decisions

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

Section 66 Participation by members of national executive

- (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
- (2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or

an official in the national or provincial executive to attend a meeting of the Council or a committee of the Council.

Section 67 Participation by local government representatives

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

Section 68 Powers of National Council

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

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

Section 69 Evidence or information before National Council

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

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

Section 70 Internal arrangements, proceedings and procedures of National Council

(1) The National Council of Provinces may -

- (a) determine and control its internal arrangements, proceedings and procedures; and
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of the National Council of Provinces must provide for -

- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
- (b) the participation of all the provinces in its proceedings in a manner consistent with democracy; and
- (c) the participation in the proceedings of the Council, and its committees, of all minority political parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

Section 71 Privilege

(1) Delegates to the National Council of Provinces, and the persons referred to in sections 66 and 67 -

- (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
 - (i) anything that they have said in, produced before, or submitted to, the Council or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to, the Council or any of its committees.
- (2) Other privileges and immunities of the National Council of Provinces, delegates to the

Council and persons referred to in sections 66 and 67, may be prescribed by national legislation.

(3) Salaries, allowances and benefits payable to permanent members of the National Council of Provinces are a direct charge against the National Revenue Fund.

Section 72 Public access to and involvement in National Council

The National Council of Provinces must -

(a) facilitate public involvement in the legislative and other processes of the Council and its committees; and

(b) conduct its business in an open manner, and hold its sittings and those of its committees, in public; but, reasonable measures may be taken to regulate public access, including access of the media, to the Council and its committees, and to provide for the search of any person, and, where appropriate, the refusal of entry or the removal of any person.

Section 73 National Legislative Process, All Bills

(1) Any Bill may be introduced in the National Assembly.

(2) Only a Cabinet member or a Deputy Minister, or a member, or committee, of the Assembly, may introduce a Bill in the Assembly; but only the Cabinet member responsible for national financial matters may introduce a money Bill in the Assembly.

(3) A Bill, except a money Bill, falling within a functional area listed in Schedule 4 or referred to in section 76(3), may be introduced in the National Council of Provinces.

(4) Only a member, or a committee, of the National Council of Provinces may introduce a Bill in the Council.

(5) A Bill passed by the National Assembly must be referred to the National Council of Provinces, if it must be considered by the Council; a Bill passed by the Council must be referred to the Assembly.

Section 74 Bills amending the Constitution

(1) The Constitution, other than the provisions of section 1 and subsection (2) of this section, may be amended by a Bill passed by -

(a) the National Assembly supported by a vote of at least two thirds of its members; and

(b) the National Council of Provinces supported by a vote of at least six provinces if it is a Bill that-

(i) affects the Council;

(ii) alters provincial boundaries, powers, functions or institutions; or

(iii) amends a provision that deals specifically with a provincial matter.

(2) Section 1, and this subsection, may be amended in accordance with subsection (1), but the Bill must be supported by at least 75 per cent of the members of the National Assembly.

(3) If a Bill referred to in subsection (1)(b) concerns only a specific province or provinces, the National Council of Provinces may not pass it unless the Bill has been approved by the relevant provincial legislature or legislatures.

(4) Parliament may not pass a Bill that amends the Constitution and concerns the powers, boundaries or functions of provinces until it has been referred to the provincial legislatures for their views.

(5) A Bill amending the Constitution, which has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

Section 75 Bills outside Schedule 4

- (1) When the National Assembly passes a Bill falling outside the functional areas listed in Schedule 4, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The Council must either -
 - (i) pass the Bill;
 - (ii) pass the Bill subject to amendments proposed by it; or
 - (iii) reject the Bill.
 - (b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.
 - (c) If the Council rejects the Bill or passes it subject to amendments, the National Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may -
 - (i) pass the Bill again, either with or without amendments; or
 - (ii) decide not to proceed with the Bill.
 - (d) A Bill passed by the National Assembly in terms of paragraph (c) must be submitted to the President for assent.
- (2) When the National Council of Provinces votes on a question in terms of this section, section 65 does not apply; instead -
- (a) each delegate in a provincial delegation has one vote;
 - (b) one third of the delegates must be present before a vote may be taken on the question; and
 - (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

Section 76 Bills within Schedule 4

- (1) When the National Assembly passes a Bill falling within a functional area listed in Schedule 4, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The National Council must either -
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
 - (b) If the National Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
 - (c) If the National Council passes an amended Bill, the amended Bill must be referred to the National Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent.
 - (d) If the National Council rejects the Bill, or if the National Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on -
 - (i) the Bill as passed by the Assembly;
 - (ii) the amended Bill as passed by the Council; or
 - (iii) another version of the Bill.
 - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the National Assembly again passes the Bill, but supported by a vote of at least two thirds of its members.
 - (f) If the Mediation Committee agrees on the Bill as passed by the National Assembly, the Bill must be referred to the National Council, and if the Council passes the Bill, the Bill must be

submitted to the President for assent.

(g) If the Mediation Committee agrees on the amended Bill as passed by the National Council, the Bill must be referred to the National Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.

(h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the National Assembly and the National Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.

(i) If a Bill referred to the National Council in terms of paragraph (f) or (h) is not passed by the Council, the Bill lapses unless the National Assembly passes the Bill supported by a vote of at least two thirds of its members.

(j) If a Bill referred to the National Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but supported by a vote of at least two thirds of its members.

(k) A Bill passed by the National Assembly in terms of paragraph (e), (i) or (j) must be submitted to the President for assent.

(2) When the National Council of Provinces passes a Bill falling within a functional area listed in Schedule 4, the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:

(a) The National Assembly must either -

(i) pass the Bill;

(ii) pass an amended Bill; or

(iii) reject the Bill.

(b) A Bill passed by the National Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.

(c) If the National Assembly passes an amended Bill, the amended Bill must be referred to the National Council, and if the Council passes the amended Bill it must be submitted to the President for assent.

(d) If the National Assembly rejects the Bill, or if the National Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, the amended Bill, must be referred to the Mediation Committee, which may agree on -

(i) the Bill as passed by the Council;

(ii) the amended Bill as passed by the Assembly; or

(iii) another version of the Bill.

(e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.

(f) If the Mediation Committee agrees on the Bill as passed by the National Council, the Bill must be referred to the National Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.

(g) If the Mediation Committee agrees on the amended Bill as passed by the National Assembly, the Bill must be referred to the National Council, and if it is passed by the Council, it must be submitted to the President for assent.

(h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the National Council and the National Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.

(i) If a Bill referred to the National Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.

(3) A Bill may be dealt with in accordance with either the procedure established by subsection (1) or (2) if it provides for legislation envisaged in any of the following sections:

(a) section 65(2);

(b) section 163;

- (c) section 182;
 - (d) section 195(3) and (4);
 - (e) section 196; and
 - (f) section 197.
- (4) A Bill must be dealt with in accordance with the procedure established by subsection (1) if it is not a money Bill, and it provides for legislation -
- (a) envisaged in section 44(2) or 220(3); or
 - (b) envisaged elsewhere in Chapter 13, and which affects the financial interests of the provincial sphere of government.
- (5) A bill envisaged in section 42(6) must be dealt with in accordance with the procedure established in subsection (1), except that -
- (a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it; and
 - (b) if the Bill is referred to the Mediation Committee, the following rules apply:
 - (i) If the National Assembly considers a Bill as envisaged in subsection (1) (g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.
 - (ii) If the National Assembly considers or reconsiders a Bill as envisaged in subsection (1)(e), (i) or (j), that Bill may be passed only if at least two-thirds of the members of the Assembly vote in favour of it.

Section 77 Money Bills

- (1) (a) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. (b) Only a money Bill may appropriate money, or impose taxes, levies, or duties, and a money Bill may not deal with any other matter except the imposition of user charges, or fines or other monetary penalties.
- (2) An Act of Parliament must provide for a procedure by which Parliament may amend a money Bill.
- (3) A money Bill must be considered in accordance with the procedure established by section 75.

Section 78 Mediation Committee

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

Section 79 Assent to Bills

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

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

Section 80 Application by members of National Assembly to Constitutional Court

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

Section 81 Publication of Acts

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

Section 82 Safekeeping of Acts of Parliament

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

Chapter 5 The President and National Executive

Section 83 The President

The President -

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

Section 84 Powers and functions of President

- (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.

(2) The President is responsible for -

- (a) assenting to and signing Bills;
- (b) referring a Bill back to Parliament for reconsideration of the Bill's constitutionality;
- (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
- (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
- (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
- (f) appointing commissions of enquiry;
- (g) proclaiming national referenda in terms of an Act of Parliament;
- (h) receiving and recognising foreign diplomatic and consular representatives;
- (i) appointing ambassadors, plenipotentiaries, diplomatic and consular representatives;
- (j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures; and
- (k) conferring honours.

Section 85 Executive authority of the Republic

(1) The executive power of the Republic is vested in the President.

(2) The President exercises the executive power, together with the other members of the Cabinet, by -

- (a) implementing national legislation unless the Constitution or an Act of Parliament provides otherwise;
- (b) developing and implementing national policy;
- (c) co-ordinating the functions of state departments and administrations;
- (d) preparing and initiating legislation; and
- (e) performing any other executive function provided for in the Constitution or in national legislation.

Section 86 Election of President

(1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be President.

(2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Schedule 3 applies to the election of the President.

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

Section 87 Assumption of office by President

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

Section 88 Term of office of President

(1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.

(2) No person may hold office as President for more than two terms; but, when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

Section 89 Removal of President

(1) The National Assembly, by a resolution supported by at least two thirds of its members, may remove the President from office only on the grounds of -

- (a) a serious violation of the Constitution or the law;
- (b) serious misconduct; or
- (c) inability to perform the functions of office.

(2) Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.

Section 90 Acting-President

(1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President:

- (a) The Deputy President.
- (b) A Minister designated by the President.
- (c) A Minister designated by the other members of the Cabinet.
- (d) The Speaker, until the National Assembly designates one of its other members.

(2) An Acting-President has the responsibilities, powers and functions of the President.

(3) Before assuming the responsibilities, duties and functions of the President, the Acting-President must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

Section 91 Cabinet

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

(2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.

(3) The President -

- (a) must select the Deputy President from among the members of the National Assembly;
- (b) may select any number of Ministers from among the members of the Assembly; and
- (c) may select no more than two Ministers from outside the Assembly.

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

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

Section 92 Accountability and Responsibilities

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

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

(3) Members of the Cabinet must -

- (a) act in accordance with the Constitution; and
- (b) provide Parliament with full and regular reports concerning matters under their control.

Section 93 Deputy Ministers

The President may appoint Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them.

Section 94 Continuation of Cabinet after elections

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

Section 95 Oath or affirmation

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

Section 96 Conduct of Cabinet members and Deputy Ministers

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

Section 97 Transfer of functions

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

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

Section 98 Temporary assignment of functions

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

Section 99 Assignment of functions

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

An assignment -

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

Section 100 National supervision of provincial administration

- (1) When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -
 - (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and

(b) assuming responsibility for the relevant obligation in that province to the extent necessary to -

(i) maintain essential national standards or meet established minimum standards for the rendering of a service;

(ii) maintain economic unity;

(iii) maintain national security; or

(iv) prevent that province from taking unreasonable action that is prejudicial to the interest of another province or to the country as a whole.

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

(a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began;

(b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and

(c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive.

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

Section 101 Executive decisions

(1) A written decision by the President must be countersigned by another Cabinet member if -

(a) the decision is made in terms of legislation; and

(b) that legislation falls within a functional area assigned to that other Cabinet member.

(2) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.

(3) National legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (2) must be -

(a) tabled in Parliament; and

(b) approved by Parliament.

Section 102 Motions of no-confidence

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

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

Chapter 6 Provinces

Section 103 Provinces

(1) The Republic has the following provinces:

(a) Eastern Cape

(b) Free State

(c) Gauteng

(d) KwaZulu-Natal

(e) Mpumalanga

(f) Northern Cape

(g) Northern Province

(h) North West

- (i) Western Cape.
- (2) The boundaries of the provinces are those existing when the Constitution took effect.

Section 104 Provincial Legislatures, Legislative authority of provinces

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

Section 105 Composition and election of provincial legislatures

- (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that -
 - (a) is prescribed by national legislation;
 - (b) is based on that province's segment of the national common voters roll;
 - (c) provides for a minimum voting age of 18 years; and
 - (d) results, in general, in proportional representation.
- (2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.

Section 106 Membership

- (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except -
 - (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -
 - (i) the Premier and other members of the Executive Council of a province; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
 - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;

- (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic; or
 - (e) anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of a provincial legislature in terms of subsection (1) (a) or (b) may be a candidate for the legislature, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of a provincial legislature if that person -
- (a) ceases to be eligible; or
 - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership.
- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

Section 107 Oath or affirmation

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

Section 108 Duration of provincial legislatures

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

Section 109 Dissolution of provincial legislatures before expiry of term

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

Section 110 Sitings and recess periods

- (1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.

- (2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.
- (3) A provincial legislature may determine where it ordinarily will sit.

Section 111 Speakers and Deputy Speakers

- (1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.
- (2) A judge designated by the President of the Constitutional Court must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of Speakers and Deputy Speakers.
- (4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.
- (5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and Deputy Speaker.

Section 112 Decisions

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

Section 113 Permanent delegates' rights in provincial legislatures

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

Section 114 Powers of provincial legislatures

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

Section 115 Evidence or information before provincial legislatures

A provincial legislature or any of its committees may -

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

Section 116 Internal arrangements, proceedings and procedures of provincial legislatures

(1) A provincial legislature may -

- (a) determine and control its internal arrangements, proceedings and procedures; and
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of a provincial legislature must provide for -

- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
- (b) the participation in the proceedings of the legislature of all minority parties represented in the legislature in a manner consistent with democracy;
- (c) financial and administrative assistance to each political party represented in the legislature, in proportion to its representation, to enable each party and its leader to perform its functions in the legislature; and
- (d) the recognition of the leader of the largest minority party in the legislature, as the Leader of the Opposition.

Section 117 Privilege

(1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces -

- (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and
- (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
 - (i) anything that they have said in, produced before, or submitted to, the legislature or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before, or submitted to, the legislature or any of its committees.

(2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.

(3) Salaries, allowances and benefits payable to members of a provincial legislature are a direct charge against the Provincial Revenue Fund.

Section 118 Public access to and involvement in provincial legislatures

A provincial legislature must -

- (a) facilitate public involvement in the legislative and other processes of the legislature and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public; but reasonable measures may be taken to regulate public access, including access of the media, to the legislature and its committees, and to provide for the search of any person, and, where appropriate, the refusal of entry or the removal of any person.

Section 119 Introduction of Bills

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

Section 120 Money Bills

- (1) (a) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill.
- (b) Only a money Bill may appropriate money or impose taxes, levies, or duties, and a money Bill may not deal with any other matter except the imposition of user charges, or fines or other monetary penalties.
- (2) An Act of a province must provide for a procedure by which the province's legislature may amend a money Bill.

Section 121 Assent to Bills

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

Section 122 Application by members to Constitutional Court

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

Section 123 Publication of provincial Acts

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

Section 124 Safekeeping of provincial Acts

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

Section 125 Provincial Executives, Executive authority of provinces

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

Section 126 Assignment of functions

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

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

Section 127 Functions of Premiers

- (1) The Premier of a province has the powers and functions entrusted to that office by the Constitution and any legislation.
- (2) The Premier of a province is responsible for-
 - (a) assenting to and signing Bills;
 - (b) referring a Bill back to the provincial legislature for reconsideration of the Bill's

constitutionality;

- (c) a referral of a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
- (d) summoning the legislature to an extraordinary sitting to conduct special business;
- (e) appointing commissions of inquiry; and
- (f) calling a referendum in the province in accordance with national legislation.

Section 128 Election of Premiers

(1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province.

(2) A judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in Schedule 3 applies to the election of the Premier.

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

Section 129 Assumption of office by Premiers

A Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

Section 130 Term of office of Premiers

(1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office.

(2) No person may hold office as Premier for more than two terms; but, when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.

Section 131 Acting-Premiers

(1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier:

(a) A member of the Executive Council designated by the Premier.

(b) A member of the Executive Council designated by the other members of the Executive Council.

(c) The Speaker, until the legislature designates one of its other members.

(2) An Acting-Premier has the responsibilities, powers and functions of the Premier.

(3) Before assuming the responsibilities, duties or functions of the Premier, the Acting-Premier must swear or affirm faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2.

Section 132 Executive Councils

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

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

Section 133 Accountability and responsibilities

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

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

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

(a) act in accordance with the Constitution; and

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

Section 134 Continuation of Executive Councils after elections

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

Section 135 Oath or affirmation

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

Section 136 Conduct of members of Executive Councils

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

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

(a) undertake any other paid work;

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

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

Section 137 Transfer of functions

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

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

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

Section 138 Temporary assignment of functions

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

Section 139 Provincial supervision of local government

(1) When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and

(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary -

(i) to maintain essential national standards or to establish minimum standards for the rendering of a service;

(ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interest of another municipality

or to the province as a whole; or

(iii) to maintain economic unity.

(2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b) -

(a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention;

(b) notice of the intervention must be tabled in the provincial legislature and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began;

(c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and

(d) the Council must review the intervention regularly and make any appropriate recommendations to the provincial executive.

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

Section 140 Executive decisions

(1) A written decision by the Premier of a province must be countersigned by another member of the Executive Council if -

(a) the decision is made in terms of legislation; and

(b) that legislation falls within a function assigned to that other Executive Council member.

(2) Proclamations, regulations and other instruments of subordinate legislation of a province must be accessible to the public.

(3) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (1) must be -

(a) tabled in the provincial legislature; and

(b) approved by the provincial legislature.

Section 141 Motions of no-confidence

(1) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no-confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.

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

Section 142 Provincial Constitutions, Adoption of provincial constitutions

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

Section 143 Contents of provincial constitutions

(1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for -

(a) provincial legislative or executive structures and procedures that differ from those

provided for in this Chapter; or

(b) the institution, role, authority and status of a traditional monarch, where applicable.

(2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) or (b) of subsection (1) -

(a) must comply with Chapter 3 and the values in section 1; and

(b) may not confer on the province any power or function that falls -

(i) outside the area of provincial competence in terms of Schedules 4 and 5; or

(ii) outside the powers and functions conferred on the province by the other sections of the Constitution.

Section 144 Certification of provincial constitutions

(1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution or constitutional amendment to the Constitutional Court for certification.

(2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified -

(a) that the text has been passed in accordance with section 142; and

(b) that the whole text complies with section 143.

Section 145 Signing, publication and safekeeping of provincial constitutions

(1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.

(2) The text assented to and signed by the Premier must be published in the national Government Gazette and takes effect on publication or on a later date determined in terms of that constitution or amendment.

(3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping.

Section 146 Conflicting Laws, Conflicts between national and provincial legislation

(1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4.

(2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions are met:

(a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.

(b) The interests of the country as a whole require that a matter be dealt with uniformly across the nation, and the national legislation provides that uniformity by establishing -

(i) norms and standards;

(ii) frameworks; or

(iii) national policies.

(c) The national legislation is necessary for -

(i) the maintenance of national security;

(ii) the maintenance of economic unity;

(iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;

(iv) the promotion of economic activities across provincial boundaries;

- (v) the promotion of equal opportunity or equal access to government services; or
- (vi) the protection of the environment.
- (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that -
 - (i) is prejudicial to the economic, health or security interest of another province or the country as a whole; or
 - (ii) impedes the implementation of national economic policy.
- (4) National legislation that deals with any matter referred to in subsection (2)(c) and has been passed by the National Council of Provinces, must be presumed to be necessary for the purposes of that subsection.
- (5) Provincial legislation prevails over the national legislation if subsection (2) does not apply.
- (6) (a) National and provincial legislation referred to in subsections (1) to (5) includes a law made in terms of an Act of Parliament or a provincial Act only if that law has been approved by the National Council of Provinces.
 - (b) If the Council does not reach a decision within 30 days of its first sitting after the law was referred to it, the legislation must be considered for all purposes to have been approved by the Council.
- (7) If the National Council of Provinces does not approve a law referred to in subsection (6)(a), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it.

Section 147 Other conflicts

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

Section 148 Conflicts that cannot be resolved

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

Section 149 Status of legislation that does not prevail

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

Section 150 Interpretation of conflicts

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

Chapter 7 Local Government

Section 151 Status of Municipalities

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

Section 152 Objects of local government

- (1) The objects of local government are -
 - (a) to provide democratic and accountable government for local communities;
 - (b) to ensure the provision of services to communities in a sustainable manner;
 - (c) to promote social and economic development;
 - (d) to promote a safe and healthy environment; and
 - (e) to encourage the involvement of communities and community organisations in the matters of local government.
- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Section 153 Developmental duties of municipalities

A municipality must -

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

Section 154 Municipalities in co-operative government

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

Section 155 Establishment of municipalities

- (1) National legislation must determine -
 - (a) the different categories of municipality that may be established;
 - (b) appropriate fiscal powers and functions for each category; and
 - (c) procedures and criteria for the demarcation of municipal boundaries by an independent authority.

- (2) Provincial government, by legislative or other measures, must -
- (a) establish municipalities;
 - (b) provide for the monitoring and support of local government in the province; and
 - (c) promote the development of local government capacity to perform its functions and its ability to manage its own affairs.
- (3) Subject to the provisions of sections 44, 151 and 154, -
- (a) a provincial government has the legislative and executive power to monitor the local government matters listed in Schedules 4 and 5; and
 - (b) national and provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of those matters, by regulating the exercise of municipalities' executive authority referred to in section 156(1).

Section 156 Powers and functions of municipalities

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

Section 157 Composition and election of Municipal Councils

- (1) A Municipal Council consists of -
- (a) members elected in accordance with subsections (2), (3), (4) and (5); or
 - (b) if provided for by national legislation -
 - (i) members appointed by another Municipal Council to represent that other Council; or
 - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (b)(i).
- (2) The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system -
- (a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
 - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voters roll.
- (3) An electoral system in terms of subsection (2) must ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties.
- (4) If the electoral system includes ward representation, the delimitation of wards must be

done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.

(5) A person may vote in a municipality only if that person is

registered on that municipality's segment of the national common voters roll.

(6) The national legislation referred to in section 157(1)(b) must establish a system that allows for parties and interests reflected within the Municipal Council making the appointment, to be fairly represented.

Section 158 Membership of Municipal Councils

(1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except -

(a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;

(b) anyone who is appointed by, or is in the service of, the state in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of the Council in terms of national legislation;

(c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 47(1)(c), (d) or (e) to be a member of the Assembly;

(d) a member of the National Assembly, the National Council of Provinces or a provincial legislature; but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council; or

(e) a member of another Municipal Council; but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category.

(2) A person who is not eligible to be a member of a Municipal Council in terms of subsection (1)(a), (b),(d), or (e) may be a candidate for the Council, subject to any limits or conditions established by national legislation.

Section 159 Terms of Municipal Councils

The term of a Municipal Council may be no more than four years, as determined by national legislation.

Section 160 Internal procedures

(1) A Municipal Council may make by-laws which prescribe rules and orders for -

(a) its internal arrangements; and

(b) its business and proceedings; and

(c) the establishment, composition, procedures, powers and functions of its committees.

(2) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.

(3) Members of a Municipal Council must be able to participate in its proceedings and those of its committees in a manner that

(a) allows parties and interests reflected within the Council to be fairly represented;

(b) is consistent with democracy; and

(c) may be regulated by national legislation.

Section 161 Privilege

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

Section 162 Publication of municipal by-laws

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

Section 163 Organised local government

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

- (a) provide for the recognition of national and provincial organisations representing municipalities; and
- (b) determine procedures by which local government may -
 - (i) consult with national or provincial government;
 - (ii) designate representatives to participate in the National Council of Provinces; and
 - (iii) nominate persons to the Financial and Fiscal Commission.

Section 164 Other matters

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

Chapter 8 Courts and Administration of Justice

Section 165 Judicial authority

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

Section 166 Judicial system

The courts are -

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognized by an Act of Parliament, which may include any court of a status similar to either the High Courts or the Magistrates' Courts.

Section 167 Constitutional Court

- (1) The Constitutional Court consists of a President, a Deputy President and nine other judges.
- (2) A matter before the Constitutional Court must be heard by at least eight judges.
- (3) The Constitutional Court -
 - (a) is the highest court in all constitutional matters;
 - (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and
 - (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.
- (4) Only the Constitutional Court may -
 - (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
 - (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in Chapter 4 or 6;
 - (c) decide that Parliament or the President has failed to comply with a constitutional duty; or
 - (d) certify a provincial constitution in terms of section 144.
- (5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force.
- (6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interest of justice and with leave of the Constitutional Court -
 - (a) to bring a matter directly to the Constitutional Court; or
 - (b) to appeal directly to the Constitutional Court from any other court.
- (7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

Section 168 Supreme Court of Appeal

- (1) The Supreme Court of Appeal consists of a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament.
- (2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament.
- (3) The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only -
 - (a) appeals;
 - (b) issues connected with appeals; and
 - (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

Section 169 High Courts

A High Court may decide -