

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

[\[View Regulation\]](#)

[DATE OF PROMULGATION: 18 DECEMBER, 1996]
[DATE OF COMMENCEMENT: 4 FEBRUARY, 1997]

(unless otherwise indicated)

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 36774 dated 22 August, 2013.

as amended by

[Constitution First Amendment Act of 1997](#)

[Constitution Second Amendment Act of 1998](#)

[Constitution Third Amendment Act of 1998](#)

[Constitution Fourth Amendment Act of 1999](#)

[Constitution Fifth Amendment Act of 1999](#)

[Constitution Sixth Amendment Act of 2001](#)

[Constitution Seventh Amendment Act of 2001](#)

[Constitution Eighth Amendment Act of 2002](#)

[Constitution Ninth Amendment Act of 2002](#)

[Constitution Tenth Amendment Act of 2003](#)

[Constitution Eleventh Amendment Act of 2003](#)

Citation of Constitutional Laws Act, [No. 5 of 2005](#)

[Constitution Twelfth Amendment Act of 2005](#)

[Constitution Thirteenth Amendment Act of 2007](#)

[Constitution Fourteenth Amendment Act of 2008](#)

[Constitution Fifteenth Amendment Act of 2008](#)

[Constitution Sixteenth Amendment Act of 2009](#)

South African Police Service Amendment Act, [No. 10 of 2012](#)

[Constitution Seventeenth Amendment Act of 2012](#)

GENERAL NOTES

In terms of [section 4](#) of [the Constitution Second Amendment Act of 1998](#), the expression "Human Rights Commission", wherever it occurs, is substituted by the expression "South African Human Rights Commission".

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

In terms of [section 1 \(1\)](#) and [\(2\)](#) of [Act No. 5 of 2005](#), from 27 June, 2005, no Act number is to be associated with the "[Constitution of the Republic of South Africa, 1996 \(Act No. 108 of 1996\)](#)"; and any reference to the "[Constitution of the Republic of South Africa, 1996 \(Act No. 108 of 1996\)](#)", contained in any law in force immediately prior to the commencement of [Act No. 5 of 2005](#), must be construed as a reference to the "[Constitution of the Republic of South Africa, 1996](#)".

ACT

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

Preamble

We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to-

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

ARRANGEMENT OF SECTIONS

CHAPTER 1

FOUNDING PROVISIONS

- | | |
|-----------|---------------------------|
| <u>1.</u> | Republic of South Africa |
| <u>2.</u> | Supremacy of Constitution |
| <u>3.</u> | Citizenship |
| <u>4.</u> | National anthem |
| <u>5.</u> | National flag |
| <u>6.</u> | Languages |

CHAPTER 2

BILL OF RIGHTS

- | | |
|------------|--|
| <u>7.</u> | Rights |
| <u>8.</u> | Application |
| <u>9.</u> | Equality |
| <u>10.</u> | Human dignity |
| <u>11.</u> | Life |
| <u>12.</u> | Freedom and security of the person |
| <u>13.</u> | Slavery, servitude and forced labour |
| <u>14.</u> | Privacy |
| <u>15.</u> | Freedom of religion, belief and opinion |
| <u>16.</u> | Freedom of expression |
| <u>17.</u> | Assembly, demonstration, picket and petition |
| <u>18.</u> | Freedom of association |
| <u>19.</u> | Political rights |
| <u>20.</u> | Citizenship |
| <u>21.</u> | Freedom of movement and residence |
| <u>22.</u> | Freedom of trade, occupation and profession |
| <u>23.</u> | Labour relations |
| <u>24.</u> | Environment |
| <u>25.</u> | Property |
| <u>26.</u> | Housing |
| <u>27.</u> | Health care, food, water and social security |
| <u>28.</u> | Children |
| <u>29.</u> | Education |
| <u>30.</u> | Language and culture |
| <u>31.</u> | Cultural, religious and linguistic communities |
| <u>32.</u> | Access to information |
| <u>33.</u> | Just administrative action |
| <u>34.</u> | Access to courts |

- [35.](#) Arrested, detained and accused persons
- [36.](#) Limitation of rights
- [37.](#) States of emergency
- [38.](#) Enforcement of rights
- [39.](#) Interpretation of Bill of Rights

[CHAPTER 3](#)

CO-OPERATIVE GOVERNMENT

- [40.](#) Government of the Republic
- [41.](#) Principles of co-operative government and intergovernmental relations

[CHAPTER 4](#)

PARLIAMENT

- [42.](#) Composition of Parliament
- [43.](#) Legislative authority of the Republic
- [44.](#) National legislative authority
- [45.](#) Joint rules and orders and joint committees
- [46.](#) Composition and election
- [47.](#) Membership
- [48.](#) Oath or affirmation
- [49.](#) Duration of National Assembly
- [50.](#) Dissolution of National Assembly before expiry of its term
- [51.](#) Sittings and recess periods
- [52.](#) Speaker and Deputy Speaker
- [53.](#) Decisions
- [54.](#) Rights of certain Cabinet members and Deputy Ministers in the National Assembly
- [55.](#) Powers of National Assembly
- [56.](#) Evidence or information before National Assembly
- [57.](#) Internal arrangements, proceedings and procedures of National Assembly
- [58.](#) Privilege
- [59.](#) Public access to and involvement in National Assembly
- [60.](#) Composition of National Council
- [61.](#) Allocation of delegates
- [62.](#) Permanent delegates
- [63.](#) Sittings of National Council
- [64.](#) Chairperson and Deputy Chairpersons
- [65.](#) Decisions
- [66.](#) Participation by members of national executive
- [67.](#) Participation by local government representatives
- [68.](#) Powers of National Council
- [69.](#) Evidence or information before National Council
- [70.](#) Internal arrangements, proceedings and procedures of National Council
- [71.](#) Privilege
- [72.](#) Public access to and involvement in National Council
- [73.](#) All Bills
- [74.](#) Bills amending [the Constitution](#)
- [75.](#) Ordinary Bills not affecting provinces
- [76.](#) Ordinary Bills affecting provinces
- [77.](#) Money Bills
- [78.](#) Mediation Committee
- [79.](#) Assent to Bills
- [80.](#) Application by members of National Assembly to Constitutional Court
- [81.](#) Publication of Acts
- [82.](#) Safekeeping of Acts of Parliament

[CHAPTER 5](#)

THE PRESIDENT AND NATIONAL EXECUTIVE

- [83.](#) The President
- [84.](#) Powers and functions of President
- [85.](#) Executive authority of the Republic
- [86.](#) Election of President
- [87.](#) Assumption of office by President
- [88.](#) Term of office of President
- [89.](#) Removal of President
- [90.](#) Acting President
- [91.](#) Cabinet

92.	Accountability and responsibilities
93.	Deputy Ministers
94.	Continuation of Cabinet after elections
95.	Oath or affirmation
96.	Conduct of Cabinet members and Deputy Ministers
97.	Transfer of functions
98.	Temporary assignment of functions
99.	Assignment of functions
100.	National intervention in provincial administration
101.	Executive decisions
102.	Motions of no confidence

[CHAPTER 6](#) PROVINCES

103.	Provinces
104.	Legislative authority of provinces
105.	Composition and election of provincial legislatures
106.	Membership
107.	Oath or affirmation
108.	Duration of provincial legislatures
109.	Dissolution of provincial legislatures before expiry of term
110.	Sittings and recess periods
111.	Speakers and Deputy Speakers
112.	Decisions
113.	Permanent delegates' rights in provincial legislatures
114.	Powers of provincial legislatures
115.	Evidence or information before provincial legislatures
116.	Internal arrangements, proceedings and procedures of provincial legislatures
117.	Privilege
118.	Public access to and involvement in provincial legislatures
119.	Introduction of Bills
120.	Money Bills
121.	Assent to Bills
122.	Application by members to Constitutional Court
123.	Publication of provincial Acts
124.	Safekeeping of provincial Acts
125.	Executive authority of provinces
126.	Assignment of functions
127.	Powers and functions of Premiers
128.	Election of Premiers
129.	Assumption of office by Premiers
130.	Term of office and removal of Premiers
131.	Acting Premiers
132.	Executive Councils
133.	Accountability and responsibilities
134.	Continuation of Executive Councils after elections
135.	Oath or affirmation
136.	Conduct of members of Executive Councils
137.	Transfer of functions
138.	Temporary assignment of functions
139.	Provincial intervention in local government
140.	Executive decisions
141.	Motions of no confidence
142.	Adoption of provincial constitutions
143.	Contents of provincial constitutions
144.	Certification of provincial constitutions
145.	Signing, publication and safekeeping of provincial constitutions
146.	Conflicts between national and provincial legislation
147.	Other conflicts
148.	Conflicts that cannot be resolved
149.	Status of legislation that does not prevail
150.	Interpretation of conflicts

[CHAPTER 7](#) LOCAL GOVERNMENT

151.	Status of municipalities
152.	Objects of local government
153.	Developmental duties of municipalities
154.	Municipalities in co-operative government
155.	Establishment of municipalities
156.	Powers and functions of municipalities

157.	Composition and election of Municipal Councils
158.	Membership of Municipal Councils
159.	Terms of Municipal Councils
160.	Internal procedures
161.	Privilege
162.	Publication of municipal by-laws
163.	Organised local government
164.	Other matters

[CHAPTER 8](#)

COURTS AND ADMINISTRATION OF JUSTICE

165.	Judicial authority
166.	Judicial system
167.	Constitutional Court
168.	Supreme Court of Appeal
169.	High Court of South Africa
170.	Other courts
171.	Court procedures
172.	Powers of courts in constitutional matters
173.	Inherent power
174.	Appointment of judicial officers
175.	Appointment of acting judges
176.	Terms of office and remuneration
177.	Removal
178.	Judicial Service Commission
179.	Prosecuting authority
180.	Other matters concerning administration of justice

[CHAPTER 9](#)

STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

181.	Establishment and governing principles
182.	Functions of Public Protector
183.	Tenure
184.	Functions of South African Human Rights Commission
185.	Functions of Commission
186.	Composition of Commission
187.	Functions of Commission for Gender Equality
188.	Functions of Auditor-General
189.	Tenure
190.	Functions of Electoral Commission
191.	Composition of Electoral Commission
192.	Broadcasting Authority
193.	Appointments
194.	Removal from office

[CHAPTER 10](#)

PUBLIC ADMINISTRATION

195.	Basic values and principles governing public administration
196.	Public Service Commission
197.	Public Service

[CHAPTER 11](#)

SECURITY SERVICES

198.	Governing principles
199.	Establishment, structuring and conduct of security services
200.	Defence force
201.	Political responsibility
202.	Command of defence force
203.	State of national defence
204.	Defence civilian secretariat
205.	Police service
206.	Political responsibility
207.	Control of police service
208.	Police civilian secretariat
209.	Establishment and control of intelligence services
210.	Powers, functions and monitoring

[CHAPTER 12](#)

TRADITIONAL LEADERS

211.	Recognition
212.	Role of traditional leaders

[CHAPTER 13](#)

FINANCE

213.	National Revenue Fund
214.	Equitable shares and allocations of revenue
215.	National, provincial and municipal budgets
216.	Treasury control
217.	Procurement
218.	Government guarantees
219.	Remuneration of persons holding public office
220.	Establishment and functions
221.	Appointment and tenure of members
222.	Reports
223.	Establishment
224.	Primary object
225.	Powers and functions
226.	Provincial Revenue Funds
227.	National sources of provincial and local government funding
228.	Provincial taxes
229.	Municipal fiscal powers and functions
230.	Provincial loans
230A.	Municipal loans

[CHAPTER 14](#)

GENERAL PROVISIONS

231.	International agreements
232.	Customary international law
233.	Application of international law
234.	Charters of Rights
235.	Self-determination
236.	Funding for political parties
237.	Diligent performance of obligations
238.	Agency and delegation
239.	Definitions
240.	Inconsistencies between different texts
241.	Transitional arrangements
242.	Repeal of laws
243.	Short title and commencement
Schedule 1	National flag
Schedule 1A	Geographical Areas of Provinces
Schedule 2	Oaths and solemn affirmations
Schedule 3	Election procedures
Schedule 4	Functional areas of concurrent national and provincial legislative competence
Schedule 5	Functional areas of exclusive provincial legislative competence
Schedule 6	Transitional arrangements
Schedule 6A
Schedule 6B
Schedule 7	Laws repealed

CHAPTER 1

FOUNDING PROVISIONS

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

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

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

3. Citizenship.-(1) There is a common South African citizenship.

(2) All citizens are-

- (a) equally entitled to the rights, privileges and benefits of citizenship; and
- (b) equally subject to the duties and responsibilities of citizenship.

(3) National legislation must provide for the acquisition, loss and restoration of citizenship.

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

5. National flag.-The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in [Schedule 1](#).

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

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

(3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usage and preferences of their residents.

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of [subsection \(2\)](#), all official languages must enjoy parity of esteem and must be treated equitably.

(5) A Pan South African Language Board established by national legislation must-

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

- (i) all official languages;
- (ii) the Khoi, Nama and San languages; and
- (iii) sign language; and

(b) promote and ensure respect for-

- (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
- (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

CHAPTER 2 BILL OF RIGHTS

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

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

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

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

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

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of [subsection \(2\)](#), a

court-

- (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
- (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with [section 36 \(1\)](#).

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

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

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

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

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

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

Footnotes

- * See Sch. [6item 23 \(1\)](#).

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

11. Life.-Everyone has the right to life.

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

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

13. Slavery, servitude and forced labour.-No one may be subjected to slavery, servitude or forced labour.

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

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

15. Freedom of religion, belief and opinion.-(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions, provided that-

- (a) those observances follow rules made by the appropriate public authorities;
- (b) they are conducted on an equitable basis; and
- (c) attendance at them is free and voluntary.

(3) (a) This section does not prevent legislation recognising-

- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
- (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

(b) Recognition in terms of [paragraph \(a\)](#) must be consistent with this section and the other provisions of [the Constitution](#).

16. Freedom of expression.-(1) Everyone has the right to freedom of expression, which includes-

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in [subsection \(1\)](#) does not extend to-

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition.-Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association.-Everyone has the right to freedom of association.

19. Political rights.-(1) Every citizen is free to make political choices, which includes the right-

- (a) to form a political party;
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of [the Constitution](#).

(3) Every adult citizen has the right-

- (a) to vote in elections for any legislative body established in terms of [the Constitution](#), and to do so in secret; and
- (b) to stand for public office and, if elected, to hold office.

20. Citizenship.-No citizen may be deprived of citizenship.

21. Freedom of movement and residence.-(1) Everyone has the right to freedom of movement.

(2) Everyone has the right to leave the Republic.

- (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- (4) Every citizen has the right to a passport.

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

23. Labour relations.—(1) Everyone has the right to fair labour practices.

(2) Every worker has the right—

- (a) to form and join a trade union;
- (b) to participate in the activities and programmes of a trade union; and
- (c) to strike.

(3) Every employer has the right—

- (a) to form and join an employers' organisation; and
- (b) to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right—

- (a) to determine its own administration, programmes and activities;
- (b) to organise; and
- (c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with [section 36 \(1\)](#).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with [section 36 \(1\)](#).

24. Environment.—Everyone has the right—

- (a) to an environment that is not harmful to their health or 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.

25. Property.—(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(4) For the purposes of this section-

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of [section 36 \(1\)](#).

(9) Parliament must enact the legislation referred to in [subsection \(6\)](#).

26. Housing.-(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security.-(1) Everyone has the right to have access to-

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

28. Children.-(1) Every child has the right-

(a) to a name and a nationality from birth;

(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

(c) to basic nutrition, shelter, basic health care services and social services;

(d) to be protected from maltreatment, neglect, abuse or degradation;

(e) to be protected from exploitative labour practices;

(f) not to be required or permitted to perform work or provide services that-

(i) are inappropriate for a person of that child's age; or

(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under [sections 12](#) and [35](#), the child may be detained only for the shortest appropriate period of time, and has the right to be-

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age;

(h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

29. Education.-(1) Everyone has the right-

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-

- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-

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

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

31. Cultural, religious and linguistic communities.-(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

- (a) to enjoy their culture, practise their religion and use their language; and
- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in [subsection \(1\)](#) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32.* Access to information.-(1) Everyone has the right of access to-

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

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

Footnotes

- * [Sub-s. \(1\)](#) deemed to read as set out in [item 23 \(2\) \(a\)](#) of [Sch 6](#) until the legislation envisaged in [sub-s. \(2\)](#) is enacted. See [Sch 6 item 23 \(1\)](#) for enactment provisions and [item 23 \(3\)](#) for lapsing provisions.

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.

Footnotes

- * Sub-ss. (1) and (2) deemed to read as set out in [item 23 \(2\) \(b\)](#) of [Sch 6](#) until the legislation envisaged in [sub-s. \(3\)](#) is enacted. See [Sch 6 item 23 \(1\)](#) for enactment provisions and [item 23 \(3\)](#) for lapsing provisions.

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

35. Arrested, detained and accused persons.—(1) Everyone who is arrested for allegedly committing an offence has the right—

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

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

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's—
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner.

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

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;

- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
- (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- (o) of appeal to, or review by, a higher court.

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

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

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

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in [subsection \(1\)](#) or in any other provision of [the Constitution](#), no law may limit any right entrenched in the Bill of Rights.

37. States of emergency.-(1) A state of emergency may be declared only in terms of an Act of Parliament, and only when-

- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
- (b) the declaration is necessary to restore peace and order.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-

- (a) prospectively; and
- (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

(3) Any competent court may decide on the validity of-

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that-

- (a) the derogation is strictly required by the emergency; and
- (b) the legislation-
 - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
 - (ii) conforms to [subsection \(5\)](#); and
 - (iii) is published in the national *Government Gazette* as soon as reasonably possible after being enacted.

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise-

- (a) indemnifying the state, or any person, in respect of any unlawful act;
- (b) any derogation from this section; or
- (c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 <i>Section Number</i>	2 <i>Section Title</i>	3 <i>Extent to which the right is protected</i>
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language.
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1) (d) and (e) and (2) (c) .
13	Slavery, servitude and forced labour	With respect to slavery and servitude.
28	Children	With respect to: <ul style="list-style-type: none">- subsection (1) (d) and (e);- the rights in subparagraphs (i) and (ii) of subsection (1) (g); and- subsection 1 (j) in respect of children of 15 years and younger.
35	Arrested, detained and accused persons	With respect to: <ul style="list-style-type: none">- subsections (1) (a), (b) and (c) and (2) (d);- the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d)- subsection (4); and- subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

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

- (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
- (b) A notice must be published in the national *Government Gazette* within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
- (c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
- (d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
- (e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.

- (f) A detainee who is not released in terms of a review under [paragraph \(e\)](#), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
- (g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
- (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

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

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

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

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

39. Interpretation of Bill of Rights.—(1) When interpreting the Bill of Rights, a court, tribunal or forum—

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

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

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

CHAPTER 3 CO-OPERATIVE GOVERNMENT

40. Government of the Republic.—(1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, inter-dependent and interrelated.

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

41. Principles of co-operative government and inter-governmental relations.—(1) All spheres of government and all organs of state within each sphere must—

- (a) preserve the peace, national unity and the indivisibility of the Republic;
- (b) secure the well-being of the people of the Republic;
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to [the Constitution](#), the Republic and its people;
- (e) respect the constitutional status, institutions, powers and functions of government in the other

spheres;

- (f) not assume any power or function except those conferred on them in terms of [the Constitution](#);
- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) co-operate with one another in mutual trust and good faith by-
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.

(2) An Act of Parliament must-

- (a) establish or provide for structures and institutions to promote and facilitate inter-governmental relations; and
- (b) provide for appropriate mechanisms and procedures to facilitate settlement of inter-governmental disputes.

(3) An organ of state involved in an inter-governmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.

(4) If a court is not satisfied that the requirements of [subsection \(3\)](#) have been met, it may refer a dispute back to the organs of state involved.

CHAPTER 4 PARLIAMENT

42. Composition of Parliament.-(1) Parliament consists of-

- (a) the National Assembly; and
- (b) the National Council of Provinces.

(2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in [the Constitution](#).

(3) The National Assembly is elected to represent the people and to ensure government by the people under [the Constitution](#). It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.

(4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

(5) The President may summon Parliament to an extraordinary sitting at any time to conduct special business.

(6) The seat of Parliament is Cape Town, but an Act of Parliament enacted in accordance with [section 76 \(1\)](#) and [\(5\)](#) may determine that the seat of Parliament is elsewhere.

43. Legislative authority of the Republic.-In the Republic, the legislative authority-

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

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

- (a) confers on the National Assembly the power-
 - (i) to amend [the Constitution](#);

- (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in [Schedule 4](#), but excluding, subject to [subsection \(2\)](#), a matter within a functional area listed in [Schedule 5](#); and
 - (iii) to assign any of its legislative powers, except the power to amend [the Constitution](#), to any legislative body in another sphere of government; and
- (b) confers on the National Council of Provinces the power-
- (i) to participate in amending [the Constitution](#) in accordance with [section 74](#);
 - (ii) to pass, in accordance with [section 76](#), legislation with regard to any matter within a functional area listed in [Schedule 4](#) and any other matter required by [the Constitution](#) to be passed in accordance with [section 76](#); and
 - (iii) to consider, in accordance with [section 75](#), any other legislation passed by the National Assembly.
- (2) Parliament may intervene, by passing legislation in accordance with [section 76 \(1\)](#), with regard to a matter falling within a functional area listed in [Schedule 5](#), when it is necessary-
- (a) to maintain national security;
 - (b) to maintain economic unity;
 - (c) to maintain essential national standards;
 - (d) to establish minimum standards required for the rendering of services; or
 - (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.
- (3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in [Schedule 4](#) is, for all purposes, legislation with regard to a matter listed in [Schedule 4](#).
- (4) When exercising its legislative authority, Parliament is bound only by [the Constitution](#), and must act in accordance with, and within the limits of, [the Constitution](#).

45. Joint rules and orders and joint committees.-(1) The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders-

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

(2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a joint committee of the Assembly and the Council as they have before the Assembly or the Council.

THE NATIONAL ASSEMBLY

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

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

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

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

47. Membership.-(1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except-

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

(2) A person who is not eligible to be a member of the National Assembly in terms of [subsection \(1\) \(a\)](#) or [\(b\)](#) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation.

(3) A person loses membership of the National Assembly if that person-

- (a) ceases to be eligible;
- (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or
- (c) ceases to be a member of the party that nominated that person as a member of the Assembly.

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

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

48. Oath or affirmation.-Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to [the Constitution](#), in accordance with [Schedule 2](#).

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

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

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

Wording of Sections

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

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

50. Dissolution of National Assembly before expiry of its term.-(1) The President must dissolve the National Assembly if-

- (a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
- (b) three years have passed since the Assembly was elected.

([Sub-s. \(1\)](#) suspended until 30 April 1999. See Sch. [6item 6 \(2\)](#).)

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

- (a) there is a vacancy in the office of President; and
- (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

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

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

(2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct special business.

(3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.

52. Speaker and Deputy Speaker.-(1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.

(2) The Chief Justice must preside over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.

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

(3) The procedure set out in Part A of [Schedule 3](#) applies to the election of the Speaker and the Deputy Speaker.

(4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.

(5) In terms of its rules and orders, the National Assembly may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

53. Decisions.-(1) Except where [the Constitution](#) provides otherwise-

- (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
- (b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly; and
- (c) all questions before the Assembly are decided by a majority of the votes cast.

(2) The member of the National Assembly presiding at a meeting of the Assembly has no deliberative vote, but-

- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
- (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Assembly.

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

[[S. 54](#) substituted by [s. 3](#) of [Constitution Sixth Amendment Act of 2001](#).]

55. Powers of National Assembly.-(1) In exercising its legislative power, the National Assembly may-

- (a) consider, pass, amend or reject any legislation before the Assembly; and
- (b) initiate or prepare legislation, except money Bills.

(2) The National Assembly must provide for mechanisms-

- (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
- (b) to maintain oversight of-
 - (i) the exercise of national executive authority, including the implementation of legislation; and
 - (ii) any organ of state.

56. Evidence or information before National Assembly.-(The National Assembly or any of its committees may-

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

57. Internal arrangements, proceedings and procedures of National Assembly.-(1) The National Assembly may-

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

58. Privilege.-(1) Cabinet members, Deputy Ministers and members of the National Assembly-

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

(2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.

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

[[S. 58](#) amended by [s. 4](#) of [Constitution Sixth Amendment Act of 2001](#).]

59. Public access to and involvement in National Assembly.-(1) The National Assembly must-

- (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-

- (i) to regulate public access, including access of the media, to the Assembly and its committees; and
- (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

NATIONAL COUNCIL OF PROVINCES

60. Composition of National Council.-(1) The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.

(2) The ten delegates are-

(a) four special delegates consisting of-

(i) the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces; and

(ii) three other special delegates; and

(b) six permanent delegates appointed in terms of [section 61 \(2\)](#).

(3) The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the Premier, heads the delegation.

61. Allocation of delegates.-(1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of [Schedule 3](#).

(2) (a) A provincial legislature must, within 30 days after the result of an election of that legislature is declared-

(i) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and

(ii) appoint the permanent delegates in accordance with the nominations of the parties.

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

(3) The national legislation envisaged in [subsection \(2\) \(a\)](#) must ensure the participation of minority parties in both the permanent and special delegates' components of the delegation in a manner consistent with democracy.

(4) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the province's delegation, must designate special delegates, as required from time to time, from among the members of the legislature.

62. Permanent delegates.-(1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.

(2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.

(3) Permanent delegates are appointed for a term that expires-

(a) immediately before the first sitting of the provincial legislature after its next election.

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

(b) on the day before the appointment of permanent delegates in accordance with section 61 (2) (b) (ii) takes effect.

[[Sub-s. \(3\)](#) substituted by [s. 2](#) of [Constitution Ninth Amendment Act of 2002](#).]

(4) A person ceases to be a permanent delegate if that person-

(a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate;

(b) becomes a member of the Cabinet;

(c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person;

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

63. Sittings of National Council.-(1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods.

(2) The President may summon the National Council of Provinces to an extraordinary sitting at any time to conduct special business.

(3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.

64. Chairperson and Deputy Chairpersons.-(1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.

(2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their terms as delegates expire earlier.

(3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.

(4) The Chief Justice must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.

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

(5) The procedure set out in Part A of [Schedule 3](#) applies to the election of the Chairperson and the Deputy Chairpersons.

(6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.

(7) In terms of its rules and orders, the National Council of Provinces may elect from among the delegates other presiding officers to assist the Chairperson and Deputy Chairpersons.

65. Decisions.-(1) Except where [the Constitution](#) provides otherwise-

- (a) each province has one vote, which is cast on behalf of the province by the head of its delegation; and
- (b) all questions before the National Council of Provinces are agreed when at least five provinces vote in favour of the question.

(2)* An Act of Parliament, enacted in accordance with the procedure established by either [subsection \(1\)](#) or [subsection \(2\)](#) of [section 76](#), must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

Footnotes

- * See [Sch 6](#) item 21 (5).

66. Participation by members of national executive.-(1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.

(2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.

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

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

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

69. Evidence or information before National Council.—The National Council of Provinces or any of its committees may—

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

70. Internal arrangements, proceedings and procedures of National Council.—(1) The National Council of Provinces may—

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

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

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

71. Privilege.—(1) Delegates to the National Council of Provinces and the persons referred to in [sections 66](#) and [67](#)—

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

(2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in [sections 66](#) and [67](#) may be prescribed by national legislation.

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

72. Public access to and involvement in National Council.—(1) The National Council of Provinces must—

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

(2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

73. All Bills.-(1) Any Bill may be introduced in the National Assembly.

(2) Only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly, but only the Cabinet member responsible for national financial matters may introduce the following Bills in the Assembly:

- (a) a money Bill; or
- (b) a Bill which provides for legislation envisaged in [section 214](#).
[Sub-s. (2) substituted by s. 1 (a) of [Constitution Seventh Amendment Act of 2001](#).]

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

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

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

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

74. Bills amending the Constitution.-(1) [Section 1](#) and this subsection may be amended by a Bill passed by-

- (a) the National Assembly, with a supporting vote of at least 75 per cent of its members; and
- (b) the National Council of Provinces, with a supporting vote of at least six provinces.

(2) [Chapter 2](#) may be amended by a Bill passed by-

- (a) the National Assembly, with a supporting vote of at least two thirds of its members; and
- (b) the National Council of Provinces, with a supporting vote of at least six provinces.

(3) Any other provision of [the Constitution](#) may be amended by a Bill passed-

- (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and
- (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment-
 - (i) relates to a matter that affects the Council;
 - (ii) alters provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.

(4) A Bill amending [the Constitution](#) may not include provisions other than constitutional amendments and matters connected with the amendments.

(5) At least 30 days before a Bill amending [the Constitution](#) is introduced in terms of [section 73 \(2\)](#), the person or committee intending to introduce the Bill must-

- (a) publish in the national *Government Gazette*, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment;
- (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and
- (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.

(6) When a Bill amending [the Constitution](#) is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures-

- (a) to the Speaker for tabling in the National Assembly; and
- (b) in respect of amendments referred to in subsection (1), [\(2\)](#) or [\(3\) \(b\)](#), to the Chairperson of the National Council of Provinces for tabling in the Council.

(7) A Bill amending [the Constitution](#) may not be put to the vote in the National Assembly within 30 days of-

- (a) its introduction, if the Assembly is sitting when the Bill is introduced; or
- (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced.

(8) If a Bill referred to in [subsection \(3\) \(b\)](#), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved

by the legislature or legislatures of the province or provinces concerned.

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

75. Ordinary Bills not affecting provinces.-(1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in [section 74](#) or [76](#) applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:

- (a) The Council must-
 - (i) pass the Bill;
 - (ii) pass the Bill subject to amendments proposed by it; or
 - (iii) reject the Bill.
- (b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.
- (c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may-
 - (i) pass the Bill again, either with or without amendments; or
 - (ii) decide not to proceed with the Bill.
- (d) A Bill passed by the Assembly in terms of [paragraph \(c\)](#) must be submitted to the President for assent.

(2) When the National Council of Provinces votes on a question in terms of this section, [section 65](#) does not apply; instead-

- (a) each delegate in a provincial delegation has one vote;
- (b) at least one third of the delegates must be present before a vote may be taken on the question; and
- (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

76. Ordinary Bills affecting provinces.-(1) When the National Assembly passes a Bill referred to in [subsection \(3\)](#), [\(4\)](#) or [\(5\)](#), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:

- (a) The Council must-
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
- (b) If the Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
- (c) If the Council passes an amended Bill, the amended Bill must be referred to the Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent.
- (d) If the Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of [paragraph \(c\)](#), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on-
 - (i) the Bill as passed by the Assembly;
 - (ii) the amended Bill as passed by the Council; or
 - (iii) another version of the Bill.
- (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members.
- (f) If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if 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 Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.

- (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Assembly and the Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.
- (i) If a Bill referred to the Council in terms of [paragraph \(f \)](#) or [\(h \)](#) is not passed by the Council, the Bill lapses unless the Assembly passes the Bill with a supporting vote of at least two thirds of its members.
- (j) If a Bill referred to the Assembly in terms of [paragraph \(g \)](#) or [\(h \)](#) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but with a supporting vote of at least two thirds of its members.
- (k) A Bill passed by the Assembly in terms of [paragraph \(e \)](#), [\(i \)](#) or [\(j \)](#) must be submitted to the President for assent.

(2) When the National Council of Provinces passes a Bill referred to in [subsection \(3\)](#), the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:

- (a) The Assembly must-
 - (i) pass the Bill;
 - (ii) pass an amended Bill; or
 - (iii) reject the Bill.
- (b) A Bill passed by the Assembly in terms of [paragraph \(a \) \(i \)](#) must be submitted to the President for assent.
- (c) If the Assembly passes an amended Bill, the amended Bill must be referred to the Council, and if the Council passes the amended Bill, it must be submitted to the President for assent.
- (d) If the Assembly rejects the Bill, or if the Council refuses to pass an amended Bill referred to it in terms of [paragraph \(c \)](#), the Bill and, where applicable, also the amended Bill must be referred to the Mediation Committee, which may agree on-
 - (i) the Bill as passed by the Council;
 - (ii) the amended Bill as passed by the Assembly; or
 - (iii) another version of the Bill.
- (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.
- (f) If the Mediation Committee agrees on the Bill as passed by the Council, the Bill must be referred to the Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.
- (g) If the Mediation Committee agrees on the amended Bill as passed by the Assembly, the Bill must be referred to the Council, and if it is passed by the Council, it must be submitted to the President for assent.
- (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Council and the Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.
- (i) If a Bill referred to the Assembly in terms of [paragraph \(f \)](#) or [\(h \)](#) is not passed by the Assembly, the Bill lapses.

(3) A Bill must be dealt with in accordance with the procedure established by either [subsection \(1\)](#) or [subsection \(2\)](#) if it falls within a functional area listed in [Schedule 4](#) or provides for legislation envisaged in any of the following sections:

- (a) [Section 65\(2\)](#);
- (b) [section 163](#);
- (c) [section 182](#);
- (d) [section 195\(3\)](#) and [\(4\)](#);
- (e) [section 196](#); and
- (f) [section 197](#).

(4) A Bill must be dealt with in accordance with the procedure established by [subsection \(1\)](#) if it provides for legislation-

- (a) envisaged in [section 44 \(2\)](#) or [220 \(3\)](#); or
- (b) envisaged in [Chapter 13](#), and which includes any provision affecting the financial interests of the provincial sphere of government.

(5) A Bill envisaged in [section 42 \(6\)](#) must be dealt with in accordance with the procedure established by [subsection \(1\)](#), except that-

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

77. Money Bills.-(1) A Bill is a money Bill if it-

- (a) appropriates money;
- (b) imposes national taxes, levies, duties or surcharges;
- (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
- (d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in [section 214](#) authorising direct charges.

(2) A money Bill may not deal with any other matter except-

- (a) a subordinate matter incidental to the appropriation of money;
- (b) the imposition, abolition or reduction of national taxes, levies, duties or surcharges;
- (c) the granting of exemption from national taxes, levies, duties or surcharges; or
- (d) the authorisation of direct charges against the National Revenue Fund.

(3) All money Bills must be considered in accordance with the procedure established by [section 75](#). An Act of Parliament must provide for a procedure to amend money Bills before Parliament.

[S. 77 substituted by s. 2 of [Constitution Seventh Amendment Act of 2001](#).]

78. Mediation Committee.-(1) The Mediation Committee consists of-

- (a) nine members of the National Assembly elected by the Assembly in accordance with a procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly; and
- (b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation.

(2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of the question, is supported by-

- (a) at least five of the representatives of the National Assembly; and
- (b) at least five of the representatives of the National Council of Provinces.

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

(2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.

(3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if-

- (a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or
- (b) section 74 (1), [\(2\)](#) or [\(3\) \(b\)](#) or [76](#) was applicable in the passing of the Bill.
- (4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must

assent to and sign the Bill; if not, the President must either-

- (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

80. Application by members of National Assembly to Constitutional Court.-(1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.

(2) An application-

- (a) must be supported by at least one third of the members of the National Assembly; and
- (b) must be made within 30 days of the date on which the President assented to and signed the Act.

(3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of [subsection \(1\)](#) has no force until the Court has decided the application if-

- (a) the interests of justice require this; and
- (b) the application has a reasonable prospect of success.

(4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

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

82. Safekeeping of Acts of Parliament.-The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safe-keeping.

CHAPTER 5 THE PRESIDENT AND NATIONAL EXECUTIVE

83. The President.-The President-

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

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

(2) The President is responsible for-

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

[General Note: Honourable tributes instituted in *Government Gazette* 24155 of 6 December, 2002, *Government Gazette* 25213 of 25 July, 2003, *Government Gazette* 25799 of 2 December, 2003 and *Government Gazette* 26573 of 16 July, 2004.]

(3)*

Footnotes

* Until 30 April 1999, [s. 84](#) is deemed to contain [sub-s. \(3\)](#) as set out in Annex B to [Sch 6](#). See [Sch 6 item 9 \(2\)](#).

85. Executive authority of the Republic.-(1) The executive authority of the Republic is vested in the President.

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

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

(2) The Chief Justice must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of [Schedule 3](#) applies to the election of the President.

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

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

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

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

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

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

89. Removal of President.-(1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of-

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

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

(3)*

Footnotes

* Until 30 April 1999, [s. 89](#) is deemed to contain [sub-s. \(3\)](#) as set out in Annex B to [Sch 6](#). See [Sch 6 item 9 \(2\)](#).

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

- (a)* The Deputy President.
- (b) A Minister designated by the President.
- (c) A Minister designated by the other members of the Cabinet.

(d) The Speaker, until the National Assembly designates one of its other members.

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

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

(4) A person who as Acting President has sworn or affirmed faithfulness to the Republic need not repeat the swearing or affirming procedure for any subsequent term as Acting President during the period ending when the person next elected President assumes office.

[[Sub-s. \(4\)](#) added by [s. 1](#) of [Constitution First Amendment Act of 1997](#) (Eng. text only).]

Footnotes

* Until 30 April 1999, [s. 90 \(1\) \(a\)](#) is deemed to read as set out in Annex B to [Sch 6](#). See [Sch 6item 9 \(2\)](#).

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.

Footnotes

* Until 30 April 1999, [s. 91](#) is deemed to read as set out in Annex B to [Sch 6](#). See [Sch 6item 9 \(2\)](#).

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

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

(3) Members of the Cabinet must-

(a) act in accordance with [the Constitution](#); and

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

93. Deputy Ministers.*-(1) The President may appoint-

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

(b) no more than two Deputy Ministers from outside the Assembly,

to assist the members of the Cabinet, and may dismiss them.

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

[[S. 93](#) substituted by [s. 7](#) of [Constitution Sixth Amendment Act of 2001](#).]

Footnotes

* Until 30 April 1999, [s. 93](#) is deemed to read as set out in Annex B to [Sch 6](#). See [Sch 6item 9 \(2\)](#).

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

95. Oath or affirmation.-Before the Deputy President, Ministers and any Deputy Ministers begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to [the Constitution](#), in accordance with [Schedule 2](#).

96. Conduct of Cabinet members and Deputy Ministers.-(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.

(2) Members of the Cabinet and Deputy Ministers may not-

- (a) undertake any other paid work;
- (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
- (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(3) to (6)* inclusive.

Footnotes

* Until 30 April 1999, [s. 96](#) is deemed to contain sub-ss. (3)-(6) as set out in Annex B to [Sch 6](#). See [Sch 6 item 9 \(2\)](#).

97. Transfer of functions.-The President by proclamation may transfer to a member of the Cabinet-

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

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

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

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

100. National intervention in provincial administration-(1) When a province cannot or does not fulfil an executive obligation in terms of [the Constitution](#) or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

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

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

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

- (a) it must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;
- (b) the intervention must end if the Council disapproves the intervention within 180 days after the

intervention began or by the end of that period has not approved the intervention; and

- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.

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

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

[S. 100 amended by s. 2 (a) of [Constitution Eleventh Amendment Act of 2003](#).]

101. Executive decisions.-(1) A decision by the President must be in writing if it-

- (a) is taken in terms of legislation; or
- (b) has legal consequences.

(2) A written decision by the President must be counter-signed by another Cabinet member if that decision concerns a function assigned to that other Cabinet member.

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

(4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in [subsection \(3\)](#) must be-

- (a) tabled in Parliament; and
- (b) approved by Parliament.

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

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

CHAPTER 6 PROVINCES

103. Provinces.-(1) The Republic has the following provinces:

- (a) Eastern Cape;
- (b) Free State;
- (c) Gauteng;
- (d) KwaZulu-Natal;
- (e) Limpopo;
- (f) Mpumalanga;
- (g) Northern Cape;
- (h) North West;
- (i) Western Cape.

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

(3) (a) Whenever the geographical area of a province is re-determined by an amendment to [the Constitution](#), an Act of Parliament may provide for measures to regulate, within a reasonable time, the legal, practical and any other consequences of the re-determination.

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

(Date of commencement of [sub-s. \(3\)](#): 23 December, 2005.)

[S. 103 amended by s. 3 of [Constitution Eleventh Amendment Act of 2003](#) and substituted by s. 1 of [Constitution Twelfth Amendment Act of 2005](#).]

PROVINCIAL LEGISLATURES

104. Legislative authority of provinces.-(1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power-

- (a) to pass a constitution for its province or to amend any constitution passed by it in terms of [sections 142](#) and [143](#);
- (b) to pass legislation for its province with regard to-
 - (i) any matter within a functional area listed in [Schedule 4](#);
 - (ii) any matter within a functional area listed in [Schedule 5](#);
 - (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
 - (iv) any matter for which a provision of [the Constitution](#) envisages the enactment of provincial legislation; and
- (c) to assign any of its legislative powers to a Municipal Council in that province.

(2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.

(3) A provincial legislature is bound only by [the Constitution](#) and, if it has passed a constitution for its province, also by that constitution, and must act in accordance with, and within the limits of, [the Constitution](#) and that provincial constitution.

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

(5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

105. Composition and election of provincial legislatures.-(1) A provincial legislature consists of women and men elected as members in terms of an electoral system that-

- (a) is prescribed by national legislation;
- (b) is based on that province's segment of the national common voters roll;
- (c) provides for a minimum voting age of 18 years; and
- (d) results, in general, in proportional representation.
[[Sub-s. \(1\)](#) amended by [s. 3](#) of [Constitution Tenth Amendment Act of 2003](#) and by [s. 3](#) of [Constitution Fourteenth Amendment Act of 2008](#).]

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

106. Membership.-(1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except-

- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than-
 - (i) the Premier and other members of the Executive Council of a province; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
- (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;
- (c) unrehabilitated insolvents;
- (d) anyone declared to be of unsound mind by a court of the Republic; or
- (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12

months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

(2) A person who is not eligible to be a member of a provincial legislature in terms of [subsection \(1\) \(a\)](#) or [\(b\)](#) may be a candidate for the legislature, subject to any limits or conditions established by national legislation.

(3) A person loses membership of a provincial legislature if that person-

- (a) ceases to be eligible;
- (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or
- (c) ceases to be a member of the party that nominated that person as a member of the legislature.

[[Sub-s. \(3\)](#) substituted by [s. 4](#) of [Constitution Tenth Amendment Act of 2003](#) and by [s. 4](#) of [Constitution Fourteenth Amendment Act of 2008](#).]

(4) Vacancies in a provincial legislature must be filled in terms of national legislation.

107. Oath or affirmation.—Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm faithfulness to the Republic and obedience to [the Constitution](#), in accordance with [Schedule 2](#).

108. Duration of provincial legislatures.—(1) A provincial legislature is elected for a term of five years.

(2) If a provincial legislature is dissolved in terms of [section 109](#), or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved or its term expired. A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of a provincial legislature.

[[Sub-s. \(2\)](#) substituted by [s. 1](#) of [Constitution Fourth Amendment Act of 1999](#) (English Only).]

[Wording of Sections](#)

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

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

109. Dissolution of provincial legislatures before expiry of term.—(1) The Premier of a province must dissolve the provincial legislature if-

- (a) the legislature has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
- (b) three years have passed since the legislature was elected.

(2) An Acting Premier must dissolve the provincial legislature if-

- (a) there is a vacancy in the office of Premier; and
- (b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred.

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

[[Sub-s. \(1\)](#) substituted by [s. 8](#) of [Constitution Sixth Amendment Act of 2001](#).]

(2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.

(3) A provincial legislature may determine where it ordinarily will sit.

111. Speakers and Deputy Speakers.-(1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.

(2) A judge designated by the Chief Justice must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.

[Sub-s. (2) substituted by s. 9 of [Constitution Sixth Amendment Act of 2001](#).]

(3) The procedure set out in Part A of [Schedule 3](#) applies to the election of Speakers and Deputy Speakers.

(4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the resolution is adopted.

(5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

112. Decisions.-(1) Except where [the Constitution](#) provides otherwise-

- (a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill;
- (b) at least one third of the members must be present before a vote may be taken on any other question before the legislature; and
- (c) all questions before a provincial legislature are decided by a majority of the votes cast.

(2) The member presiding at a meeting of a provincial legislature has no deliberative vote, but-

- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
- (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the legislature.

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

114. Powers of provincial legislatures.-(1) In exercising its legislative power, a provincial legislature may-

- (a) consider, pass, amend or reject any Bill before the legislature; and
- (b) initiate or prepare legislation, except money Bills.

(2) A provincial legislature must provide for mechanisms-

- (a) to ensure that all provincial executive organs of state in the province are accountable to it; and
- (b) to maintain oversight of-
 - (i) the exercise of provincial executive authority in the province, including the implementation of legislation; and
 - (ii) any provincial organ of state.

115. Evidence or information before provincial legislatures.-A provincial legislature or any of its committees may-

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

116. Internal arrangements, proceedings and procedures of provincial legislatures.-(1) A provincial legislature may-

- (a) determine and control its internal arrangements, proceedings and procedures; and

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

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

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

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

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

118. Public access to and involvement in provincial legislatures.-(1) A provincial legislature must-

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

(2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

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

120. Money Bills.-(1) A Bill is a money Bill if it-

- (a) appropriates money;
- (b) imposes provincial taxes, levies, duties or surcharges;
- (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
- (d) authorises direct charges against a Provincial Revenue Fund.

(2) A money Bill may not deal with any other matter except-

- (a) a subordinate matter incidental to the appropriation of money;
- (b) the imposition, abolition or reduction of provincial taxes, levies, duties or surcharges;

- (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against a Provincial Revenue Fund.
- (3) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill. [\[S. 120 substituted by s. 3 of Constitution Seventh Amendment Act of 2001.\]](#)

121. Assent to Bills.-(1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature in terms of this Chapter or, if the Premier has reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.

(2) If, after reconsideration, a Bill fully accommodates the Premier's reservations, the Premier must assent to and sign the Bill; if not, the Premier must either-

- (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it.

122. Application by members to Constitutional Court.-(1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.

(2) An application-

- (a) must be supported by at least 20 per cent of the members of the legislature; and
- (b) must be made within 30 days of the date on which the Premier assented to and signed the Act.

(3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of [subsection \(1\)](#) has no force until the Court has decided the application if-

- (a) the interests of justice require this; and
- (b) the application has a reasonable prospect of success.

(4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

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

124. Safekeeping of provincial Acts.-The signed copy of a provincial Act is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safe-keeping.

PROVINCIAL EXECUTIVES

125. Executive authority of provinces.-(1) The executive authority of a province is vested in the Premier of that province.

(2) The Premier exercises the executive authority, together with the other members of the Executive Council, by-

- (a) implementing provincial legislation in the province;
- (b) implementing all national legislation within the functional areas listed in [Schedule 4](#) or [5](#) except where [the Constitution](#) or an Act of Parliament provides otherwise;
- (c) administering in the province, national legislation outside the functional areas listed in [Schedules 4](#) and [5](#), the administration of which has been assigned to the provincial executive in terms of an Act of Parliament;
- (d) developing and implementing provincial policy;
- (e) co-ordinating the functions of the provincial administration and its departments;
- (f) preparing and initiating provincial legislation; and
- (g) performing any other function assigned to the provincial executive in terms of [the Constitution](#) or an

(3) A province has executive authority in terms of [subsection \(2\) \(b\)](#) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in [subsection \(2\)](#).

(4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council.

(5) Subject to [section 100](#), the implementation of provincial legislation in a province is an exclusive provincial executive power.

(6) The provincial executive must act in accordance with-

- (a) [the Constitution](#); and
- (b) the provincial constitution, if a constitution has been passed for the province.

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

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

127. Powers and functions of Premiers.-(1) The Premier of a province has the powers and functions entrusted to that office by [the Constitution](#) and any legislation.

(2) The Premier of a province is responsible for-

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

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

(2) A judge designated by the Chief Justice must preside over the election of the Premier. The procedure set out in Part A of [Schedule 3](#) applies to the election of the Premier.

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

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

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

129. Assumption of office by Premiers.-A Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and obedience to [the Constitution](#), in accordance with [Schedule 2](#).

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

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

(3) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of-

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

(4) Anyone who has been removed from the office of Premier in terms of [subsection \(3\) \(a\)](#) or [\(b\)](#) may not receive any benefits of that office, and may not serve in any public office.

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

- (a) A member of the Executive Council designated by the Premier.
- (b) A member of the Executive Council designated by the other members of the Council.
- (c) The Speaker, until the legislature designates one of its other members.

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

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

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

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

Footnotes

- * Until the Premier assumes office or the province enacts its constitution, [s. 132](#) is deemed to read as set out in Annex C to [Sch 6](#). See [Sch 6 item 12 \(2\)](#).

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

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

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

- (a) act in accordance with [the Constitution](#) and, if a provincial constitution has been passed for the province, also that constitution; and
- (b) provide the legislature with full and regular reports concerning matters under their control.

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

135. Oath or affirmation.-Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to [the Constitution](#), in accordance with [Schedule 2](#).

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

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

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

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

(3)* to (6) inclusive.

Footnotes

- * Until the Premier assumes office or the province enacts its constitution, [s. 136](#) is deemed to contain sub-ss. (3)-(6) as set out in Annex C to [Sch 6](#). See [Sch 6 item 12 \(2\)](#).

137. Transfer of functions.-The Premier by proclamation may transfer to a member of the Executive Council-

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

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

139. Provincial intervention in local government.-(1) When a municipality cannot or does not fulfil an executive obligation in terms of [the Constitution](#) or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to-
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

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

- (a) it must submit a written notice of the intervention to-
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces,within 14 days after the intervention began;
- (b) the intervention must end if-
 - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.

(3) If a Municipal Council is dissolved in terms of [subsection \(1\) \(c\)](#)-

- (a) the provincial executive must immediately submit a written notice of the dissolution to-
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces; and
- (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.

(4) If a municipality cannot or does not fulfil an obligation in terms of [the Constitution](#) or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising

measures are approved, including dissolving the Municipal Council and-

- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

(5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must-

- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which-
 - (i) is to be prepared in accordance with national legislation; and
 - (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
- (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and-
 - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
 - (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
- (c) if the Municipal Council is not dissolved in terms of [paragraph \(b\)](#), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

(6) If a provincial executive intervenes in a municipality in terms of [subsection \(4\)](#) or [\(5\)](#), it must submit a written notice of the intervention to-

- (a) the Cabinet member responsible for local government affairs; and
- (b) the relevant provincial legislature and the National Council of Provinces,

within seven days after the intervention began.

(7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in [subsection \(4\)](#) or [\(5\)](#), the national executive must intervene in terms of [subsection \(4\)](#) or [\(5\)](#) in the stead of the relevant provincial executive.

(8) National legislation may regulate the implementation of this section, including the processes established by this section

[[S. 139](#) substituted by [s. 4](#) of [Constitution Eleventh Amendment Act of 2003](#).]

140. Executive decisions.-(1) A decision by the Premier of a province must be in writing if it-

- (a) is taken in terms of legislation; or
- (b) has legal consequences.

(2) A written decision by the Premier must be counter-signed by another Executive Council member if that decision concerns a function assigned to that other member.

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

(4) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in [subsection \(3\)](#) must be-

- (a) tabled in the provincial legislature; and
- (b) approved by the provincial legislature.

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

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

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

143. Contents of provincial constitutions.—(1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for—

- (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
- (b) the institution, role, authority and status of a traditional monarch, where applicable.

(2) Provisions included in a provincial constitution or constitutional amendment in terms of [paragraphs \(a\)](#) or [\(b\)](#) of [subsection \(1\)](#)—

- (a) must comply with the values in [section 1](#) and with [Chapter 3](#); and
- (b) may not confer on the province any power or function that falls—
 - (i) outside the area of provincial competence in terms of [Schedules 4](#) and [5](#); or
 - (ii) outside the powers and functions conferred on the province by other sections of [the Constitution](#).

144. Certification of provincial constitutions.—(1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of [the constitution](#) or constitutional amendment to the Constitutional Court for certification.

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

- (a) that the text has been passed in accordance with [section 142](#); and
- (b) that the whole text complies with [section 143](#).

145. Signing, publication and safe-keeping 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 safe-keeping.

CONFLICTING LAWS

146. Conflicts between national and provincial legislation.—(1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in [Schedule 4](#).

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

- (a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
- (b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—
 - (i) norms and standards;
 - (ii) frameworks; or
 - (iii) national policies.
- (c) The national legislation is necessary for—
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;
 - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;

- (iv) the promotion of economic activities across provincial boundaries;
- (v) the promotion of equal opportunity or equal access to government services; or
- (vi) the protection of the environment.

(3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that-

- (a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or
- (b) impedes the implementation of national economic policy.

(4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in [subsection \(2\) \(c\)](#) and that dispute comes before a court for resolution, the court must have due regard to the approval or the rejection of the legislation by the National Council of Provinces.

(5) Provincial legislation prevails over national legislation if [subsection \(2\)](#) or [\(3\)](#) does not apply.

(6) A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.

(7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council.

(8) If the National Council of Provinces does not approve a law referred to in [subsection \(6\)](#), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it.

147. Other conflicts.-(1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to-

- (a) a matter concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution;
- (b) national legislative intervention in terms of [section 44 \(2\)](#), the national legislation prevails over the provision of the provincial constitution; or
- (c) a matter within a functional area listed in [Schedule 4, section 146](#) applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.

(2) National legislation referred to in [section 44 \(2\)](#) prevails over provincial legislation in respect of matters within the functional areas listed in [Schedule 5](#).

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

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

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

CHAPTER 7 LOCAL GOVERNMENT

151. Status of municipalities.-(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in [the Constitution](#).

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to

exercise its powers or perform its functions.

152. Objects of local government.-(1) The objects of local government are-

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

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

153. Developmental duties of municipalities.-A municipality must-

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

154. Municipalities in co-operative government.-(1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

(2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

155. Establishment of municipalities.-(1) There are the following categories of municipality:

- (a) **Category A:** A municipality that has exclusive municipal executive and legislative authority in its area.
- (b) **Category B:** A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.
- (c) **Category C:** A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.

(2) National legislation must define the different types of municipality that may be established within each category.

(3) National legislation must-

- (a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C;
- (b) establish criteria and procedures for the determination of municipal boundaries by an independent authority; and
- (c) subject to [section 229](#), make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality.

(4) The legislation referred to in [subsection \(3\)](#) must take into account the need to provide municipal services in an equitable and sustainable manner.

(5) Provincial legislation must determine the different types of municipality to be established in the province.

(6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of [subsections \(2\)](#) and [\(3\)](#) and, by legislative or other measures, must-

- (a) provide for the monitoring and support of local government in the province; and
- (b) promote the development of local government capacity to enable municipalities to perform their

functions and manage their own affairs.

(6A)

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

Wording of Sections

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

156. Powers and functions of municipalities.-(1) A municipality has executive authority in respect of, and has the right to administer-

- (a) the local government matters listed in Part B of [Schedule 4](#) and Part B of [Schedule 5](#); and
- (b) any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

(3) Subject to [section 151 \(4\)](#), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a 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) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of [Schedule 4](#) or Part A of [Schedule 5](#) which necessarily relates to local government, if-

- (a) that matter would most effectively be administered locally; and
- (b) the municipality has the capacity to administer it.

(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

157. Composition and election of Municipal Councils.-(1) A Municipal Council consists of-

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

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

(2) The election of members to a Municipal Council as anticipated in [subsection \(1\) \(a\)](#) must be in accordance with national legislation, which must prescribe a system-

- (a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
- (b) of proportional representation as described in [paragraph \(a\)](#) combined with a system of ward representation based on that municipality's segment of the national common voters roll.

(3) An electoral system in terms of [subsection \(2\)](#) must result, in general, in proportional representation.

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

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

(b)

[[Sub-s. \(4\)](#) substituted by [s. 2](#) of [Constitution Third Amendment Act of 1998](#) (English Only). [Para \(b\)](#) deleted by [s. 3](#) of [the Constitution Twelfth Amendment Act of 2005](#).]

Wording of Sections

(5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voters roll.

(6) The national legislation referred to in [subsection \(1\) \(b\)](#) must establish a system that allows for parties

and interests reflected within the Municipal Council making the appointment, to be fairly represented in the Municipal Council to which the appointment is made.

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

- (a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
 - (b) anyone who is appointed by, or is in the service of, the state in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of a Municipal Council in terms of national legislation;
 - (c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of [section 47 \(1\) \(c\), \(d\) or \(e\)](#) from being a member of the Assembly;
 - (d) a member of the National Assembly, a delegate to the National Council of Provinces or a member of a provincial legislature; but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council; or
 - (e) a member of another Municipal Council; but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category.
- (2) A person who is not eligible to be a member of a Municipal Council in terms of [subsection \(1\) \(a\), \(b\), \(d\) or \(e\)](#) may be a candidate for the Council, subject to any limits or conditions established by national legislation.
- (3) Vacancies in a Municipal Council must be filled in terms of national legislation.
- [[Sub-s. \(3\)](#) added by [s. 4](#) of [Constitution Fifteenth Amendment Act of 2008](#).]

159. Terms of Municipal Councils.-(1) The term of a Municipal Council may be no more than five years, as determined by national legislation.

(2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired.

(3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of [section 139](#), remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.

[[S. 159](#) substituted by [s. 1](#) of [Constitution Second Amendment Act of 1998](#).]

Wording of Sections

160. Internal procedures.-(1) A Municipal Council-

- (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
- (b) must elect its chairperson;

(Date of commencement: 30 June, 1997)

- (c) may elect an executive committee and other committees, subject to national legislation; and
- (d) may employ personnel that are necessary for the effective performance of its functions.

(2) The following functions may not be delegated by a Municipal Council:

- (a) The passing of by-laws;
- (b) the approval of budgets;
- (c) the imposition of rates and other taxes, levies and duties; and
- (d) the raising of loans.

(3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.

(b) All questions concerning matters mentioned in [subsection \(2\)](#) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.

(c) All other questions before a Municipal Council are decided by a majority of the votes cast.

(4) No by-law may be passed by a Municipal Council unless-

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

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

162. Publication of municipal by-laws.-(1) A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.

- (2) A provincial official gazette must publish a municipal by-law upon request by the municipality.
- (3) Municipal by-laws must be accessible to the public.

163. Organised local government.-An Act of Parliament enacted in accordance with the procedure established by [section 76](#) must-

- (a) provide for the recognition of national and provincial organisations representing municipalities; and
- (b) determine procedures by which local government may-
 - (i) consult with the national or a provincial government;
 - (ii) designate representatives to participate in the National Council of Provinces; and
 - (iii) participate in the process prescribed in the national legislation envisaged in [section 221 \(1\) \(c\)](#).
[[Para. \(b\)](#) substituted by [s. 4](#) of [Constitution Seventh Amendment Act of 2001](#).]

164. Other matters.-Any matter concerning local government not dealt with in [the Constitution](#) may be prescribed by national legislation or by provincial legislation within the framework of national legislation.

CHAPTER 8 COURTS AND ADMINISTRATION OF JUSTICE

165. Judicial authority.-(1) The judicial authority of the Republic is vested in the courts.

(2) The courts are independent and subject only to [the Constitution](#) and the law, which they must apply impartially and without fear, favour or prejudice.

(3) No person or organ of state may interfere with the functioning of the courts.

(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

(6) The Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

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

166. Judicial system.—The courts are—

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from any court of a status similar to the High Court of South Africa;
[[Para. \(c\)](#) substituted by s. 2 (a) of [the Constitution Seventeenth Amendment Act of 2012](#).]

Wording of Sections

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

Wording of Sections

167. Constitutional Court.—(1) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.

[[Sub-s. \(1\)](#) substituted by [s. 11](#) of [Constitution Sixth Amendment Act of 2001](#).]

(2) A matter before the Constitutional Court must be heard by at least eight judges.

(3) The Constitutional Court—

- (a) is the highest court of the Republic; and
- (b) may decide—
 - (i) constitutional matters; and
 - (ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court; and
- (c) makes the final decision whether a matter is within its jurisdiction.
[[Sub-s. \(3\)](#) substituted by s. 3 (a) of [the Constitution Seventeenth Amendment Act of 2012](#).]

Wording of Sections

(4) Only the Constitutional Court may—

- (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in [section 79](#) or [121](#);
- (c) decide applications envisaged in [section 80](#) or [122](#);
- (d) decide on the constitutionality of any amendment to [the Constitution](#);
- (e) decide that Parliament or the President has failed to fulfil a constitutional obligation; or
- (f) certify a provincial constitution in terms of [section 144](#).

(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force.

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

Wording of Sections

(6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—

- (a) to bring a matter directly to the Constitutional Court; or
 - (b) to appeal directly to the Constitutional Court from any other court.
- (7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of [the](#)

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

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

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

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

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

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

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

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

Wording of Sections

169. High Court of South Africa.-(1) The High Court of South Africa may decide-

(a) any constitutional matter except a matter that-

- (i) the Constitutional Court has agreed to hear directly in terms of [section 167 \(6\) \(a\)](#); or
- (ii) is assigned by an Act of Parliament to another court of a status similar to the High Court of South Africa; and

(b) any other matter not assigned to another court by an Act of Parliament.

(2) The High Court of South Africa consists of the Divisions determined by an Act of Parliament, which Act must provide for-

- (a) the establishing of Divisions, with one or more seats in a Division; and
- (b) the assigning of jurisdiction to a Division or a seat within a Division.

(3) Each Division of the High Court of South Africa-

- (a) has a Judge President;
- (b) may have one or more Deputy Judges President; and
- (c) has the number of other judges determined in terms of national legislation.

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

Wording of Sections

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

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

Wording of Sections

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

172. Powers of courts in constitutional matters.-(1) When deciding a constitutional matter within its power, a court-

- (a) must declare that any law or conduct that is inconsistent with [the Constitution](#) is invalid to the extent of its inconsistency; and
- (b) may make any order that is just and equitable, including-
 - (i) an order limiting the retrospective effect of the declaration of invalidity; and
 - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

(2) (a) The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President,

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

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

Wording of Sections

(b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.

(c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court.

(d) Any person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.

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

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

Wording of Sections

174. Appointment of judicial officers.—(1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.

(2) The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.

(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Supreme Court of Appeal.

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

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

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

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

(5) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court.

(6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.

(7) Other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.

(8) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with [Schedule 2](#), that they will uphold and protect [the Constitution](#).

175. Appointment of acting judges.—(1) The President may appoint a woman or man to serve as an acting Deputy Chief Justice or judge of the Constitutional Court if there is a vacancy in any of those offices, or if the person holding such an office is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the Chief Justice, and an appointment as acting Deputy Chief Justice must be made from the ranks of the judges who had been appointed to the Constitutional Court in terms of [section 174 \(4\)](#).

(2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve.

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

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

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

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

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

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

(a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and

(b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.

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

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

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

(a) the Chief Justice, who presides at meetings of the Commission;

(b) the President of the Supreme Court of Appeal;

[[Para. \(b\)](#) substituted by [s. 16 \(a\)](#) of [Constitution Sixth Amendment Act of 2001](#).]

(c) one Judge President designated by the Judges President;

(d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;

(e) two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President;

(f) two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President;

(g) one teacher of law designated by teachers of law at South African universities;

(h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;

(i) four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces;

(j) four persons designated by the President as head of the national executive, after consulting the leaders of all the parties in the National Assembly; and

(k) when considering matters relating to a specific Division of the High Court of South Africa, the Judge President of that Division and the Premier of the province concerned, or an alternate designated by each of them.

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

Wording of Sections

(2) If the number of persons nominated from within the advocates' or attorneys' profession in terms of [subsection \(1\) \(e\)](#) or [\(f\)](#) equals the number of vacancies to be filled, the President must appoint them. If the number of persons nominated exceeds the number of vacancies to be filled, the President, after consulting the relevant profession, must appoint sufficient of the nominees to fill the vacancies, taking into account the need to ensure that those appointed represent the profession as a whole.

(3) Members of the Commission designated by the National Council of Provinces serve until they are replaced together, or until any vacancy occurs in their number. Other members who were designated or nominated to the Commission serve until they are replaced by those who designated or nominated them.

(4) The Judicial Service Commission has the powers and functions assigned to it in [the Constitution](#) and national legislation.

(5) The Judicial Service Commission may advise the national government on any matter relating to the judiciary or the administration of justice, but when it considers any matter except the appointment of a judge, it must sit without the members designated in terms of [subsection \(1\) \(h\)](#) and [\(i\)](#).

(6) The Judicial Service Commission may determine its own procedure, but decisions of the Commission must be supported by a majority of its members.

(7) If the Chief Justice or the President of the Supreme Court of Appeal is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the Supreme Court of Appeal, as the case may be, acts as his or her alternate on the Commission.

[Sub-s. (7) added by s. 2 (b) of [Constitution Second Amendment Act of 1998](#) and substituted by s. 16 (c) of [Constitution Sixth Amendment Act of 2001](#).]

(8) The President and the persons who appoint, nominate or designate the members of the Commission in terms of [subsection \(1\) \(c\), \(e\), \(f\) and \(g\)](#), may, in the same manner appoint, nominate or designate an alternate for each of those members, to serve on the Commission whenever the member concerned is temporarily unable to do so by reason of his or her incapacity or absence from the Republic or for any other sufficient reason.

[Sub-s. (8) added by s. 2 (b) of [Constitution Second Amendment Act of 1998](#).]

179. Prosecuting authority.-(1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of-

(a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President, as head of the national executive; and

(b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.

(2) The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.

(3) National legislation must ensure that the Directors of Public Prosecutions-

(a) are appropriately qualified; and

(b) are responsible for prosecutions in specific jurisdictions, subject to [subsection \(5\)](#).

(4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.

(5) The National Director of Public Prosecutions-

(a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy, which must be observed in the prosecution process;

(b) must issue policy directives which must be observed in the prosecution process;

(c) may intervene in the prosecution process when policy directives are not complied with; and

(d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:

(i) The accused person.

(ii) The complainant.

(iii) Any other person or party whom the National Director considers to be relevant.

(6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.

(7) All other matters concerning the prosecuting authority must be determined by national legislation.

180. Other matters concerning administration of justice.-National legislation may provide for any matter concerning the administration of justice that is not dealt with in [the Constitution](#), including-

(a) training programmes for judicial officers;

(b) procedures for dealing with complaints about judicial officers; and

(c) the participation of people other than judicial officers in court decisions.

CHAPTER 9 STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

181. Establishment and governing principles.-(1) The following state institutions strengthen constitutional

democracy in the Republic:

- (a) The Public Protector.
- (b) The South African Human Rights Commission.
- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
- (d) The Commission for Gender Equality.
- (e) The Auditor-General.
- (f) The Electoral Commission.

(2) These institutions are independent, and subject only to [the Constitution](#) and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

PUBLIC PROTECTOR

182. Functions of Public Protector.-(1) The Public Protector has the power, as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- (b) to report on that conduct; and
- (c) to take appropriate remedial action.

(2) The Public Protector has the additional powers and functions prescribed by national legislation.

(3) The Public Protector may not investigate court decisions.

(4) The Public Protector must be accessible to all persons and communities.

(5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

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

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

184. Functions of South African Human Rights Commission.-(1) The South African Human Rights Commission must-

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

(2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-

- (a) to investigate and to report on the observance of human rights;
- (b) to take steps to secure appropriate redress where human rights have been violated;
- (c) to carry out research; and
- (d) to educate.

(3) Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

(4) The South African Human Rights Commission has the additional powers and functions prescribed by

national legislation.

COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

185. Functions of Commission.-(1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are-

- (a) to promote respect for the rights of cultural, religious and linguistic communities;
- (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

(2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

(3) The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation.

(4) The Commission has the additional powers and functions prescribed by national legislation.

186. Composition of Commission.-(1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.

(2) The composition of the Commission must-

- (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
- (b) broadly reflect the gender composition of South Africa.

COMMISSION FOR GENDER EQUALITY

187. Functions of Commission for Gender Equality.-(1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

(2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.

(3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.

AUDITOR-GENERAL

188. Functions of Auditor-General.-(1) The Auditor-General must audit and report on the accounts, financial statements and financial management of-

- (a) all national and provincial state departments and administrations;
- (b) all municipalities; and
- (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

(2) In addition to the duties prescribed in [subsection \(1\)](#), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of-

- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
- (b) any institution that is authorised in terms of any law to receive money for a public purpose.

(3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.

(4) The Auditor-General has the additional powers and functions prescribed by national legislation.

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

ELECTORAL COMMISSION

190. Functions of Electoral Commission.-(1) The Electoral Commission must-

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

(2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

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

INDEPENDENT AUTHORITY TO REGULATE BROADCASTING

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

GENERAL PROVISIONS

193. Appointments.-(1) The Public Protector and the members of any Commission established by this Chapter must be women or men who-

- (a) are South African citizens;
- (b) are fit and proper persons to hold the particular office; and
- (c) comply with any other requirements prescribed by national legislation.

(2) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.

(3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.

(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of-

- (a) the South African Human Rights Commission;
- (b) the Commission for Gender Equality; and
- (c) the Electoral Commission.

(5) The National Assembly must recommend persons-

- (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
- (b) approved by the Assembly by a resolution adopted with a supporting vote-
 - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or
 - (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.

(6) The involvement of civil society in the recommendation process may be provided for as envisaged in [section 59 \(1\) \(a\)](#).

194. Removal from office.-(1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on-

- (a) the ground of misconduct, incapacity or incompetence;
- (b) a finding to that effect by a committee of the National Assembly; and
- (c) the adoption by the Assembly of a resolution calling for that person's removal from office.

(2) A resolution of the National Assembly concerning the removal from office of-

- (a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or
- (b) a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.

(3) The President-

- (a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and
- (b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.

CHAPTER 10 PUBLIC ADMINISTRATION

195. Basic values and principles governing public administration.-(1) Public administration must be governed by the democratic values and principles enshrined in [the Constitution](#), including the following principles:

- (a) A high standard of professional ethics must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided impartially, fairly, equitably and without bias.
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration must be accountable.
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

(2) The above principles apply to-

- (a) administration in every sphere of government;
- (b) organs of state; and
- (c) public enterprises.

(3) National legislation must ensure the promotion of the values and principles listed in [subsection \(1\)](#).

(4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.

(5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.

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

196. Public Service Commission.-(1) There is a single Public Service Commission for the Republic.

(2) The Commission is independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The Commission must be regulated by national legislation.

(3) Other organs of state, through legislative and other measures, must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of state may interfere with the functioning of the Commission.

(4) The powers and functions of the Commission are-

- (a) to promote the values and principles set out in [section 195](#), throughout the public service;
- (b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
- (c) to propose measures to ensure effective and efficient performance within the public service;
- (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in [section 195](#);
- (e) to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in [section 195](#) are complied with; and
- (f) either of its own accord or on receipt of any complaint-
 - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
 - (ii) to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
 - (iii) to monitor and investigate adherence to applicable procedures in the public service; and
 - (iv) to advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service; and
- (g) to exercise or perform the additional powers or functions prescribed by an Act of Parliament.
[\[Para. \(g\) added by s. 3 of Constitution Second Amendment Act of 1998.\]](#)

(5) The Commission is accountable to the National Assembly.

(6) The Commission must report at least once a year in terms of [subsection \(4\) \(e\)](#)-

- (a) to the National Assembly; and
- (b) in respect of its activities in a province, to the legislature of that province.

(7) The Commission has the following 14 commissioners appointed by the President:

- (a) Five commissioners approved by the National Assembly in accordance with [subsection \(8\) \(a\)](#); and
- (b) one commissioner for each province nominated by the Premier of the province in accordance with [subsection \(8\) \(b\)](#).

(8) (a) A commissioner appointed in terms of [subsection \(7\) \(a\)](#) must be-

- (i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly; and
- (ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.

(b) A commissioner nominated by the Premier of a province must be-

- (i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature; and
- (ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members.

(9) An Act of Parliament must regulate the procedure for the appointment of commissioners.

(10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is-

- (a) a South African citizen; and
- (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.

(11) A commissioner may be removed from office only on-

- (a) the ground of misconduct, incapacity or incompetence;
- (b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province; and
- (c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.

(12) The President must remove the relevant commissioner from office upon-

- (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
- (b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal.

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

197. Public Service.-(1) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.

(2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.

(3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.

(4) Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service.

CHAPTER 11 SECURITY SERVICES

198. Governing principles.-The following principles govern national security in the Republic:

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

Footnotes

* [Para. \(b\)](#) may not be enforced until the legislation envisaged in [s. 198](#) is enacted. See [Sch 6 item 21 \(2\)](#).

199. Establishment, structuring and conduct of security services.-(1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of [the Constitution](#).

(2) The defence force is the only lawful military force in the Republic.

(3)* Other than the security services established in terms of [the Constitution](#), armed organisations or services may be established only in terms of national legislation.

(4) The security services must be structured and regulated by national legislation.

(5) The security services must act, and must teach and require their members to act, in accordance with [the Constitution](#) and the law, including customary international law and international agreements binding on the Republic.

(6) No member of any security service may obey a manifestly illegal order.

(7) Neither the security services, nor any of their members, may, in the performance of their functions-

- (a) prejudice a political party interest that is legitimate in terms of [the Constitution](#); or
- (b) further, in a partisan manner, any interest of a political party.

(8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

DEFENCE

Footnotes

* Please note that Sch. 6, item 21 (3) makes reference to section 199 (3) (a) , however, paragraph (a) does not exist.

200. Defence force.-(1) The defence force must be structured and managed as a disciplined military force.

(2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with [the Constitution](#) and the principles of international law regulating the use of force.

201. Political responsibility.-(1) A member of the Cabinet must be responsible for defence.

(2) Only the President, as head of the national executive, may authorise the employment of the defence force-

- (a) in co-operation with the police service;
- (b) in defence of the Republic; or
- (c) in fulfilment of an international obligation.

(3) When the defence force is employed for any purpose mentioned in [subsection \(2\)](#), the President must inform Parliament, promptly and in appropriate detail, of-

- (a) the reasons for the employment of the defence force;
- (b) any place where the force is being employed;
- (c) the number of people involved; and
- (d) the period for which the force is expected to be employed.

(4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in [subsection \(2\)](#), the President must provide the information required in [subsection \(3\)](#) to the appropriate oversight committee.

202. Command of defence force.-(1) The President as head of the national executive is Commander-in- Chief of the defence force, and must appoint the Military Command of the defence force.

(2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence, under the authority of the President.

203. State of national defence.-(1) The President as head of the national executive may declare a state of national defence, and must inform Parliament promptly and in appropriate detail of-

- (a) the reasons for the declaration;
- (b) any place where the defence force is being employed; and
- (c) the number of people involved.

(2) If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration.

(3) A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.

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

POLICE

205. Police service.-(1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.

(2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.

(3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

206. Political responsibility.-(1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.

(2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.

(3) Each province is entitled-

- (a) to monitor police conduct;
- (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
- (c) to promote good relations between the police and the community;
- (d) to assess the effectiveness of visible policing; and
- (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.

(4) A provincial executive is responsible for policing functions-

- (a) vested in it by this Chapter;
- (b) assigned to it in terms of national legislation; and
- (c) allocated to it in the national policing policy.

(5) In order to perform the functions set out in [subsection \(3\)](#), a province-

- (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
- (b) must make recommendations to the Cabinet member responsible for policing.

(6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.

(7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.

(8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government.

(9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.

207. Control of police service.-(1) The President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service.

(2) The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.

(3) The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.

(4) The provincial commissioners are responsible for policing in their respective provinces-

- (a) as prescribed by national legislation; and
- (b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of [subsection \(2\)](#).

(5) The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.

(6) If the provincial commissioner has lost the confidence of the provincial executive, that executive may

institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with national legislation.

208. Police civilian secretariat.-A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing.

INTELLIGENCE

209. Establishment and control of intelligence services.-(1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.

(2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of [subsection \(1\)](#), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

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

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

CHAPTER 12 TRADITIONAL LEADERS

211. Recognition.-(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to [the Constitution](#).

(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.

(3) The courts must apply customary law when that law is applicable, subject to [the Constitution](#) and any legislation that specifically deals with customary law.

212. Role of traditional leaders.-(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law-

- (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and
- (b) national legislation may establish a council of traditional leaders.

CHAPTER 13 FINANCE GENERAL FINANCIAL MATTERS

213. National Revenue Fund.-(1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.

(2) Money may be withdrawn from the National Revenue Fund only-

- (a) in terms of an appropriation by an Act of Parliament; or
- (b) as a direct charge against the National Revenue Fund, when it is provided for in [the Constitution](#) or an Act of Parliament.

(3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

(Date of commencement: 1 January, 1998.)

214. Equitable shares and allocations of revenue.-(1) An Act of Parliament must provide for-

- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- (b) the determination of each province's equitable share of the provincial share of that revenue; and
- (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.

(2) The Act referred to in [subsection \(1\)](#) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account-

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

(Date of commencement: 1 January, 1998.)

215. National, provincial and municipal budgets.-(1) National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.

(2) National legislation must prescribe-

- (a) the form of national, provincial and municipal budgets;
- (b) when national and provincial budgets must be tabled; and
- (c) that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.

(3) Budgets in each sphere of government must contain-

- (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
- (b) proposals for financing any anticipated deficit for the period to which they apply; and
- (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

(Date of commencement: 1 January, 1998.)

216. Treasury control.-(1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-

- (a) generally recognised accounting practice;
- (b) uniform expenditure classifications; and
- (c) uniform treasury norms and standards.

(2) The national treasury must enforce compliance with the measures established in terms of [subsection \(1\)](#),

and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

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

(3) A decision to stop the transfer of funds due to a province in terms of [section 214 \(1\) \(b\)](#) may be taken only in the circumstances mentioned in [subsection \(2\)](#) and-

- (a) may not stop the transfer of funds for more than 120 days; and
- (b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of [section 76 \(1\)](#) and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the national treasury.

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

(4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of [subsection \(3\)](#).

(5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province-

- (a) the Auditor-General must report to Parliament; and
- (b) the province must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

(Date of commencement: 1 January, 1998.)

217. Procurement.-(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

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

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

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

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

Footnotes

- * See Sch. [6item 21 \(4\)](#).

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

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

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

(Date of commencement: 1 January, 1998.)

219. Remuneration of persons holding public office.-(1) An Act of Parliament must establish a framework for determining-

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

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

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

(4) The national executive, a provincial executive, a municipality or any other relevant authority may

implement the national legislation referred to in [subsection \(1\)](#) only after considering any recommendations of the commission established in terms of [subsection \(2\)](#).

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

FINANCIAL AND FISCAL COMMISSION

220. Establishment and functions.-(1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.

(2) The Commission is independent and subject only to [the Constitution](#) and the law, and must be impartial.

(3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in [section 214 \(2\)](#).

221. Appointment and tenure of members.-(1) The Commission consists of the following women and men appointed by the President, as head of the national executive:

- (a) A chairperson and deputy chairperson;
- (b) three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;
- (c) two persons selected, after consulting organised local government, from a list compiled in accordance with a process prescribed by national legislation; and
- (d) two other persons.

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

Wording of Sections

(1A) National legislation referred to in [subsection \(1\)](#) must provide for the participation of-

- (a) the Premiers in the compilation of a list envisaged in [subsection \(1\) \(b\)](#); and
- (b) organised local government in the compilation of a list envisaged in [subsection \(1\) \(c\)](#).

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

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

(3) Members serve for a term established in terms of national legislation. The President may remove a member from office on the ground of misconduct, incapacity or incompetence.

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

CENTRAL BANK

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

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

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

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

226. Provincial Revenue Funds.-(1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except money reasonably excluded by an Act of Parliament.

(2) Money may be withdrawn from a Provincial Revenue Fund only-

- (a) in terms of an appropriation by a provincial Act; or
- (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in [the Constitution](#) or a provincial Act.

(3) Revenue allocated through a province to local government in that province in terms of [section 214 \(1\)](#), is a direct charge against that province's Revenue Fund.

(4) National legislation may determine a framework within which-

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

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

(Date of commencement: 1 January, 1998.)

227. National sources of provincial and local government funding.-(1) Local government and each province-

- (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and
- (b) may receive other allocations from national government revenue, either conditionally or unconditionally.

(2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

(3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of [section 216](#).

(4) A province must provide for itself any resources that it requires, in terms of a provision of its provincial constitution, that are additional to its requirements envisaged in [the Constitution](#).

(Date of commencement: 1 January, 1998.)

228. Provincial taxes.-(1) A provincial legislature may impose-

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

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

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

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

(Date of commencement: 1 January, 1998.)

229. Municipal fiscal powers and functions.-(1) Subject to [subsections \(2\)](#), [\(3\)](#) and [\(4\)](#), a municipality may impose-

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

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

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

(3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:-

- (a) The need to comply with sound principles of taxation.
- (b) The powers and functions performed by each municipality.
- (c) The fiscal capacity of each municipality.
- (d) The effectiveness and efficiency of raising taxes, levies and duties.
- (e) Equity.

(4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.

(5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

(Date of commencement: 1 January, 1998.)

Footnotes

- * See Sch. 6 item 21 (6).

230. Provincial loans.-(1) A province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.

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

[[S. 230](#) substituted by [s. 10](#) of [Constitution Seventh Amendment Act of 2001](#).]

(Date of commencement: 1 January, 1998.)

230A. Municipal loans.-(1) A Municipal Council may, in accordance with national legislation-

- (a) raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and
- (b) bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.

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

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

CHAPTER 14 GENERAL PROVISIONS INTERNATIONAL LAW

231. International agreements.-(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in [subsection \(3\)](#).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with [the Constitution](#) or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

232. Customary international law.-Customary international law is law in the Republic unless it is inconsistent with [the Constitution](#) or an Act of Parliament.

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

OTHER MATTERS

234. Charters of Rights.-In order to deepen the culture of democracy established by [the Constitution](#), Parliament may adopt Charters of Rights consistent with the provisions of [the Constitution](#).

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

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

237. Diligent performance of obligations.-All constitutional obligations must be performed diligently and without delay.

238. Agency and delegation.-An executive organ of state in any sphere of government may-

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

239. Definitions.-In [the Constitution](#), unless the context indicates otherwise-

"national legislation" includes-

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

"organ of state" means-

- (a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution-

(i) exercising a power or performing a function in terms of [the Constitution](#) or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation,

but does not include a court or a judicial officer;

"provincial legislation" includes-

(a) subordinate legislation made in terms of a provincial Act; and

(b) legislation that was in force when [the Constitution](#) took effect and that is administered by a provincial government.

240. Inconsistencies between different texts.-In the event of an inconsistency between different texts of [the Constitution](#), the English text prevails.

241. Transitional arrangements.-[Schedule 6](#) applies to the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition.

242. Repeal of laws.-The laws mentioned in [Schedule 7](#) are repealed, subject to [section 243](#) and [Schedule 6](#).

243. Short title and commencement.-(1) This Act is called [the Constitution](#) of the Republic of South Africa, 1996, and comes into effect as soon as possible on a date set by the President by proclamation, which may not be a date later than 1 July 1997.

(2) The President may set different dates before the date mentioned in [subsection \(1\)](#) in respect of different provisions of [the Constitution](#).

(3) Unless the context otherwise indicates, a reference in a provision of [the Constitution](#) to a time when [the Constitution](#) took effect must be construed as a reference to the time when that provision took effect.

(4) If a different date is set for any particular provision of [the Constitution](#) in terms of [subsection \(2\)](#), any corresponding provision of [the Constitution](#) of the Republic of South Africa, 1993 ([Act 200 of 1993](#)), mentioned in the proclamation, is repealed with effect from the same date.

(5) [Sections 213, 214, 215, 216, 218, 226, 227, 228, 229](#) and [230](#) come into effect on 1 January 1998, but this does not preclude the enactment in terms of this Constitution of legislation envisaged in any of these provisions before that date. Until that date any corresponding and incidental provisions of [the Constitution](#) of the Republic of South Africa, 1993, remain in force.

Schedule 1

NATIONAL FLAG

(1) The national flag is rectangular; it is one and a half times longer than it is wide.

(2) It is black, gold, green, white, chilli red and blue.

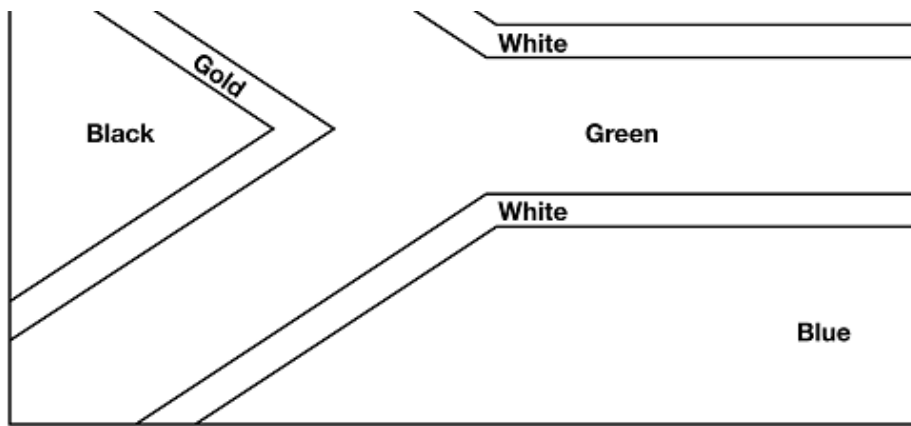
(3) It has a green Y-shaped band that is one fifth as wide as the flag. The centre lines of the band start in the top and bottom corners next to the flag post, converge in the centre of the flag, and continue horizontally to the middle of the free edge.

(4) The green band is edged, above and below in white, and towards the flag post end, in gold. Each edging is one fifteenth as wide as the flag.

(5) The triangle next to the flag post is black.

(6) The upper horizontal band is chilli red and the lower horizontal band is blue. These bands are each one third as wide as the flag.





Schedule 1A

GEOGRAPHICAL AREAS OF PROVINCES

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

The Province of the Eastern Cape

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

The Province of the Free State

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

The Province of Gauteng

Map No. 4 in Notice 1490 of 2008
Map No. 17 of Schedule 2 to Notice 1998 of 2005
Map No. 18 of Schedule 2 to Notice 1998 of 2005
Map No. 19 of Schedule 2 to Notice 1998 of 2005
Map No. 20 of Schedule 2 to Notice 1998 of 2005
Map No. 21 of Schedule 2 to Notice 1998 of 2005

The Province of KwaZulu-Natal

Map No. 22 of Schedule 2 to Notice 1998 of 2005
Map No. 23 of Schedule 2 to Notice 1998 of 2005
Map No. 24 of Schedule 2 to Notice 1998 of 2005
Map No. 25 of Schedule 2 to Notice 1998 of 2005

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

Map No. 32 of Schedule 2 to Notice 1998 of 2005

The Province of Limpopo

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

The Province of Mpumalanga

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

The Province of the Northern Cape

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

The Province of North West

Map No. 5 in Notice 1490 of 2008
Map No. 46 of Schedule 2 to Notice 1998 of 2005
Map No. 47 of Schedule 2 to Notice 1998 of 2005
Map No. 48 of Schedule 2 to Notice 1998 of 2005

The Province of the Western Cape

Map No. 49 of Schedule 2 to Notice 1998 of 2005
Map No. 50 of Schedule 2 to Notice 1998 of 2005
Map No. 51 of Schedule 2 to Notice 1998 of 2005
Map No. 52 of Schedule 2 to Notice 1998 of 2005
Map No. 53 of Schedule 2 to Notice 1998 of 2005
Map No. 54 of Schedule 2 to Notice 1998 of 2005

Schedule 2

OATHS AND SOLEMN AFFIRMATIONS

[[Schedule 2](#) amended by [s. 2](#) of [Constitution First Amendment Act of 1997](#) (English text only) and substituted by [s.](#)

Wording of Sections

Oath or solemn affirmation of President and Acting President

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

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

- * promote all that will advance the Republic, and oppose all that may harm it;
- * protect and promote the rights of all South Africans;
- * discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- * do justice to all; and
- * devote myself to the well-being of the Republic and all of its people.

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

Oath or solemn affirmation of Deputy President

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

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

- * promote all that will advance the Republic, and oppose all that may harm it;
- * be a true and faithful counsellor;
- * discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- * do justice to all; and
- * devote myself to the well-being of the Republic and all of its people.

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

Oath or solemn affirmation of Ministers and Deputy Ministers

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

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

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

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

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

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

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

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

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

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

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

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

Oath or solemn affirmation of Judicial Officers

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

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

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

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

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

Schedule 3

ELECTION PROCEDURES

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

Wording of Sections

PART A-ELECTION PROCEDURES FOR CONSTITUTIONAL OFFICE-BEARERS

Application

1. The procedure set out in this Schedule applies whenever-

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

Nominations

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

Formal requirements

3. (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.

(2) The form on which a nomination is made must be signed-

- (a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected;
- (b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected; or
- (c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons

who have been nominated as candidates, but may not permit any debate.

Single candidate

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

Election procedure

6. If more than one candidate is nominated-

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

Elimination procedure

7. (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with [item 6](#). This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

Further meetings

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

Rules

9. (1) The Chief Justice must make rules prescribing-

- (a) the procedure for meetings to which this Schedule applies;
- (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
- (c) the form on which nominations must be submitted; and
- (d) the manner in which voting is to be conducted.

- (2) These rules must be made known in the way that the Chief Justice determines.

PART B-FORMULA TO DETERMINE PARTY PARTICIPATION IN PROVINCIAL DELEGATIONS TO THE NATIONAL COUNCIL OF PROVINCES

1. The number of delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.
2. If a calculation in terms of [item 1](#) yields a surplus not absorbed by the delegates allocated to a party in terms of that item, the surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.
3. If the competing surpluses envisaged in [item 2](#) are equal, the undistributed delegates in the delegation must be allocated to the party or parties, with the same surplus in the sequence from the highest to the lowest number of votes that have been recorded for those parties during the last election for the provincial legislature concerned.
4. If more than one party with the same surplus recorded the same number of votes during the last election for the provincial legislature concerned, the legislature concerned must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.

Schedule 4

FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE

PART A

Administration of indigenous forests

Agriculture

Airports other than international and national airports

Animal control and diseases

Casinos, racing, gambling and wagering, excluding lotteries and sports pools

Consumer protection

Cultural matters

Disaster management

Education at all levels, excluding tertiary education

Environment

Health services

Housing

Indigenous law and customary law, subject to [Chapter 12](#) of [the Constitution](#)

Industrial promotion

Language policy and the regulation of official languages to the extent that the provisions of [section 6](#) of [the Constitution](#) expressly confer upon the provincial legislatures legislative competence

Media services directly controlled or provided by the provincial government, subject to [section 192](#)

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police to the extent that the provisions of [Chapter 11](#) of [the Constitution](#) confer upon the provincial legislatures legislative competence

Pollution control

Population development

Property transfer fees

Provincial public enterprises in respect of the functional areas in this Schedule and [Schedule 5](#)

Public transport

Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of [the Constitution](#) or any other law

Regional planning and development

Road traffic regulation

Soil conservation

Tourism

Trade

Traditional leadership, subject to [Chapter 12](#) of [the Constitution](#)

Urban and rural development

Vehicle licensing

Welfare services

PART B

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

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Fire-fighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto

Stormwater management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Schedule 5

FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

PART A

Abattoirs

Ambulance services

Archives other than national archives

Libraries other than national libraries

Liquor licences

Museums other than national museums

Provincial planning

Provincial cultural matters

Provincial recreation and amenities

Provincial sport

Provincial roads and traffic

Veterinary services, excluding regulation of the profession

PART B

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

Beaches and amusement facilities

Billboards and the display of advertisements in public places

Cemeteries, funeral parlours and crematoria

Cleansing

Control of public nuisances

Control of undertakings that sell liquor to the public

Facilities for the accommodation, care and burial of animals

Fencing and fences

Licensing of dogs

Licensing and control of undertakings that sell food to the public

Local amenities

Local sport facilities

Markets

Municipal abattoirs

Municipal parks and recreation

Municipal roads

Noise pollution

Pounds

Public places

Refuse removal, refuse dumps and solid waste disposal

Street trading

Street lighting

Traffic and parking

Schedule 6

TRANSITIONAL ARRANGEMENTS

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

Wording of Sections

Definitions

1. In this Schedule, unless inconsistent with the context-

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

"new Constitution" means [the Constitution](#) of the Republic of South Africa, 1996;

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

"previous Constitution" means [the Constitution](#) of the Republic of South Africa, 1993 ([Act 200 of 1993](#)).

Continuation of existing law

2. (1) All law that was in force when the new Constitution took effect, continues in force, subject to-

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

(2) Old order legislation that continues in force in terms of subitem (1)-

- (a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
- (b) continues to be administered by the authorities that administered it when the new Constitution took effect, subject to the new Constitution.

Interpretation of existing legislation

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

- (a) to the Republic of South Africa or a homeland (except when it refers to a territorial area), must be construed as a reference to the Republic of South Africa under the new Constitution;
- (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
- (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to [item 9](#) of this Schedule;
- (d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces;
- (e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to [item 12](#) of this Schedule; or
- (f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution.

(2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation-

- (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or of a homeland, must be construed as a reference to-
 - (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
 - (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive; or
- (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or of a homeland, must be construed as a reference to-
 - (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
 - (ii) the Premier of a province under the new Constitution, if the administration of that legislation

has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive.

National Assembly

4. (1) Anyone who was a member or office-bearer of the National Assembly when the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.

(2) The National Assembly as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.

(3) The National Assembly consists of 400 members for the duration of its term that expires on 30 April 1999, subject to [section 49\(4\)](#) of the new Constitution.

(4) The rules and orders of the National Assembly in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

Unfinished business before Parliament

5. (1) Any unfinished business before the National Assembly when the new Constitution takes effect must be proceeded with in terms of the new Constitution.

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

Elections of National Assembly

6. (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of [section 50 \(2\)](#) after a motion of no confidence in the President in terms of [section 102 \(2\)](#) of the new Constitution.

(2) [Section 50 \(1\)](#) of the new Constitution is suspended until 30 April 1999.

(3) Despite the repeal of the previous Constitution, [Schedule 2](#) to that Constitution, as amended by Annexure A to this Schedule, applies-

- (a) to the first election of the National Assembly under the new Constitution;
- (b) to the loss of membership of the Assembly in circumstances other than those provided for in [section 47 \(3\)](#) of the new Constitution; and
- (c) to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution.

(4) [Section 47 \(4\)](#) of the new Constitution is suspended until the second election of the National Assembly under the new Constitution.

National Council of Provinces

7. (1) For the period which ends immediately before the first sitting of a provincial legislature held after its first election under the new Constitution-

- (a) the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's [s 10](#) senators were nominated in terms of [section 48](#) of the previous Constitution; and
- (b) the allocation of permanent delegates and special delegates to the parties represented in the provincial legislature, is as follows:

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

5. Mpumalanga	FF NP	1 1	ANC	4
6. Northern Cape	ANC FF NP	3 1 2	ANC NP	2 2
7. Northern Province	ANC	6	ANC	4
8. North West	ANC FF NP	4 1 1	ANC	4
9. Western Cape	ANC DP NP	2 1 3	ANC NP	1 3

(2) A party represented in a provincial legislature-

- (a) must nominate its permanent delegates from among the persons who were senators when the new Constitution took effect and are available to serve as permanent delegates; and
- (b) may nominate other persons as permanent delegates only if none or an insufficient number of its former senators are available.

(3) A provincial legislature must appoint its permanent delegates in accordance with the nominations of the parties.

(4) Sub-items (2) and (3) apply only to the first appointment of permanent delegates to the National Council of Provinces.

(5) [Section 62 \(1\)](#) of the new Constitution does not apply to the nomination and appointment of former senators as permanent delegates in terms of this item.

(6) The rules and orders of the Senate in force when the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal.

Former senators

8. (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces is entitled to become a full voting member of the legislature of the province from which that person was nominated as a senator in terms of [section 48](#) of the previous Constitution.

(2) If a former senator elects not to become a member of a provincial legislature that person is regarded as having resigned as a senator the day before the new Constitution took effect.

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

National executive

9. (1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister under the previous Constitution when the new Constitution took effect, continues in and holds that office in terms of the new Constitution, but subject to subitem (2).

(2) Until 30 April 1999, [sections 84, 89, 90, 91, 93](#) and [96](#) of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.

(3) Sub-item (2) does not prevent a Minister who was a senator when the new Constitution took effect, from continuing as a Minister referred to in [section 91 \(1\) \(a\)](#) of the new Constitution, as that section reads in Annexure B.

Provincial legislatures

10. (1) Anyone who was a member or office-bearer of a province's legislature when the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.

(2) A provincial legislature as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.

(3) For the duration of its term that expires on 30 April 1999, and subject to [section 108 \(4\)](#), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of [item 8](#) of this Schedule.

(4) The rules and orders of a provincial legislature in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

Elections of provincial legislatures

11. (1) Despite the repeal of the previous Constitution, [Schedule 2](#) to that Constitution, as amended by Annexure A to this Schedule, applies-

- (a) to the first election of a provincial legislature under the new Constitution;
- (b) to the loss of membership of a legislature in circumstances other than those provided for in [section 106 \(3\)](#) of the new Constitution; and
- (c) to the filling of vacancies in a legislature, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the legislature under the new Constitution.

(2) [Section 106 \(4\)](#) of the new Constitution is suspended in respect of a provincial legislature until the second election of the legislature under the new Constitution.

Provincial executives

12. (1) Anyone who was the Premier or a member of the Executive Council of a province when the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subitem (2).

(2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever occurs first, [sections 132](#) and [136](#) of the new Constitution must be regarded to read as set out in Annexure C to this Schedule.

Provincial constitutions

13. A provincial constitution passed before the new Constitution took effect must comply with [section 143](#) of the new Constitution.

Assignment of legislation to provinces

14. (1) Legislation with regard to a matter within a functional area listed in [Schedule 4](#) or [5](#) to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Executive Council of the province.

(2) To the extent that it is necessary for an assignment of legislation under subitem (1) to be effectively carried out, the President, by proclamation, may-

- (a) amend or adapt the legislation to regulate its interpretation or application;
- (b) where the assignment does not apply to the whole of any piece of legislation, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those provisions to which the assignment applies or to the extent that the assignment applies to them; or
- (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial executive or any department of state, administration, security service or other institution.

(3) (a) A copy of each proclamation issued in terms of subitem (1) or (2) must be submitted to the National Assembly and the National Council of Provinces within 10 days of the publication of the proclamation.

(b) If both the National Assembly and the National Council by resolution disapprove the proclamation or any provision of it, the proclamation or provision lapses, but without affecting-

- (i) the validity of anything done in terms of the proclamation or provision before it lapsed; or
- (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.

(4) When legislation is assigned under subitem (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.

(5) Any assignment of legislation under section 235 (8) of the previous Constitution, including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is regarded as having been done under this item.

Existing legislation outside Parliament's legislative power

15. (1) An authority within the national executive that administers any legislation falling outside Parliament's legislative power when the new Constitution takes effect, remains competent to administer that legislation until it is assigned to an authority within a provincial executive in terms of [item 14](#) of this Schedule.

(2) Sub-item (1) lapses two years after the new Constitution took effect.

Courts

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

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

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

(b)

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

(b)

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

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

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

- (a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution;
- (b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and
- (c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.

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

(b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).

(7) (a) Anyone holding office, when [the Constitution](#) of the Republic of South Africa Amendment Act, 2001, takes effect, as-

- (i) the President of the Constitutional Court, becomes the Chief Justice as contemplated in [section 167 \(1\)](#) of the new Constitution;
- (ii) the Deputy President of the Constitutional Court, becomes the Deputy Chief Justice as contemplated in [section 167 \(1\)](#) of the new Constitution;
- (iii) the Chief Justice, becomes the President of the Supreme Court of Appeal as contemplated in [section 168 \(1\)](#) of the new Constitution; and
- (iv) the Deputy Chief Justice, becomes the Deputy President of the Supreme Court of Appeal as contemplated in [section 168 \(1\)](#) of the new Constitution.

(b) All rules, regulations or directions made by the President of the Constitutional Court or the Chief Justice in force immediately before [the Constitution](#) of the Republic of South Africa Amendment Act, 2001, takes effect, continue in force until repealed or amended.

(c) Unless inconsistent with the context or clearly inappropriate, a reference in any law or process to the Chief Justice or to the President of the Constitutional Court, must be construed as a reference to the Chief Justice as contemplated in [section 167 \(1\)](#) of the new Constitution.

Cases pending before courts

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

Prosecuting authority

18. (1) [Section 108](#) of the previous Constitution continues in force until the Act of Parliament envisaged in [section 179](#) of the new Constitution takes effect. This subitem does not affect the appointment of the National Director of Public Prosecutions in terms of [section 179](#).

(2) An attorney-general holding office when the new Constitution takes effect, continues to function in terms of the legislation applicable to that office, subject to subitem (1).

Oaths and affirmations

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

20. (1) In this section "constitutional institution" means-

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

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

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

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

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

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

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

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

Enactment of legislation required by new Constitution

21. (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect.

(2) [Section 198 \(b\)](#) of the new Constitution may not be enforced until the legislation envisaged in that section has been enacted.

(3)* [Section 199 \(3\) \(a\)](#) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged in that section has been enacted.

(4) National legislation envisaged in [section 217 \(3\)](#) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect, but the absence of this legislation during this period does not prevent the implementation of the policy referred to in [section 217 \(2\)](#).

(5) Until the Act of Parliament referred to in [section 65 \(2\)](#) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.

(6) Until the legislation envisaged in [section 229 \(1\) \(b\)](#) of the new Constitution is enacted, a municipality remains competent to impose any tax, levy or duty which it was authorised to impose when [the Constitution](#) took effect.

National unity and reconciliation

22. (1) Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 ([Act 34 of 1995](#)), as amended, including for the purposes of its validity.

(2) For the purposes of subitem (1), the date "6 December 1993", where it appears in the provisions of the previous Constitution under the heading "National Unity and Reconciliation", must be read as "11 May 1994".

23. (1) National legislation envisaged in [sections 9 \(4\), 32 \(2\) and 33 \(3\)](#) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.

(2) Until the legislation envisaged in [sections 32 \(2\) and 33 \(3\)](#) of the new Constitution is enacted-

(a) [section 32 \(1\)](#) must be regarded to read as follows:

"(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights."; and

(b) [section 33 \(1\) and \(2\)](#) must be regarded to read as follows:

"Every person has the right to-

- (a) lawful administrative action where any of their rights or interests is affected or threatened;
- (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
- (c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and
- (d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened."

(3) [Sections 32 \(2\) and 33 \(3\)](#) of the new Constitution lapse if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect.

Public administration and security services

24. (1) Sections 82 (4) (b), [215, 218 \(1\), 219 \(1\), 224 to 228](#), 236 (1), (2), (3), (6), (7) (b) and (8), 237 (1) and (2) (a) and 239 (4) and (5) of the previous Constitution continue in force as if the previous Constitution had not been repealed, subject to-

- (a) the amendments to those sections as set out in Annexure D;
- (b) any further amendment or any repeal of those sections by an Act of Parliament passed in terms of [section 75](#) of the new Constitution; and
- (c) consistency with the new Constitution.

(2) The Public Service Commission and the provincial service commissions referred to in [Chapter 13](#) of the previous Constitution continue to function in terms of that Chapter and the legislation applicable to it as if that Chapter had not been repealed, until the Commission and the provincial service commissions are abolished by an Act of Parliament passed in terms of [section 75](#) of the new Constitution.

(3) The repeal of the previous Constitution does not affect any proclamation issued under section 237 (3) of the previous Constitution, and any such proclamation continues in force, subject to-

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

Additional disqualification for legislatures

25. (1) Anyone who, when the new Constitution took effect, was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.

(2) The disqualification of a person in terms of subitem (1)-

- (a) lapses if the conviction is set aside on appeal, or the sentence is reduced on appeal to a sentence that does not disqualify that person; and
- (b) ends five years after the sentence has been completed.

Local government

26. (1) Notwithstanding the provisions of [sections 151, 155, 156 and 157](#) of the new Constitution-

- (a) the provisions of the Local Government Transition Act, 1993 ([Act 209 of 1993](#)), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until a Municipal Council replacing that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and
- (b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council,

referred to in the Local Government Transition Act, 1993, and who has been identified as set out in [section 182](#) of the previous Constitution, is *ex officio* entitled to be a member of that council until a Municipal Council replacing that council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.

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

Safekeeping of Acts of Parliament and Provincial Acts

27. [Sections 82](#) and [124](#) of the new Constitution do not affect the safe-keeping of Acts of Parliament or provincial Acts passed before the new Constitution took effect.

Registration of immovable property owned by the state

28. (1) On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of [section 239](#) of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

(2) No duty, fee or other charge is payable in respect of a registration in terms of subitem (1).

Annexure A

AMENDMENTS TO [SCHEDULE 2](#) TO THE PREVIOUS CONSTITUTION

1. The replacement of [item 1](#) with the following item:

"1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation."

2. The replacement of [item 2](#) with the following item:

"2. The seats in the National Assembly as determined in terms of [section 46](#) of the new Constitution, shall be filled as follows:

- (a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.
- (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted."

3. The replacement of [item 3](#) with the following item:

"3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine."

4. The amendment of [item 5](#) by replacing the words preceding paragraph (a) with the following words:

"5. The seats referred to in item 2 (a) shall be allocated per region to the parties contesting an election, as follows:"

5. The amendment of [item 6](#)-

- (a) by replacing the words preceding paragraph (a) with the following words:

"6. The seats referred to in item 2 (b) shall be allocated to the parties contesting an election, as follows:"; and

- (b) by replacing paragraph (a) with the following paragraph:

"(a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat."

6. The amendment of [item 7 \(3\)](#) by replacing paragraph (b) with the following paragraph:

"(b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a)."

7. The replacement of [item 10](#) with the following item:

"10. The number of seats in each provincial legislature shall be as determined in terms of [section 105](#) of the new Constitution."

8. The replacement of [item 11](#) with the following item:

"11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall

nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation."

9. The replacement of [item 16](#) with the following item:

"Designation of representatives

16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of [section 190](#) of the new Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.
- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.
- (3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures."

10. The amendment of [item 18](#) by replacing paragraph (b) with the following paragraph:

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

11. The replacement of [item 19](#) with the following item:

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

12. The replacement of [item 23](#) with the following item:

"Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating a person-
 - (a) whose name appears on the list of candidates from which the vacating member was originally nominated; and
 - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item 23A (1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of [item 7](#) or [14](#), as the case may be."

13. The insertion of the following item after [item 23](#):

"Additional ground for loss of membership of legislatures

- 23A. (1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.
- (2) Despite subitem (1) any existing political party may at any time change its name.
- (3) An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with [section 76 \(1\)](#) of the new Constitution to amend this item and [item 23](#) to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature.
- (4) An Act of Parliament referred to in subitem (3) may also provide for-
 - (a) any existing party to merge with another party; or
 - (b) any party to subdivide into more than one party."

14. The deletion of [item 24](#).

15. The amendment of [item 25](#)-

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

" 'Commission' means the Electoral Commission referred to in [section 190](#) of the new Constitution;";
and

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

" 'new Constitution' means [the Constitution](#) of the Republic of South Africa, 1996;"

16. The deletion of [item 26](#).

Annexure B

GOVERNMENT OF NATIONAL UNITY: NATIONAL SPHERE

1. [Section 84](#) of the new Constitution is deemed to contain the following additional subsection:

"(3) The President must consult the Executive Deputy Presidents-

- (a) in the development and execution of the policies of the national government;
- (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
- (c) in the assignment of functions to the Executive Deputy Presidents;
- (d) before making any appointment under [the Constitution](#) or any legislation, including the appointment of ambassadors or other diplomatic representatives;
- (e) before appointing commissions of inquiry;
- (f) before calling a referendum; and
- (g) before pardoning or reprieving offenders."

2. [Section 89](#) of the new Constitution is deemed to contain the following additional subsection:

"(3) [Subsections \(1\)](#) and [\(2\)](#) apply also to an Executive Deputy President."

3. [Paragraph \(a\)](#) of [section 90 \(1\)](#) of the new Constitution is deemed to read as follows:

"(a) an Executive Deputy President designated by the President;"

4. [Section 91](#) of the new Constitution is deemed to read as follows:

"Cabinet

91. (1) The Cabinet consists of the President, the Executive Deputy Presidents and-

- (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
 - (b) not more than one Minister who is not a member of the National Assembly and appointed in terms of subsection (13), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties, deems the appointment of such a Minister expedient.
- (2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.
 - (3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.
 - (4) On being designated, an Executive Deputy President may elect to remain or cease to be a member of the Assembly.
 - (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by [the Constitution](#) or assigned to that office by the President.
 - (6) An Executive Deputy President holds office-
 - (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of [subsections \(2\)](#) and [\(3\)](#); or
 - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.
 - (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
 - (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection (1) (a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.
 - (9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula:
 - (a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1) (a) are to be appointed, plus one.
 - (b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.
 - (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
 - (d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.

- (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must-
- (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
 - (b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio;
 - (c) if it becomes necessary for the purposes of [the Constitution](#) or in the interest of good government, vary any determination under paragraph (a), subject to subsection (9);
 - (d) terminate any appointment under paragraph (b)-
 - (i) if the President is requested to do so by the leader of the party of which the Minister in question is a member; or
 - (ii) if it becomes necessary for the purposes of [the Constitution](#) or in the interest of good government; or
 - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on-
- (a) the exercise of a power referred to in paragraph (a), (c) or (d) (ii) of that subsection, the President's decision prevails;
 - (b) the exercise of a power referred to in paragraph (b), (d) (i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and
 - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.
- (12) If any determination of portfolio allocations is varied under subsection (10) (c), the affected Ministers must vacate their portfolios but are eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President-
- (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must-
 - (i) determine a specific portfolio for a Minister referred to in subsection (1) (b) should it become necessary pursuant to a decision of the President under that subsection;
 - (ii) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio; and
 - (iii) fill, if necessary, a vacancy in respect of that portfolio; or
 - (b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of [the Constitution](#) or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government."

5. [Section 93](#) of the new Constitution is deemed to read as follows:

"Appointment of Deputy Ministers

93. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.
- (3) The provisions of section 91 (10) to (12) apply, with the necessary changes, in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.
- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister-

- (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
 - (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
- (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific power or function."
6. [Section 96](#) of the new Constitution is deemed to contain the following additional subsections:
- "(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.
 - (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
 - (5) If a Minister fails to administer the portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with that policy.
 - (6) If the Minister concerned fails to comply with a requirement of the President under [subsection \(5\)](#), the President may remove the Minister from office-
 - (a) if it is a Minister referred to in section 91 (1) (a), after consultation with the Minister and, if the Minister is not a member of the President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party; or
 - (b) if it is a Minister referred to in section 91 (1) (b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."

Annexure C

GOVERNMENT OF NATIONAL UNITY: PROVINCIAL SPHERE

1. [Section 132](#) of the new Constitution is deemed to read as follows:

"Executive Councils

132. (1) The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.
- (2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties.
 - (3) Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 91 (9), and in applying that formula a reference in that section to-
 - (a) the Cabinet, must be read as a reference to an Executive Council;
 - (b) a Minister, must be read as a reference to a member of an Executive Council; and
 - (c) the National Assembly, must be read as a reference to the provincial legislature.
 - (4) The Premier of a province after consultation with the leaders of the participating parties must-
 - (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of [subsection \(3\)](#);
 - (b) appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;
 - (c) if it becomes necessary for the purposes of [the Constitution](#) or in the interest of good government, vary any determination under paragraph (a), subject to [subsection \(3\)](#);
 - (d) terminate any appointment under paragraph (b)-
 - (i) if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member; or
 - (ii) if it becomes necessary for the purposes of [the Constitution](#) or in the interest of good government; or
 - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council.
 - (5) [Subsection \(4\)](#) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on-
 - (a) the exercise of a power referred to in paragraph (a), (c) or (d) (ii) of that subsection, the

Premier's decision prevails;

- (b) the exercise of a power referred to in paragraph (b), (d) (i) or (e) of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails; and
 - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the Premier's party, the Premier's decision prevails.
- (6) If any determination of portfolio allocations is varied under subsection (4) (c), the affected members must vacate their portfolios but are eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (7) Meetings of an Executive Council must be presided over by the Premier of the province.
- (8) An Executive Council must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government."

2. [Section 136](#) of the new Constitution is deemed to contain the following additional subsections:

- "(3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies.
- (4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council.
- (5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the member concerned fails to comply with a requirement of the Premier under [subsection \(5\)](#), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party."

Annexure D

PUBLIC ADMINISTRATION AND SECURITY SERVICES: AMENDMENTS TO SECTIONS OF THE PREVIOUS CONSTITUTION

1. The amendment of [section 218](#) of the previous Constitution-

- (a) by replacing in [subsection \(1\)](#) the words preceding paragraph (a) with the following words:

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

"(b) the appointment of provincial commissioners;";
- (c)

[[Item 1 \(c\)](#) repealed by [s. 21](#) of [Act No. 10 of 2012](#).]

Wording of Sections

- (d) by replacing paragraph (k) of [subsection \(1\)](#) with the following paragraph:

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

"(1) Subject to [section 218\(1\)](#), a Provincial Commissioner shall be responsible for-".

3. The amendment of [section 224](#) of the previous Constitution by replacing the proviso to [subsection \(2\)](#) with the following proviso:

"Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of [the Constitution](#) of the Republic of South Africa, 1993 ([Act 200 of 1993](#)), but before the adoption of the new constitutional text as envisaged in [section 73](#) of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution."

4. The amendment of [section 227](#) of the previous Constitution by replacing [subsection \(2\)](#) with the following subsection:

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

5. The amendment of [section 236](#) of the previous Constitution-

- (a) by replacing [subsection \(1\)](#) with the following subsection:
- "(1) A public service, department of state, administration or security service which immediately before the commencement of [the Constitution](#) of the Republic of South Africa, 1996 (hereinafter referred to as "the new Constitution"), performed governmental functions, continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution.";
- (b) by replacing subsection (6) with the following subsection:
- "(6) (a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in [subsection \(2\)](#) or any class of such persons.
- (b) The commission may reverse or alter a contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case."; and
- (c) by replacing "this Constitution", wherever this occurs in [section 236](#), with "the new Constitution".
6. The amendment of [section 237](#) of the previous Constitution-
- (a) by replacing paragraph (a) of [subsection \(1\)](#) with the following paragraph:
- "(a) The rationalisation of all institutions referred to in section 236 (1), excluding military forces referred to in [section 224 \(2\)](#), shall after the commencement of [the Constitution](#) of the Republic of South Africa, 1996, continue, with a view to establishing-
- (i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere; and
- (ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government."; and
- (b) by replacing subparagraph (i) of subsection (2) (a) with the following subparagraph:
- "(i) institutions referred to in section 236 (1), excluding military forces, shall rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments;".
7. The amendment of [section 239](#) of the previous Constitution by replacing [subsection \(4\)](#) with the following subsection:
- "(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in [section 224 \(2\)](#) shall devolve upon the National Defence Force in accordance with the directions of the Minister of Defence.".

Footnotes

- * Please note that Sch. [6](#), item 21 (3) makes reference to section 199 (3) (a) , however, paragraph (a) does not exist.

Schedule 6A

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

Schedule 6B

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

Schedule 7 LAWS REPEALED

<i>Number and year of law</i>	<i>Title</i>
Act No. 200 of 1993	Constitution of the Republic of South Africa, 1993
Act No. 2 of 1994	Constitution of the Republic of South Africa Amendment Act, 1994
Act No. 3 of 1994	Constitution of the Republic of South Africa Second Amendment Act, 1994
Act No. 13 of 1994	Constitution of the Republic of South Africa Third Amendment Act, 1994

Act No. 14 of 1994	Constitution of the Republic of South Africa Fourth Amendment Act, 1994
Act No. 24 of 1994	Constitution of the Republic of South Africa Sixth Amendment Act, 1994
Act No. 29 of 1994	Constitution of the Republic of South Africa Fifth Amendment Act, 1994
Act No. 20 of 1995	Constitution of the Republic of South Africa Amendment Act, 1995
Act No. 44 of 1995	Constitution of the Republic of South Africa Second Amendment Act, 1995
Act No. 7 of 1996	Constitution of the Republic of South Africa Amendment Act, 1996
Act No. 26 of 1996	Constitution of the Republic of South Africa Third Amendment Act, 1996

GNR.1675 of 31 October 2003: Rules of the Constitutional Court

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The English text of the Constitutional Court Rules is contained in Government Gazette No. 25726 of 31 October 2003 and follows beneath. The Constitutional Court Rules in all other official languages will be available in due course.

The Chief Justice of South Africa has, under [section 171](#) of the Constitution of the Republic of South Africa, 1996, and [section 16](#) of the Constitutional Court Complementary Act, 1995 (Act [No. 13 of 1995](#)), as amended, prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from 1 December 2003.

	ARRANGEMENT OF RULES
1.	Definitions
	PART I
2.	Court
	PART II
	REGISTRAR
3.	Registrar's office hours
4.	General duties of the Registrar
	PART III
	JOINDER OF ORGANS OF STATE
5.	
	PART IV
	PARTIES
6.	Representation of Parties
7.	Change of Parties
8.	Intervention of Parties in the proceedings
9.	Power of attorney or authorisation to act
	PART V
10.	<i>Amici curiae</i>
	PART VI
	APPLICATIONS
11.	Application procedure
12.	Urgent applications
13.	Argument

PART VII

MATTERS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT

- [14.](#) Referral of a Bill
- [15.](#) Constitutionality of an Act
- [16.](#) Confirmation of an order of constitutional invalidity
- [17.](#) Certification of a provincial constitution

PART VIII

DIRECT ACCESS AND APPEALS

- [18.](#) Direct access
- [19.](#) Appeals
- [20.](#) Procedure on appeal
- [21.](#) Additional information to be furnished to the Registrar

PART IX

FEES AND COSTS

- [22.](#) Taxation of costs and attorneys' fees
- [23.](#) Fees of the Court

PART X

MISCELLANEOUS PROVISIONS

- [24.](#) Library
- [25.](#) Translations
- [26.](#) Models, diagrams and exhibits
- [27.](#) Withdrawal of cases
- [28.](#) Format of documents
- [29.](#) Application of certain rules of the Uniform Rules
- [30.](#) Application of certain sections of the Supreme Court Act, 1959
- [31.](#) Documents lodged to canvass factual material
- [32.](#) Non-compliance with the rules
- [33.](#) Execution: Section 3 of the Constitutional Court Complementary Act, 1995 (Act [No. 13 of 1995](#))
- [34.](#) Transitional provisions
- [35.](#) Repeal of rules
- [36.](#) Short title

SCHEDULE 1

- [Form 1](#) Notice of motion (to Registrar)
- [Form 2](#) Notice of motion (to Registrar and Respondent)

SCHEDULE 2

[Fees](#)

1. Definitions.-(1) In these rules any word or expression to which a meaning has been assigned in the Constitution shall bear that meaning and, unless the context otherwise indicates-

"affidavit" includes an affirmation or a declaration contemplated in [section 7](#) of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act [No. 16 of 1963](#));

"apply" means apply on notice of motion, and **"application"** has a corresponding meaning;

"Chief Justice" means the Chief Justice of South Africa appointed in terms of [section 174 \(3\)](#) of the Constitution;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Court" means the Constitutional Court established by [section 166 \(a\)](#) of the Constitution, read with [item 16 \(2\) \(a\)](#) of [Schedule 6](#) to the Constitution;

"Court day" means any day other than a Saturday, Sunday or public holiday, and only Court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the Court;

"Deputy Chief Justice" means the Deputy Chief Justice appointed in terms of [section 174 \(3\)](#) of the Constitution;

"directions" means directions given by the Chief Justice with regard to the procedures to be followed in the conduct and disposition of cases;

"judge" means a judge or acting judge of the Court appointed under [section 174](#) or [175](#) of the Constitution,

sitting otherwise than in open court;

"law clinic" means a centre for the practical legal education of students in the faculty of law at a university in the Republic, and includes a law centre controlled by a non-profit organisation which provides the public with legal services free of charge and is certified as contemplated in section 3 (1) (f) of the Attorneys Act, 1979 (Act No. 53 of 1979);

"legal representative" means an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act No. 53 of 1979);

"party" or any other reference to a litigant includes a legal representative appearing on behalf of a party, as the context may require;

"President" means the President of the Supreme Court of Appeal;

"Registrar" means the Registrar of the Court, and includes any acting or assistant Registrar of the Court, or in their absence any person designated by the Director of the Court;

"sheriff" means a person appointed in terms of [section 2](#) of the Sheriffs Act, 1986 (Act [No. 90 of 1986](#)), and includes a person appointed in terms of [section 5](#) or [section 6](#) of that Act as an acting or a deputy sheriff, respectively, and a sheriff, an acting or a deputy sheriff appointed in terms of any law not yet repealed by a competent authority and in force immediately before the commencement of the Constitution, in any area which forms part of the national territory;

"Supreme Court of Appeal Rules" means the rules regulating the conduct of the proceedings of the Supreme Court of Appeal published under [Government Notice No. R.1523 of 27 November 1998](#); and

"Uniform Rules" means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the high courts published under [Government Notice No. R.48 of 12 January 1965](#), as amended.

(2) Any powers or authority vesting in the Chief Justice in terms of these rules may be exercised by a judge or judges designated by the Chief Justice for that purpose.

(3) Any reference in these rules to a party having to sign documents shall be construed as including a reference to a legal representative representing such party, and a reference to lodging documents with the Registrar as including prior service of such documents on other parties and the lodging of 25 copies of all relevant documents and an electronic version thereof that is compatible with the software used by the Court, with the Registrar.

(4) Notices, directions or other communications in terms of these rules may be given or made by registered post or by facsimile or other electronic copy: Provided that, if a notice or other communication is given by electronic copy, the party giving such notice or communication shall forthwith lodge with the Registrar a hard copy of the notice or communication, with a certificate signed by such a party verifying the date of such communication or notice.

(5) The Chief Justice may extend any time limit prescribed in these rules.

(6) Written arguments, responses and any other representations to the Court shall be clear and succinct.

(7) Applications shall be legible and in double-spaced, typewritten format on A4-size paper.

(8) Subject to [rule 5](#), the provisions of [rule 4](#) of the Uniform Rules shall apply, with such modifications as may be necessary, to the service of any process of the Court.

PART I

2. Court.-(1) There shall be four terms in each year as follows:

15 February to 31 March, inclusive;

1 May to 31 May, inclusive;

15 August to 30 September, inclusive;

1 November to 30 November, inclusive.

(2) A case may be heard out of term if the Chief Justice so directs.

(3) If the day fixed for the commencement of a term is not a Court day, the term shall commence on the next succeeding Court day and, if the day fixed for the end of a term is not a Court day, the term shall end on the Court day preceding.

PART II REGISTRAR

3. Registrar's office hours.-(1) The office of the Registrar shall be open from 08:30 to 13:00 and from 14:00 to 15:30 on Court days.

(2) The Registrar may in exceptional circumstances accept documents at a time outside office hours, and shall do so when directed by a judge.

4. General duties of the Registrar.-(1) A notice of appeal, an order of court referring any matter to the Court by another court, or another document by which proceedings are initiated in the Court in terms of these rules shall be numbered by the Registrar with a consecutive number for the year during which it is filed.

(2) Every document afterwards lodged in such a case or in any subsequent case in continuation thereof shall be marked with that number by the party lodging it and shall not be received by the Registrar until so marked.

(3) All documents delivered to the Registrar to be filed in a case shall be filed by the Registrar in a case file under the number of such case.

(4) All documents referred to in [subrule \(1\)](#) shall be subject to the payment of R75, 00 court fees in the form of a revenue stamp: Provided that if a party satisfies the Registrar in terms of [subrule \(5\)](#) that he or she is indigent, the payment of court fees shall be waived by the Registrar who shall make a note to that effect on the first page of the document in question.

(5) A party who desires to initiate or oppose proceedings in the Court and who is of the opinion that he or she is indigent, or anybody on behalf of such party, shall satisfy the Registrar that, except for household goods, wearing apparel and tools of trade, such party is not possessed of property to the amount of R20 000 and will not be able within a reasonable time to provide such sum from his or her earnings.

(6) Where photocopies are made, the fee prescribed in [subrule \(6\) \(a\)](#) shall be payable. Copies of a record may be made by any person in the presence of the Registrar.

(a) The Registrar shall at the request of a party make a copy of any court document on payment of court fees with revenue stamps of R0, 50 for every photocopy of an A4-size page or part thereof and shall against payment of a fee of R1, 00 certify that photocopy to be a true copy of the original.

(b) The payment of court fees may be waived by the Registrar in the case of an indigent person referred to in subrules (4) and (5).

(7) Whenever the Court makes an order declaring or confirming any law or provision thereof to be inconsistent with the Constitution under [section 172](#) of the Constitution, the Registrar shall, not later than 15 days after such order has been made, cause such order to be published in the *Gazette* and in the relevant *Provincial Gazette* if the order relates to provincial legislation.

(8) The Registrar shall publish a hearing list, which shall be affixed to the notice board at the Court building not less than 15 days before each term for the convenience of the legal representatives and the information of the public.

(9) Directions with regard to any proceedings shall be furnished by the Registrar to the parties concerned within five days of such directions having been given.

(10) (a) The Registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building.

(b) Any document lodged with the Registrar and made part of the Court's records shall not thereafter be withdrawn permanently from the official court files.

(c) After the conclusion of the proceedings in the Court, any original records and papers transmitted to the Court by any other court shall be returned to the court from which they were received.

(11) (a) If it appears to the Registrar that a party is unrepresented, he or she shall refer such party to the nearest office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or such other appropriate body or institution that may be willing and in a position to assist such party.

(b) The State or the Registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that Registrar to such party in proceedings before the Court or in the enforcement of an order in terms of these rules in the form of legal advice or in the compilation or preparation of any process or document.

PART III JOINDER OF ORGANS OF STATE

5. (1) In any matter, including any appeal, where there is a dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct, or in any inquiry into the constitutionality of any law, including any Act of Parliament or that of a provincial legislature, and the authority responsible for the executive or administrative act or conduct or the threatening thereof or for the administration of any such law is not cited as a party to the case, the party challenging the constitutionality of such act or conduct or law shall, within five days of lodging with the Registrar a document in which such contention is raised for the first

time in the proceedings before the Court, take steps to join the authority concerned as a party to the proceedings.

(2) No order declaring such act, conduct or law to be unconstitutional shall be made by the Court in such matter unless the provisions of this rule have been complied with.

PART IV PARTIES

6. Representation of Parties.—Except where the Court or the Chief Justice directs otherwise, no person shall be entitled to appear on behalf of any party at any proceedings of the Court unless he or she is entitled to appear in the high courts.

7. Change of Parties.—(1) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall thereby be stayed until such time as an authorised representative or other competent person has been appointed in the place of such party, or until such incompetence ceases to exist.

(2) Where an authorised or other competent person has been so appointed, the Court may, on application, order that such authorised or competent person be substituted for the party who has so died or become incompetent.

8. Intervention of Parties in the proceedings.—(1) Any person entitled to join as a party or liable to be joined as a party in the proceedings may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a party.

(2) The Court or the Chief Justice may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the proceedings as may be necessary.

9. Power of attorney or authorisation to act.—(1) A power of attorney need not be filed, but the authority of a legal practitioner to act on behalf of any party may, within 21 days after it has come to the notice of any party that the legal practitioner is so acting, or with the leave of the Court on good cause shown at any time before judgment, be disputed by notice, whereafter the legal practitioner may no longer so act, unless a power of attorney is lodged with the Registrar within 21 days of such notice.

(2) Every power of attorney or authorisation to act lodged shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law.

(3) No power of attorney or authorisation to act shall be required to be lodged by anyone acting on behalf of the State.

PART V

10. Amici curiae.—(1) Subject to these rules, any person interested in any matter before the Court may, with the written consent of all the parties in the matter before the Court, given not later than the time specified in [subrule \(5\)](#), be admitted therein as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon in writing with all the parties before the Court or as may be directed by the Chief Justice in terms of [subrule \(3\)](#).

(2) The written consent referred to in [subrule \(1\)](#) shall, within five days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

(3) The Chief Justice may amend the terms, conditions, rights and privileges agreed upon as referred to in [subrule \(1\)](#).

(4) If the written consent referred to in [subrule \(1\)](#) has not been secured, any person who has an interest in any matter before the Court may apply to the Chief Justice to be admitted therein as an *amicus curiae*, and the Chief Justice may grant such application upon such terms and conditions and with such rights and privileges as he or she may determine.

(5) If time limits are not otherwise prescribed in the directions given in that matter an application pursuant to the provisions of [subrule \(4\)](#) shall be made not later than five days after the lodging of the respondent's written submissions or after the time for lodging such submissions has expired.

(6) An application to be admitted as an *amicus curiae* shall—

(a) briefly describe the interest of the *amicus curiae* in the proceedings;

- (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings; and
- (c) set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(7) An *amicus curiae* shall have the right to lodge written argument, provided that such written argument does not repeat any matter set forth in the argument of the other parties and raises new contentions which may be useful to the Court.

(8) Subject to the provisions of [rule 31](#), an *amicus curiae* shall be limited to the record on appeal or referral and the facts found proved in other proceedings and shall not add thereto and shall not present oral argument.

(9) An order granting leave to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.

(10) An order of Court dealing with costs may make provision for the payment of costs incurred by or as a result of the intervention of an *amicus curiae*.

(11) The provisions of [rule 1 \(3\)](#) shall be applicable, with such modifications as may be necessary, to an *amicus curiae*.

PART VI APPLICATIONS

11. Application procedure.-(1) Save where otherwise provided, in any matter in which an application is necessary for any purpose, including-

- (a) in respect of a matter contemplated in [section 167 \(4\) \(a\)](#) of the Constitution, and
- (b) the obtaining of directions from the Court,

such application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief and shall set out an address within 25 kilometres from the office of the Registrar stating the physical and postal address with facsimile, telephone numbers and an e-mail address, where available, at which he or she will accept notice and service of all documents in the proceedings and shall set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he or she intends to oppose such application and shall further state that if no such notification is given, the Registrar will be requested to place the matter before the Chief Justice to be dealt with in terms of [subrule \(4\)](#).

(2) When relief is claimed against any person, authority, government, organ of state or body, or where it is necessary or proper to give any of the aforementioned notice of an application referred to in [subrule \(1\)](#), the notice of motion shall be addressed to both the Registrar and the aforementioned, and shall set out such particulars, including physical address, facsimile, telephone numbers and an e-mail address, where available, of the party against whom the relief is sought, as will enable the Registrar to communicate with such party, otherwise it shall be addressed to the Registrar and shall be as near as may be in accordance with Form 1 or 2, as the case may be.

(3) (a) Any person opposing the granting of an order sought in the notice of motion shall-

- (i) within the time stated in the said notice, notify the applicant and the Registrar in writing of his or her intention to oppose the application and shall in such notice appoint an address within 25 kilometres of the office of the Registrar at which he or she will accept notice and service of all documents in the proceedings;
- (ii) within 15 days of notifying the applicant of his or her intention to oppose the application lodge his or her answering affidavit, if any, together with any relevant documents, which may include supporting affidavits.

(b) The applicant may lodge a replying affidavit within 10 days of the service upon him or her of the affidavit and documents referred to in [paragraph \(a\) \(ii\)](#).

(c) (i) Where no notice of opposition is given or where no answering affidavit in terms of [paragraph \(a\) \(ii\)](#) is lodged within the time referred to in [paragraph \(a\) \(ii\)](#), the Registrar shall within five days of the expiry thereof place the application before the Chief Justice.

(ii) Where an answering affidavit is lodged, the Registrar shall place the application before the Chief Justice within five days of the lodging of the replying affidavit.

(d) The Chief Justice may, when giving directions under [subrule \(4\)](#), permit the lodging of further affidavits.

(4) When an application is placed before the Chief Justice in terms of [subrule \(3\) \(c\)](#), he or she shall give directions as to how the application shall be dealt with and, in particular, as to whether it shall be set down for hearing or whether it shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the affidavits.

12. Urgent applications.-(1) In urgent applications, the Chief Justice may dispense with the forms and service provided for in these rules and may give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as is practicable be in accordance with these rules, as may be appropriate.

(2) An application in terms of [subrule \(1\)](#) shall on notice of motion be accompanied by an affidavit setting forth explicitly the circumstances that justify a departure from the ordinary procedures.

13. Argument.-(1) Written argument shall be filed timeously and shall contain a table of contents, and a table of authorities with references to the pages in the document on which they are cited.

(2) Oral argument shall not be allowed if directions to that effect are given by the Chief Justice.

(3) (a) Oral argument shall be relevant to the issues before the Court and its duration shall be subject to such time limits as the Chief Justice may impose.

(b) The parties shall assume that all the judges have read the written arguments and that there is no need to repeat what is set out therein.

(4) (a) Argument may be addressed to the Court in any official language and the party concerned shall not be responsible for the provision of an interpreter.

(b) Should a person wish to address the Court in an official language other than the language in which such person's written argument is couched, such person shall, at least seven days prior to the hearing of the matter in question, give written notice to the Registrar of his or her intention to use another official language and shall indicate what that language is.

(5) On the Court's own motion, or on the application of one or more parties, the Court may order that two or more cases, involving what appear to be the same or related questions, be argued together as one case or on such other terms as may be prescribed.

PART VII MATTERS WITH IN THE EXCLUSIVE JURISDICTION OF THE COURT

14. Referral of a Bill.-(1) The referral of a Bill in terms of [section 79 \(4\) \(b\)](#) or [121 \(2\) \(b\)](#) of the Constitution by the President of the Republic of South Africa or by the Premier of a province, as the case may be, shall be in writing and shall be addressed to the Registrar and to the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, or to the Speaker of the provincial legislature in question, as the case may be.

(2) Such referral shall specify-

- (a) the provision or provisions of the Bill in respect of which the President of the Republic of South Africa or the Premier of a province has reservations;
- (b) the constitutional provision or provisions relating to such reservations; and
- (c) the grounds or reasons for such reservations.

(3) Political parties represented in the national Parliament or the provincial legislature concerned, as the case may be, shall be entitled as of right to make written submissions relevant to the determination of the issue within the time specified in directions given under [subrule \(4\)](#).

(4) Upon receipt of the referral, the matter shall be dealt with in accordance with directions given by the Chief Justice, which may include a direction-

- (a) requesting the relevant Speaker or the Chairperson of the National Council of Provinces, as the case may be, for such additional information as the Chief Justice may consider to be necessary or expedient to deal with the matter; and
- (b) calling upon all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who may wish to do so to make such written submissions as are relevant to the determination of the issue within a period to be specified in such direction.

15. Constitutionality of an Act.-(1) An application in terms of [sections 80 \(1\)](#) and [122 \(1\)](#) of the Constitution by members of the National Assembly or a provincial legislature shall be brought on notice of motion supported by an affidavit as to the contentions upon which the applicants rely for relief and shall be lodged with the Registrar and served on the Speaker of the National Assembly and, where applicable, the Chairperson of the National Council of Provinces, or on the Speaker of the provincial legislature concerned, as the case may be.

(2) The notice shall request the Speaker and, if relevant, the Chairperson of the National Council of Provinces, to bring the application to the attention of all political parties represented in the relevant house or legislature in writing within five days of the service upon him or her of such application.

(3) The application referred to in subrule (1) shall be accompanied by a certificate by the Speaker of the legislature concerned that the requirements of [section 80 \(2\) \(a\)](#) or [section 122 \(2\) \(a\)](#) of the Constitution, as the case maybe, have been complied with.

(4) The application referred to in subrule (1) shall also specify-

- (a) the provision or provisions of the Act being challenged;
- (b) the relevant provision or provisions of the Constitution relied upon for such challenge;
- (c) the grounds upon which the respective provisions are deemed to be in conflict; and
- (d) the relief, including any interim relief, sought.

(5) (a) Any political party in the legislature concerned or any government that wishes to oppose the granting of an order sought in such an application shall notify the Registrar in writing within 15 days of service of such application of such intention to oppose and shall, in such notification, appoint an address at which such party or government will accept notice and service of all documents in the proceedings.

(b) If such a notice is given, the application shall be disposed of in accordance with the provisions of [rule 11](#).

(6) If a notice to oppose is not lodged in terms of [subrule \(5\)](#), the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include a direction-

- (a) calling for such additional information as the Chief Justice may consider necessary or expedient to deal with the matter; and
- (b) that all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who wish to do so make such written submissions as are relevant to the determination of the issue within a period specified in such direction.

16. Confirmation of an order of constitutional invalidity.-(1) The Registrar of a court which has made an order of constitutional invalidity as contemplated in [section 172](#) of the Constitution shall, within 15 days of such order, lodge with the Registrar of the Court a copy of such order.

(2) A person or organ of state entitled to do so and desirous of appealing against such an order in terms of [section 172 \(2\) \(d\)](#) of the Constitution shall, within 15 days of the making of such order, lodge a notice of appeal with the Registrar and a copy thereof with the Registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

(3) The appellant shall in such notice of appeal set forth clearly the grounds on which the appeal is brought, indicating which findings of fact and/or law are appealed against and the order it is contended ought to have been made.

(4) A person or organ of state entitled to do so and desirous of applying for the confirmation of an order in terms of [section 172 \(2\) \(d\)](#) of the Constitution shall, within 15 days of the making of such order, lodge an application for such confirmation with the Registrar and a copy thereof with the Registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

(5) If no notice or application as contemplated in subrules (2) and (4), respectively, has been lodged within the time prescribed, the matter of the confirmation of the order of invalidity shall be disposed of in accordance with directions given by the Chief Justice.

17. Certification of a provincial constitution.-(1) The Speaker of a provisional legislature which has passed or amended a constitution in terms of [sections 142](#) and [144 \(2\)](#) of the Constitution and which wishes such constitution or constitutional amendment to be certified by the Court shall certify in writing the content of the constitution or amendment passed by the provincial legislature and submit such constitution or constitutional amendment to the Registrar with a formal request to the Court to perform its functions in terms of [section 144](#) of the Constitution.

(2) The certificate contemplated in [subrule \(1\)](#) shall include a statement specifying that the constitution or the constitutional amendment was passed by the requisite majority.

(3) Any political party represented in the provincial legislature shall be entitled as of right to present oral argument to the Court, provided that such political party may be required to submit a written submission to the Court in advance of the oral argument.

(4) Upon the receipt of the request referred to in [subrule \(1\)](#), the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include-

- (a) referral to the Speaker for such additional information as is considered by the Chief Justice to be necessary or expedient to deal with the matter;
- (b) a direction, specifying the time within which written submissions from interested political parties shall be made;
- (c) a direction that any written submissions made in terms [paragraph \(b\)](#) should be brought to the

attention of other political parties in the provincial legislature by such means as the Chief Justice considers suitable.

(5) An order of the Court pursuant to [section 144](#) of the Constitution may specify the provisions of the provincial constitution or of the constitutional amendment, if any, which comply and which do not comply with the Constitution.

PART VIII DIRECT ACCESS AND APPEALS

18. Direct access.-(1) An application for direct access as contemplated in [section 167 \(6\) \(a\)](#) of the Constitution shall be brought on notice of motion, which shall be supported by an affidavit, which shall set forth the facts upon which the applicant relies for relief.

(2) An application in terms of [subrule \(1\)](#) shall be lodged with the Registrar and served on all parties with a direct or substantial interest in the relief claimed and shall set out-

- (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
- (b) the nature of the relief sought and the grounds upon which such relief is based;
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot,
- (d) how such evidence should be adduced and conflicts of fact resolved.

(3) Any person or party wishing to oppose the application shall, within 10 days after the lodging of such application, notify the applicant and the Registrar in writing of his or her intention to oppose.

(4) After such notice of intention to oppose has been received by the Registrar or where the time for the lodging of such notice has expired, the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include-

- (a) a direction calling upon the respondents to make written submissions to the Court within a specified time as to whether or not direct access should be granted; or
- (b) a direction indicating that no written submissions or affidavits need be filed.

(5) Applications for direct access may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself: Provided that where the respondent has indicated his or her intention to oppose in terms of [subrule \(3\)](#), an application for direct access shall be granted only after the provisions of [subrule \(4\) \(a\)](#) have been complied with.

19. Appeals.-(1) The procedure set out in this rule shall be followed in an application for leave to appeal to the Court where a decision on a constitutional matter, other than an order of constitutional invalidity under [section 172 \(2\) \(a\)](#) of the Constitution, has been given by any court including the Supreme Court of Appeal, and irrespective of whether the President has refused leave or special leave to appeal.

(2) A litigant who is aggrieved by the decision of a court and who wishes to appeal against it directly to the Court on a constitutional matter shall, within 15 days of the order against which the appeal is sought to be brought and after giving notice to the other party or parties concerned, lodge with the Registrar an application for leave to appeal: Provided that where the President has refused leave to appeal the period prescribed in this rule shall run from the date of the order refusing leave.

(3) An application referred to in [subrule \(2\)](#) shall be signed by the applicant or his or her legal representative and shall contain-

- (a) the decision against which the appeal is brought and the grounds upon which such decision is disputed;
- (b) a statement setting out clearly and succinctly the constitutional matter raised in the decision; and any other issues including issues that are alleged to be connected with a decision on the constitutional matter;
- (c) such supplementary information or argument as the applicant considers necessary to bring to the attention of the Court; and
- (d) a statement indicating whether the applicant has applied or intends to apply for leave or special leave to appeal to any other court, and if so-
 - (i) which court;
 - (ii) whether such application is conditional upon the application to the Court being refused; and
 - (iii) the outcome of such application, if known at the time of the application to the Court.

(4) (a) Within 10 days from the date upon which an application referred to in [subrule \(2\)](#) is lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the application for leave to appeal is being opposed, and if so the grounds for such opposition.

(b) The response shall be signed by the respondent or respondents or his or her or their legal representative.

(5) (a) A respondent or respondents wishing to lodge a cross-appeal to the Court on a constitutional matter shall, within 10 days from the date upon which an application in [subrule \(2\)](#) is lodged, lodge with the Registrar an application for leave to cross-appeal.

(b) The provisions of these rules with regard to appeals shall apply, with necessary modifications, to cross-appeals.

(6) (a) The Court shall decide whether or not to grant the appellant leave to appeal.

(b) Applications for leave to appeal may be dealt with summarily, without receiving oral or written argument other than that contained in the application itself.

(c) The Court may order that the application for leave to appeal be set down for argument and direct that the written argument of the parties deal not only with the question whether the application for leave to appeal should be granted, but also with the merits of the dispute. The provisions of [rule 20](#) shall, with necessary modifications, apply to the procedure to be followed in such procedures.

20. Procedure on appeal.-(1) If leave to appeal is given in terms of [rule 19](#), the appellant shall note and prosecute the appeal as follows:

(a) The appellant shall prepare and lodge the appeal record with the Registrar within such time as may be fixed by the Chief Justice in directions.

(b) Subject to the provisions of [subrule \(1\) \(c\)](#) below, the appeal record shall consist of the judgment of the court from which the appeal is noted, together with all the documentation lodged by the parties in that court and all the evidence which may have been led in the proceedings and which may be relevant to the issues that are to be determined.

(c) (i) The parties shall endeavour to reach agreement on what should be included in the record and, in the absence of such agreement, the appellant shall apply to the Chief Justice for directions to be given in regard to the compilation of the record.

(ii) Such application shall be made in writing and shall set out the nature of the dispute between the parties in regard to the compilation of the record and the reasons for the appellant's contentions.

(iii) The respondent may respond to the application within 10 days of being served with the application and shall set out the reasons for the respondent's contentions.

(iv) The Chief Justice may assign the application to one or more judges, who may deal with the matter on the papers or require the parties to appear before him or her or them on a specified day and at a specified time to debate the compilation of the record.

(v) The judge or judges concerned shall give directions in regard to the compilation of the record, the time within which the record is to be lodged with the Registrar and any other matters which may be deemed by him or her or them to be necessary for the purpose of enabling the Court to deal with the appeal, which directions may include that the matter be referred back to the court *a quo* for the hearing of additional evidence specified in the directions, or that additional evidence be put before the Court by way of affidavit or otherwise for the purpose of the appeal.

(2) (a) One of the copies of the record lodged with the Registrar shall be certified as correct by the Registrar of the court appealed from.

(b) Copies of the record shall be clearly typed on stout A4-size paper, double-spaced in black record ink, on one side of the paper only.

(c) Legible documents that were typed or printed in their original form such as cheques and the like shall not be retyped and clear photocopies on A4-size paper shall be provided instead.

(d) The pages shall be numbered clearly and consecutively and every tenth line on each page shall be numbered and the pagination used in the court *a quo* shall be retained where possible.

(e) Bulky records shall be divided into separate conveniently-sized volumes of approximately 100 pages each. The record shall be securely bound in book format to withstand constant use and shall be so bound that upon being used will lie open without manual or other restraint.

(f) All records shall be securely bound in suitable covers disclosing the case number, names of the parties, the volume number and the numbers of the pages contained in that volume, the total number of volumes, the court *a quo* and the names of the attorneys of the parties.

(g) The binding required by this rule shall be sufficiently secure to ensure the stability of the papers

contained within the volume; and where the record consists of more than one volume, the number of each volume and the number of the pages contained in a volume shall appear on the upper third of the spine of the volume.

(h) Where documents are lodged with the Registrar, and such documents are recorded on a computer disk, the party lodging the document shall where possible also make available to the Registrar a disk containing the file in which the document is contained, or transmit an electronic copy of the document concerned by e-mail in a format determined by the Registrar which is compatible with software that is used by the Court at the time of lodgement, to the Registrar at: registrar@concourt.org.za: Provided that the transmission of such copy shall not relieve the party concerned from the obligation under [rule 1 \(3\)](#) to lodge the prescribed number of hard copies of the documents so lodged.

(i) If a disk is made available to the Registrar the file will be copied and the disk will be returned to the party concerned. Where a disk or an electronic copy of a document other than a record is provided, the party need lodge only 13 copies of the document concerned with the Registrar.

(3) If a record has been lodged in accordance with the provisions of [paragraphs \(b\)](#) and [\(c\)](#) of [subrule \(1\)](#), the Registrar shall cause a notice to be given to the parties to the appeal requiring-

- (a) the appellant to lodge with the Registrar written argument in support of the appeal within a period determined by the Chief Justice and specified in such notice; and
- (b) the respondent to lodge with the Registrar written argument in reply to the appellant's argument by a specified date determined by the Chief Justice, which shall be subsequent to the date on which the appellant's argument was served on the respondent.

(4) The appellant may lodge with the Registrar written argument in answer to the respondent's argument within 10 days from the date on which the respondent's argument was served on the appellant.

(5) The Chief Justice may decide whether the appeal shall be dealt with on the basis of written arguments only.

(6) Subject to the provisions of [subrule \(5\)](#), the Chief Justice shall determine the date on which oral argument will be heard, and the Registrar shall within five days of such determination notify all parties to the appeal of the date of the hearing by registered post or facsimile.

21. Additional information to be furnished to the Registrar.—When an application for confirmation of an order of constitutional invalidity or a notice of appeal against such order is lodged with the Registrar in terms of [rule 16](#), or an application for leave to appeal is lodged in terms of [rule 19](#), the applicant or appellant shall at the same time provide the Registrar with a note—

- (a) setting out the length of the record, or if the record consists of evidence that has not been transcribed, an estimate of the length of the record and the time required for transcription;
- (b) whether there are any special circumstances that may require a hearing of more than one day or which might otherwise be relevant to the directions to be given by the Chief Justice.

PART IX FEES AND COSTS

22. Taxation of costs and attorneys' fees.—(1) Rules 17 and 18 of the Supreme Court of Appeal Rules regarding taxation and attorneys' fees shall apply, with such modifications as may be necessary.

(2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.

23. Fees of the Court.—(1) In addition to the Court fees already prescribed in these rules the fees in [Schedule 2](#) shall be the fees of the court payable with revenue stamps.

(2) The proviso to [rule 4 \(4\)](#) and the provisions of [rule 4 \(5\)](#) shall apply, with such modifications as may be necessary.

PART X MISCELLANEOUS PROVISIONS

24. Library.—(1) The Court's library shall be available for use by the judges, the staff of the Court and other persons who have permission from the librarian for the purposes of constitutional research.

(2) The library shall be open during such times as the reasonable needs of the Court may require and its operation shall be governed by the rules made by the Court's Library Committee in consultation with the Chief

25. Translations.—Where any record or other document lodged with the Registrar contains material written in an official language that is not understood by all the judges, the Registrar shall have the portions of such record or document concerned translated by a sworn translator of the High Court into a language or languages that will be understood by such judges, and shall supply the parties with a copy of such translations.

26. Models, diagrams and exhibits.—(1) Models, diagrams and exhibits of material forming part of the evidence taken in a case and brought to the Court for its inspection shall be placed in the custody of the Registrar at least 10 days before the case is to be heard or submitted.

(2) All models, diagrams and exhibits of material placed in the custody of the Registrar shall be removed by the parties within 40 days after the case is decided.

(3) When this is not done, the Registrar shall notify the party concerned to remove the articles forthwith and if they are not removed within six months thereafter, the Registrar shall destroy them or otherwise appropriately dispose of them.

27. Withdrawal of cases.—Whenever all parties, at any stage of the proceedings, lodge with the Registrar an agreement in writing that a case be withdrawn, specifying the terms relating to the payment of costs and payment to the Registrar of any fees that may be due, the Registrar shall, if the Chief Justice so directs, enter such withdrawal, whereupon the Court shall no longer be seized of the matter.

28. Format of documents.—(1) Every document that exceeds 15 pages shall, regardless of the method of duplication, contain a table of contents with correct references.

(2) Every document at its close shall bear the name of the party or his or her attorney, the postal and physical address, facsimile, telephone number and an e-mail address, where available, and the original document shall be signed by the party or his or her attorney.

(3) (a) The Registrar shall not accept for lodging any document presented in a form not in compliance with these rules, but shall return it to the defaulting party indicating respects in which there has been a failure to comply: Provided that if new and proper copies of any such document are resubmitted within five days of receiving written notification, such lodging shall not be deemed late.

(b) If the Court finds that the provisions of these rules have not been complied with, it may impose, in its discretion, appropriate sanctions.

29. Application of certain rules of the Uniform Rules.—The following rules of the Uniform Rules shall, with such modifications as may be necessary, apply to the proceedings in the Court:

Rule No.	Subject
6 (7) to 6 (15)	Joinder of parties on application and related matters
28	Amendments to pleadings and documents
35 (13)	Discovery, inspection and production of documents
38 (3) to 38 (8)	Procuring evidence for trial
42	Variation and rescission of orders
59	Sworn translators
61	Interpretation of evidence
62	Filing, preparation and inspection of documents
63	Authentication of documents executed outside the Republic for use within the Republic
64	Destruction of documents
65	Commissioners of the Court

30. Application of certain sections of the Supreme Court Act, 1959 (Act No. 59 of 1959).-The following sections of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply, with such modifications as may be necessary, to proceedings of and before the Court as if they were rules of their court.

Section	Subject
19bis	Reference of particular matters for investigation by referee
22	Powers of court on hearing of appeals
32	Examinations by interrogatories of persons whose evidence is required in civil cases
	Manner of dealing with commissions <i>rogatoire</i> , letters of request and documents for service originating from foreign countries:
33	Provided that this provision shall apply subject to the replacement of English or Afrikaans with the phrase "any official language".

31. Documents lodged to canvass factual material.-(1) Any party to any proceedings before the Court and an *amicus curiae* properly admitted by the Court in any proceedings shall be entitled, in documents lodged with the Registrar in terms of these rules, to canvass factual material that is relevant to the determination of the issues before the Court and that does not specifically appear on the record: Provided that such facts-

- (a) are common cause or otherwise incontrovertible; or
- (b) are of an official, scientific, technical or statistical nature capable of easy verification.

(2) All other parties shall be entitled, within the time allowed by these rules for responding to such document, to admit, deny, controvert or elaborate upon such facts to the extent necessary and appropriate for a proper decision by the Court.

32. Non-compliance with the rules.-The Court or the Chief Justice may-

- (1) of their own accord or on application and on sufficient cause shown, extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules; and
- (2) give such directions in matters of practice, procedure and the disposal of any appeal, application or other matter as the Court or Chief Justice may consider just and expedient.

33. Execution: Section 3 of the Constitutional Court Complementary Act, 1995 (Act [No. 13 of 1995](#)).-Costs orders of the Court shall be executed in the magistrate's court as follows:

- (1) The costs order shall have the effect of a civil judgment of the magistrate's court and the party in whose favour a costs order was made shall be deemed the judgment creditor and the party against whom such order was made shall be deemed the judgment debtor.
- (2) The party in whose favour a costs order was made shall, where a costs order has not been complied with, file with the Registrar an affidavit setting out the details of the costs order and stating that the costs order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, and shall request the Registrar to furnish him or her with a certified copy of such costs order.
- (3) The Registrar shall, after having inspected the court file concerned to verify the contents of the affidavit, furnish the party referred to in [subrule \(2\)](#) with a certified copy of the costs order concerned and shall record such furnishing on the Court file.
- (4) The party referred to in [subrule \(2\)](#) shall file the said copy with the clerk of the civil court of the district in which he or she resides, carries on business or is employed.
- (5) Such order shall be executed in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act [No. 32 of 1944](#)), and the Magistrates' Courts Rules published under [Government Notice R.1108 of 21 June 1968](#), as amended, regarding warrants of execution against movable and immovable property and the issuing of emolument attachment orders and garnishee orders only.

34. Transitional provisions.-When a time is prescribed for any purpose in terms of these rules, and such time would otherwise have commenced to run prior to the commencement of these rules, such time shall begin to run only on the date on which these rules come into operation.

35. Repeal of rules.-The Rules of the Constitutional Court previously published shall be repealed on the date on which these rules come into operation: Provided that any directions in writing pertaining to the procedures to be followed in the determination of a dispute or an issue in cases already instituted shall remain in force, unless repealed in writing by the Chief Justice.

36. Short title.-These rules shall be called the Constitutional Court Rules, 2003.

Schedule 1

Form 1 Notice of Motion

FORM 1 **NOTICE OF MOTION** (to Registrar) **IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA** Case No.

In the matter of:

(Applicant)

Take notice that the above-named applicant applies to the Court for an order in the following terms:

- (a)
- (b)
- (c)

and that the affidavit of _____, annexed hereto, will be used in support thereof.

Kindly place the matter before the Chief Justice to be dealt with in terms of [rule 11 \(4\)](#).

Dated at _____, this _____ day of _____ 20____.

Applicant or attorney

To the Registrar of the above-named Court.

Form 2 Notice of Motion

FORM 2 **NOTICE OF MOTION** (to Registrar and Respondent) **IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA** Case No.

In the matter between:

(Applicant)

and

(Respondent)

Take notice that _____ (hereinafter called the applicant) intends to make application to this Court for an order (a) _____ (b) _____ (c) _____ (here set forth the form of order prayed) and that the accompanying affidavit of _____ will be used in support thereof.

Take notice further that the applicant has appointed _____ (here set forth an address) as the address at which he or she will accept notice and service of all process in these proceedings.

Take notice further that if you intend opposing this application you are required (a) to notify applicant's attorney in writing on or before _____ (date) and (b) within 15 days after you have so given notice of your intention to oppose the application

to file your answering affidavit, if any; and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the applicant will request the Registrar to place the matter before the Chief Justice to be dealt with in terms of [rule 11 \(4\)](#).

Dated at _____, this _____ day of _____ 20____

Applicant or attorney

To: (1)
(Respondent)

(Address)

(2) The Registrar of the above Court

Schedule 2

Fees

	R
Lodging of any application (other than the first document)	10,00
Lodging of an answering affidavit (each)	10,00
Lodging of a notice of appeal or cross-appeal	15,00
Order of the court granting leave to appeal	15,00
For the Registrar's certificate on certified copies of documents (each)	1,00
Taxing fee in any matter	25,00

GN 182 of 14 March 2014: Rules for the first sitting of the National Assembly, National Council of Provinces and Provincial Legislatures (Government Gazette No. 37442)

DEPARTMENT OF JUSTICE

By virtue of the powers vested in me in terms of Item 9 of Part A of [Schedule 3](#) to the Constitution of the Republic of South Africa, 1996, I, **Mogoeng Mogoeng**, the Chief Justice of the Republic of South Africa, have made the attached rules prescribing the procedure for the election of the President of the Republic of South Africa, Speaker and Deputy Speaker of the National Assembly, Chairperson and Deputy Chairpersons of the National Council of Provinces, Premier of a Province, and Speaker and Deputy Speaker of a Provincial Legislature.

(Signed)

Mogoeng Mogoeng
Chief Justice of the Republic of South Africa

Republic of South Africa

Rules for the election of the

President of the Republic

Speaker and Deputy Speaker of the National Assembly

Chairperson and Deputy Chairpersons of the NCOP

Premier of a Province

Speaker and Deputy Speaker of a Provincial Legislature

As approved by Chief Justice Mogoeng Mogoeng

Rules, in terms of item 9 of Part A of [Schedule 3](#) to the Constitution of the Republic of South Africa, 1996, for the election of President of the Republic of South Africa; Speaker and Deputy Speaker of the National Assembly; Chairperson and Deputy Chairpersons of the National Council of Provinces; Premier of a Province; Speaker and Deputy Speaker of a provincial legislature.

1. PRESIDING OFFICER

In these Rules the "presiding officer" means the Chief Justice or a Judge designated by the Chief Justice presiding at a meeting to which these Rules apply.

2. RETURNING OFFICER AND ASSISTANT RETURNING OFFICERS

- (1) In the event of an election referred to in item 1 (a) or (b) of Part A of [Schedule 3](#) to the Constitution, the Secretary to Parliament or a member of the staff of Parliament designated by the presiding officer, and in the event of an election referred to in item 1 (c) of Part A of that schedule, the Secretary to the relevant provincial legislature or a member of the staff of the provincial legislature designated by the presiding officer, must act as the returning officer at the election and will, in accordance with these Rules, do all things necessary for the due conduct of the election.
- (2) The returning officer must appoint assistant returning officers from among the staff of Parliament or the provincial legislature concerned to assist him or her in connection with the performance of his or her duties.
- (3) The returning officer and every assistant returning officer must, before assuming their duties, take an oath or make an affirmation before the presiding officer in accordance with Annexure A.

3. NOMINATION OF CANDIDATES

- (1) Nominations must be submitted substantially in the form of Annexure B.
- (2) The returning officer must satisfy himself or herself as to the identity of every signatory to a nomination paper and report the result to the presiding officer.

4. MEETING

- (1) Immediately before the appointed time for any meeting to which these Rules apply, the bells of the Chamber in which the meeting is to be held must be rung for 5 minutes.
- (2) If more than one candidate has been nominated, the presiding officer must announce the names of the candidates nominated and may thereafter suspend proceedings for such period as he or she may deem necessary.
- (3) If at any stage, in the election procedure before the announcement of the result, a candidate for whatever reason becomes ineligible for election, the presiding officer must declare the nomination null and void, and he or she may take such steps to proceed with the election or to commence *de novo* as he or she may think fit.

5. BALLOT

- (1) Ballot papers substantially in the form of Annexure C must be prepared as directed by the returning officer.
- (2) The ballot papers must have printed thereon, in alphabetical order according to their surnames and the full names of all the duly nominated candidates.
- (3) One ballot paper marked on the reverse side thereof with the official mark provided for the purpose must be issued by an assistant returning officer, in the event of an election under these Rules in the National Assembly and provincial legislature, to every member present and eligible to vote at the meeting and, in the event of an election under these Rules in the National Council of Provinces, to every head of a provincial delegation, in the following manner-
 - (a) The returning officer must call out the names of persons eligible to vote from the official members' list, or from a list of the names of heads of provincial delegations, as the case may be.
 - (b) When the name of a member or a head of a provincial delegation is called, he or she must, if present at the meeting, be issued with a ballot paper and record his or her vote in accordance with Rule 5 (5).
- (4) The name of the member or head of a provincial delegation to whom a ballot paper is issued must be marked off by an assistant returning officer on the list referred to in Rule 5 (3) (a).
- (5) A member or a head of a provincial delegation must record his or her vote by placing a cross against the name of the candidate for whom he or she desires to vote in the space provided on the ballot paper for recording a vote.
- (6) A member or a head of a provincial delegation to whom a ballot paper has been issued must, after having recorded his or her vote thereon, fold it in such a manner that the official mark thereon is visible to an assistant returning officer, and place it in the ballot box provided for the purpose, after the assistant returning officer has noted the official mark.
- (7) If, during the ballot, the presiding officer is satisfied that a ballot paper has been inadvertently spoiled, he or she must instruct the returning officer to cancel that ballot paper, endorse the counterfoil thereof accordingly and issue a new ballot paper to the member or the leader of the provincial delegation

concerned.

6. INVALID BALLOT PAPERS

A ballot paper is invalid-

- (a) if it does not bear the official mark required to be placed thereon in terms of Rule 5 (3); or
- (b) if it is unmarked; or
- (c) if a member or a head of a provincial delegation has signed his or her name or written any word or made any mark other than the one required to be made by him or her in recording his or her vote.

7. COUNTING OF VOTES

- (1) As soon as the voting has been completed, the presiding officer must suspend proceedings and the returning officer and the assistant returning officers must remove the ballot box and all their papers to a room where the counting is to take place.
- (2) The ballot box must be opened by the returning officer in the presence of the presiding officer and the counting of the votes must then be proceeded with.
- (3) No person other than the presiding officer, the returning officer and the assistant returning officers may be present in the room while the votes are being counted.
- (4) After the votes have been counted, the returning officer must report to the presiding officer, informing him or her of the result of the counting of the votes.
- (5) On receipt of the report, the presiding officer must return to the place of the meeting and announce the result of the election.
- (6)
 - (a) The returning officer must retain the nomination papers, the used ballot papers and the counterfoils thereof in a sealed packet for a period of at least one year.
 - (b) The sealed packet may not be opened except by order of a court.

8. UNFORESEEN PROCEDURAL MATTERS

- (1) The presiding officer may submit to the meeting, for decision, any question of procedure which may arise and is not provided for in the preceding Rules and should, in his or her opinion, be decided by the meeting.
- (2) A question of procedure may be raised, with the presiding officer's leave, by way of a motion proposed by a member or, in the event of an election under these Rules in the National Council of Provinces, a head of a provincial delegation on behalf of a delegation, and seconded by another member or by a head of another delegation on behalf of such other delegation, as the case may be.
- (3) If he or she considers it necessary or desirable in a particular case, the presiding officer may permit a discussion of the question and may limit participation in, and the duration of, the discussion in such manner as he or she thinks fit.
- (4) If two or more members or, in the event of an election under these Rules in the National Council of Provinces, two or more heads of provincial delegations on behalf of their delegations, request that the question be put to a vote, a poll by a show of hands by members or leaders of delegations, as the case may be, must be taken.

ANNEXURE A

OATH/SOLEMN AFFIRMATION BY RETURNING OFFICER AND ASSISTANT RETURNING OFFICERS

OATH

I, **full names**, swear that I will faithfully and impartially discharge my duties in terms of the Rules for the election of

President of the Republic; Speaker/Deputy speaker of the National Assembly;
Chairperson/Deputy Chairpersons of the National Council of Provinces; Premier of a province; Speaker/Deputy speaker of a provincial legislature,

and will not divulge any information which may be disclosed to me, except for the purposes of the said Rules or when it is required of me to do so as a witness in a court of law.

So help me God.

SOLEMN AFFIRMATION

I, **full names**, solemnly affirm that I will faithfully and impartially discharge my duties in terms of the Rules for the election of

President of the Republic; Speaker/Deputy Speaker of the National Assembly;
Chairperson/Deputy Chairpersons of the National Council of Provinces; Premier of a province; Speaker/Deputy Speaker of a provincial legislature,

and will not divulge any information which may be disclosed to me, except for the

purposes of the said Rules or when it is required of me to do so as a witness in a court of law.

ANNEXURE B

Nomination paper for election of-

- * President
- * Premier
- * Speaker
- * Deputy Speaker
- * Chairperson of NCOP
- * Deputy Chairperson of NCOP

(Under item 9, <JL:Jump,"GN.182 of 2014 Part A">Part A<EL>, <JL:Jump,"Act 108 of 1996 sch 3">Schedule 3<EL> to the Constitution of the Republic of South Africa, 1996)

We, the undersigned members of the National Assembly/the provincial legislature of .../delegates to the National Council of Provinces, hereby nominate the following person as a candidate for election as President/Premier/Speaker/Deputy Speaker/Chairperson/Deputy Chairperson #:

(Full name of person nominated in block letters)

(Address)

(Occupation)

First Proposer

(Name in block letters and signature)

Second Proposer

(Name in block letters and signature)

I, the abovementioned nominee, do hereby accept the nomination #.

(Signature)

* Delete whichever is inapplicable.

Willingness to accept nomination may also be signified separately in writing.

ANNEXURE C

Form of front of ballot paper

Counterfoil

No.

NAME	
NAME	

Election of President/Speaker/

Deputy Speaker/Premier/

Chairperson of NCOP/Deputy

Chairperson of NCOP

Date

Form of back of ballot paper

OFFICIAL MARK

No.
Election of President/Speaker/
Deputy Speaker/Premier/
Chairperson of NCOP/Deputy
Chairperson of NCOP
Date

**GN 207 of 5 April 2019: Rules for the first sitting of the National Assembly, National Council of Provinces and Provincial Legislatures
(Government Gazette No. 42386)**

DEPARTMENT OF TRADE AND INDUSTRY

By virtue of the powers vested in me in terms of Item 9 of Part A of [Schedule 3](#) to the Constitution of the Republic of South Africa, 1996, **I, Mogoeng Mogoeng**, the Chief Justice of the Republic of South Africa, have made the attached Rules that prescribe the procedure for the election of the President of the Republic of South Africa, Speaker and Deputy Speaker of the National Assembly, Chairperson and Deputy Chairpersons of the National Council of Provinces, Premier of a Province, and Speaker and Deputy Speaker of a Provincial Legislature.

(Signed)

MOGOENG MOGOENG

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

Republic of South Africa

Rules for the election of the

President of the Republic

Speaker and Deputy Speaker of the National Assembly

Chairperson and Deputy Chairpersons of the NCOP

Premier of a Province

Speaker and Deputy Speaker of a Provincial Legislature

(Signed)

AS APPROVED BY CHIEF JUSTICE MOGOENG MOGOENG

DATE: 1 April 2019

Rules for the election of President of the Republic of South Africa; Speaker and Deputy Speaker of the National Assembly; Chairperson and Deputy Chairpersons of the National Council of Provinces; Premier of a Province, and Speaker and Deputy Speaker of a Provincial Legislature.

(In terms of item 9 of Part A of [Schedule 3](#) to the Constitution of the Republic of South Africa, 1996)

ARRANGEMENT OF REGULATIONS

- | | |
|----------------------------|--|
| 1. | Presiding officer |
| 2. | Returning officer and assistant returning officers |
| 3. | Nomination of candidates |
| 4. | Meeting |
| 5. | Ballot |
| 6. | Invalid ballot papers |
| 7. | Counting of votes |
| 8. | Unforeseen procedural matters |
| Annexure A | Oath/Solemn Affirmation by Returning Officer and Assistant |
| Annexure B | Returning Officers |
| Annexure C | Nomination paper |
| | Form of front of ballot paper |

1. Presiding officer.-In these Rules the "presiding officer" means the Chief Justice, a Judge designated by the Chief Justice or a Speaker presiding at a meeting to which these Rules apply.

2. Returning officer and assistant returning officers.-(1) In the event of an election referred to in item 1 (a)

or (b) of Part A of [Schedule 3](#) to the Constitution, the Secretary to Parliament or a staff member of Parliament designated by the Presiding Officer, and in the event of an election referred to in item 1 (c), of Part A of that Schedule, the Secretary to the relevant Provincial Legislature or a staff member of the Provincial Legislature designated by the Presiding Officer, must act as the returning officer at the election and must, in accordance with these Rules, do all things necessary for the due conduct of the election.

(2) The returning officer must appoint assistant returning officers from among the staff of Parliament or the Provincial Legislature concerned to assist him or her in connection with the performance of his or her duties.

(3) The returning officer and every assistant returning officer must, before assuming their duties, take an oath or make an affirmation before the Presiding Officer in accordance with [Annexure A](#).

3. Nomination of candidates.-(1) Nominations must be submitted substantially in the form of [Annexure B](#).

(2) The returning officer must satisfy himself or herself as to the identity of every signatory to a nomination paper and report the result to the Presiding Officer.

4. Meeting.-(1) Immediately before the appointed time for any meeting to which these Rules apply, the bells of the Chamber in which the meeting is to be held must be rung for 5 minutes.

(2) If more than one candidate has been nominated, the Presiding Officer must announce the names of the candidates nominated and may thereafter suspend proceedings for such period as he or she may deem necessary.

(3) If at any stage in the election procedure before the announcement of the result a candidate for whatever reason becomes ineligible for election, the Presiding Officer must declare the nomination null and void, and he or she may proceed with the election or start that process anew or take such steps as he or she considers necessary.

5. Ballot.-(1) Ballot papers substantially in the form of [Annexure C](#) must be prepared as directed by the Presiding Officer.

(2) The ballot papers must reflect the surnames and full names of all duly nominated candidates in alphabetical order.

(3) One ballot paper marked on the reverse side with the official mark provided for the purpose must be issued by an assistant returning officer. In the event of an election under these Rules in the National Assembly and a Provincial Legislature it must be issued to every Member present and eligible to vote at the meeting. And in the event of an election under these Rules in the National Council of Provinces the ballot must be issued to every Head of a provincial delegation, in the following manner-

(a) The returning officer must call out the names of persons eligible to vote from the official Members' list, or from a list of the names of Heads of provincial delegations, as the case may be.

(b) When the name of a Member or a Head of a provincial delegation is called, he or she must, if present at the meeting, be issued with a ballot paper and record his or her vote in accordance with Rule 5 (5).

(4) The name of the Member or Head of a provincial delegation to whom a ballot paper is issued must be marked off by an assistant returning officer on the list referred to in Rule 5 (3) (a).

(5) A Member or a Head of a provincial delegation must record his or her vote by placing a cross against the name of the candidate for whom he or she desires to vote in the space provided on the ballot paper for recording a vote.

(6) A Member or a Head of a provincial delegation to whom a ballot paper has been issued must, after having recorded his or her vote thereon, fold it in such a manner that the official mark thereon is visible to an assistant returning officer, and place it in the ballot box provided for the purpose, after the assistant returning officer has noted the official mark.

(7) If, during the ballot, the Presiding Officer is satisfied that a ballot paper has been inadvertently spoiled, he or she must instruct the returning officer to cancel that ballot paper, endorse the counterfoil thereof accordingly and issue a new ballot paper to the Member or the Leader of the provincial delegation concerned.

6. Invalid ballot papers.-A ballot paper is invalid-

(a) if it does not bear the official mark required to be placed thereon in terms of Rule 5 (3); or

(b) if it is unmarked; or

(c) if a Member or a Head of a provincial delegation has signed his or her name or written any word or made any mark other than the one required to be made by him or her in recording his or her vote.

7. Counting of votes.-(1) As soon as the voting has been completed, the Presiding Officer must suspend proceedings and the returning officer and the assistant returning officers must remove the ballot box and all papers to a room where the counting is to take place.

(2) The ballot box must be opened by the returning officer in the presence of the Presiding Officer and the counting of the votes must then be proceeded with.

(3) No person other than the Presiding Officer, the returning officer and the assistant returning officers may be present in the room while the votes are being counted.

(4) After the votes have been counted, the returning officer must report to the Presiding Officer, informing him or her of the result of the counting of the votes.

(5) On receipt of the report the Presiding Officer must return to the place of the meeting and announce the result of the election.

(6) (a) The returning officer must retain the nomination papers, the used ballot papers and the counterfoils thereof in a sealed packet for a period of at least one year.

(b) The sealed packet may not be opened except in terms of a court order.

8. Unforeseen procedural matters.-(1) The Presiding Officer may submit to the meeting, for decision, any question of procedure which is not provided for in the preceding rules and which may arise at the meeting and, in his or her opinion, cannot be decided by him or her in the capacity of Presiding Officer.

(2) A question of procedure may be raised, with the Presiding Officer's leave, by way of a motion proposed by a Member or, in the event of an election under these Rules in the National Council of Provinces, a Head of a provincial delegation on behalf of a delegation, and seconded by another Member or by a Head of another delegation on behalf of such other delegation, as the case may be.

(3) If he or she considers it necessary or desirable in a particular case, the Presiding Officer may permit a discussion of the question and may limit participation in, and the duration of, the discussion in such manner as he or she thinks fit.

(4) If two or more Members or, in the event of an election under these Rules in the National Council of Provinces, two or more Heads of provincial delegations on behalf of their delegations, request that the question be put to a vote, a poll by a show of hands by Members or leaders of delegations, as the case may be, must be taken.

ANNEXURE A

OATH/SOLEMN AFFIRMATION BY RETURNING OFFICER AND ASSISTANT RETURNING OFFICERS

OATH

I (full names) swear that I will faithfully and impartially discharge my duties in terms of the rules for the election of-

President of the Republic; Speaker/Deputy Speaker of the National Assembly; Chairperson/Deputy Chairpersons of the National Council of Provinces; Premier of a Province; Speaker/Deputy Speaker of a Provincial Legislature, and will not divulge any information which may be disclosed to me, except for the purposes of the said rules or when it is required of me to do so as a witness in a court of law.

So help me God

SOLEMN AFFIRMATION

I (full names) solemnly affirm that I will faithfully and impartially discharge my duties in terms of the rules for the election of-

President of the Republic; Speaker/Deputy Speaker of the National Assembly; Chairperson/Deputy Chairpersons of the National Council of Provinces; Premier of a Province; Speaker/Deputy Speaker of a Provincial Legislature, and will not divulge any information which may be disclosed to me, except for the purposes of the said rules or when it is required of me to do so as a witness in a court of law.

ANNEXURE B

Nomination paper for election of-

- * President
- * Premier
- * Speaker
- * Deputy Speaker
- * Chairperson of NCOP
- * Deputy Chairperson of NCOP

(Under item 9, Part A, [Schedule 3](#) to the Constitution of the Republic of South Africa, 1996)
We, the undersigned members of the National Assembly/the Provincial Legislature of
/ delegates to the National Council of Provinces, hereby nominate the
following person as a candidate for election as President/Premier/Speaker/Deputy
Speaker/ Chairperson/ Deputy Chairperson #:

(Full name of person nominated in block letters)

(Address)

(Occupation)

First Proposer

(Name in block letters and signature)

Second Proposer

(Name in block letters and signature)

I, the abovementioned nominee, do hereby accept the nomination #.

(Signature)

* Delete whichever is inapplicable.

Willingness to accept nomination may also be signified separately in writing.

ANNEXURE C

Form of front of ballot paper

Counterfoil

No.

Election of President/Speaker/
Deputy Speaker/Premier/
Chairperson of NCOP/ Deputy
Chairperson of NCOP

Date

NAME	
NAME	

Form of back of ballot paper

OFFICIAL MARK

No.

Election of President/Speaker/
Deputy Speaker/Premier/
Chairperson of NCOP/ Deputy
Chairperson of NCOP

Date

--

GNR.1665 of 2 September 2005: Space planning norms and standards for office accommodation used by organs of State

DEPARTMENT OF PUBLIC WORKS

This document provides updated norms for public office buildings and replaces previous norms in circulation. These norms apply to all office space used by organs of state (as defined in [section 239](#) of the Constitution of the Republic of South Africa, 1996 (Act [108 of 1996](#))).

ARRANGEMENT OF SECTIONS

Glossary	
1.	Introduction
2.	Background
3.	Principles
4.	Space norms
Table 1	Space Planning Norms for Office Buildings
5.	Application of norms
Table 2	Example of a section of space planning schedule (square metres)

Glossary

"Cellular offices" means offices with fixed walls and doors, which can be used to close the office off from other parts of the working environment;

"Core" refers to the area given over to the functions that are centrally managed and support the whole organisation or building. It also includes aspects such as circulation and the technical support spaces that are essential for the functioning of the building as a whole;

"Daylight factor" under totally overcast sky conditions, means the percentage of light that arrives on a horizontal surface within a building compared to the amount of light arriving on an unshielded horizontal surface outside;

"Executive Management" means Political Office Bearers; Directors-General and Chief Operating Officers in national departments and equivalent positions in provincial departments;

"FTE / Full Time Equivalent" represents a measure of the occupation of the building. One FTE represents 1 person occupying a workspace for 8 hours a day. An employee who is part-time and only occupies space for 4 hours a day would therefore be a 0.5 FTE;

"Gross Construction Area" covers the entire building area and is the total sum of areas measured at each covered floor area over the external walls, including internal parking, ground floor lobbies, corridors, basements, mezzanine floors, stairwells, lift shafts, ducts spaces and plant rooms;

"Hot-desking" refers to a situation where a number of employees (who work in a variety of locations) share a single work-station in a particular location;

"Open-plan" means a spatial layout in which there is minimal use of cellular offices, where people generally work at workstations divided by movable partitions rather than permanent fixed walls. Cellular offices are provided where required for particular functional reasons, such as privacy, confidentiality, or a need for a quiet working environment;

"Organ of State" means any department of state or administration in the national, provincial, or local sphere of government or any other organisation exercising a power or performing a function in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any legislation;

"Senior Management" means Deputy Directors-General in national departments and equivalent positions in provincial departments;

"Structure" refers to the area occupied by the immovable construction elements of the building such as walls, columns, slabs and beams;

"Workspace" refers to the area allocated to workstations and their immediate requirements like personal filing; and,

"Workspace Support Space" refers to the area allocated to functions that are managed by and support a section or working group, including rest rooms, catering facilities, tearooms, storage, information management, amenities and internal parking.

1. Introduction.-This document provides updated norms for public office buildings and replaces previous norms. The norms apply to all office space used by organs of state in South Africa.

The **Background** section provides a summary of the key factors that have influenced the development of the norms. A number of **Principles** are then outlined which should be used to guide space planning and management. The **Overall Space Norms**, which provide a number of critical high-level norms which must be complied with, are set out in Clause 4. The application of the norms is described in Clause 5.

2. Background.-Many office buildings currently used by government in South Africa are not conducive to efficient and effective work processes and suffer from poor environmental conditions and space use. This can lead to poor morale, high staff turnover, low levels of productivity and compromised service delivery.

Internationally there has been increasing interest in understanding how organisational effectiveness and employee productivity in offices can be improved and service costs reduced. Advances in information and communications technology, innovative space planning approaches (often using open-plan layouts) and more efficient space management techniques (including concepts such as hot-desking), have resulted in improved performance, better environmental conditions and decreasing space-use per occupant. The norms provided in this document are based on an analysis of both international and local trends.

The shift to open-plan accommodation for offices typically results in a saving of approximately 15% to 20% of floor area compared with cellular office space. Open office planning is suitable for a large proportion of functions performed by Government and the private sector. Internationally most office buildings now provide a substantial proportion of work space in open-plan offices supported by separate meeting and group work spaces. Some cellular offices are provided where required from a functional perspective.

Standards and legislation governing the built environment include the national building regulations, standards developed by the South African Bureau of Standards (SABS), and the Occupational Health and Safety Act. These are being continuously improved to reflect local needs and international best practice. Increasing concerns about sustainability are likely to lead to more stringent performance requirements within the areas of water and energy consumption as well as access for people living with disabilities.

The Batho Pele policy sets out standards that government should maintain with regard to service delivery. These standards include value for money, the setting of specific service standards, courtesy, consultation and access. There are clear implications of this policy for the design and management of government offices buildings, including:

- . Providing adequate, well designed and clearly signposted reception and public service areas so as to enable the general public to access required services promptly and effectively; and,
- . Ensuring all facilities used by the general public can easily be used by everyone, including old people and people with disabilities.

3. Principles.-The following principles must be followed in the planning, procurement and management of office space:

- . **Fit:** Care must be taken to ensure that there is a good 'fit' between the organisation, its functions and the office accommodation. Organisations have many characteristics such as size, structure, culture, work patterns, change and internal and external relationships that must be matched with physical aspects of accommodation including size, layout, servicing and location.
- . **Standards of Fittings and Finishes:** Government office space must represent effective and efficient use of government resources. Standards must therefore be reasonable and supportive of productive work, but not ostentatious or wasteful. Finishes and fittings must not be luxurious and must be durable and easily maintainable (except for prestige properties and prestige areas of buildings, which may require fittings of a higher standard).
- . **Flexibility and Adaptability:** Office buildings must be able to accommodate change easily and inexpensively. This consideration must be reflected in structural design, emergency egress, circulation and services strategies, office layout design and in the selection of furniture. New buildings are to be designed on a column and slab principle so that all walls, except those supporting lift shafts and stairs, can be removed without impeding the structural integrity of the structure.
- . **Environmental Quality:** Space must provide good levels of occupant comfort and health. This includes good day lighting (30% of lighting levels to be provided by natural light); external views; low energy consumption (20% of energy to be provided by renewable sources); low water usage (all sanitary fittings to be water efficient units); acceptable indoor air quality and reasonable thermal (18 - 22° C) and acoustic conditions. In achieving these conditions users should be provided with appropriate means to control their local environment and an over-reliance on mechanical systems should be avoided.
- . **Lifecycle costs:** The operational costs of maintaining space, such as maintenance, cleaning and energy costs must be carefully considered and where appropriate, minimised.
- . **Inclusion:** All offices used by government must be inclusive. This requires office layouts, procurement and management processes to comply with environmental standards that enable a wide diversity of people to visit and work in the building comfortably including old people, parents and children and people with disabilities.
- . **Health and Safety:** Accommodation used by government must be fully compliant with the Occupational Health and Safety Act and all current building regulations. Consideration must also be made of the likely future legislative trends, such as increasingly stringent access for people living with disabilities and water and energy consumption standards.
- . **Service Delivery:** Where an office building has a component which is open to the general public, care must be taken to ensure that appropriate environmental and service standards are maintained. Guidance provided in the Batho Pele policy must be followed.

4. Space norms.-[Table 1](#) below provides the norms that office buildings used by organs of state are required to comply with. It also provides guidance on what the relative proportions of different types of space in office buildings should be.

Table 1
Space Planning Norms for Office Buildings

A. Overall Space Norms

A.1 Gross construction area per FTE			
Applicable to: New office buildings procured by government			
Measure		Norm	
Gross construction divided by number of FTEs		Average gross construction area per FTE should not exceed 24m ²	
A.2 Workspace area per FTE			
Applicable to: All office space used (included leased space) by government			
Measure		Norm	
Workspace area divided by number of FTEs		Average workspace area per FTE should not exceed 12m ²	
B. Workspace Norms			
B.1 Workspace area per function			
Applicable to: All office space used (included leased space) by government			
<i>Function</i>	<i>Spatial requirements</i>	<i>Norm</i>	<i>Notes</i>
Administration	Open-plan. Some local storage.	Workspace area should be between 6-8m ²	1. Standard hard wearing modular furniture should be used. 2. All workspaces should have a daylight factor of at least 10%. 3. Refer to definition of " open-plan " in glossary.
Technical & Management	Open-plan. Some layout space and or space for large equipment such as drawing boards.	Workspace area should be between 8-16m ²	
Senior Management	Open-plan or cellular offices. Requirement for some privacy and space for small meetings.	Workspace area should be between 16-20m ²	
Executive Management	Cellular offices. Requirement for privacy and space for small meetings.	Workspace area should be between 20-25m ²	
B.2 Support space per workspace area			
Applicable to: All office space used (included leased space) by government			
<i>Function</i>	<i>Example</i>	<i>Guide</i>	<i>Notes</i>
Workspace support	Meeting rooms, rest rooms, catering, storage, information management, tea rooms, creches and parking	Support space is usually between 55% to 65% of workspace area	1. Executive management such as Ministers and Director Generals have additional spatial requirements in the form of additional storage and large meeting spaces.
B.3 Core space per workspace area			
Applicable to: All new buildings, either owned or leased by government			
<i>Function</i>	<i>Example</i>	<i>Guide</i>	<i>Notes</i>
Organisation support	Circulation, technical support and facilities management	Core space is usually between 65% to 85% of workspace area	1. Centralised meeting areas: These should be easily accessible to both building users and visitors. They are therefore likely to be near the main entrance and on the ground floor.
B.3 Structural space per internal area (workspace + workspace support + core)			

Applicable to: All office space used (included leased space) by government			
<i>Structure</i>	<i>Example</i>	<i>Guide</i>	<i>Notes</i>
Structure	External walls, internal walls, structural columns	Structural space should not exceed 10% of (workspace + workspace support + core space areas)	1. Building must be designed to enable a range of different office layouts, allowing change to be accommodated.

The concept of open-plan accommodation should, as far as practically possible, be introduced in all situations where departments change their accommodation. However, it will not always be possible to convert existing buildings (and more specifically heritage buildings) into open-plan offices. Each building must nevertheless be analysed in this regard and where practically possible, as well as financially viable, there should be a move towards open-plan offices.

Although open-plan office accommodation provides for free movement within a specific open-plan area, individual workstations should be created for each person by using partitioning, to create an acceptable level of visual and acoustical privacy.

5. Application of norms.-The norms must be applied at particular stages in space planning and management processes of office buildings.

5.1 Space Planning of Office Buildings

A space planning exercise must be undertaken where a government department is planning to occupy an existing building or develop a new building for their accommodation. The norms must be used during this process to determine whether the proposed building or design is suitable.

A space planning exercise would normally follow the following steps:

1. Obtain organisational information: This would include all information that would have a bearing on the selection or design of a building such as size and structure of human resources, strategic objectives, activities, internal and external relationships, culture and work processes.
2. This information must then be used with the Workspace Norms in this document to develop an area schedule that describes the workspace requirement of the different organisational groupings within the organisation.
3. Each of these groupings of workspace usually requires support space such as meeting rooms, auditoria, rest rooms, tea-rooms, kitchens, creches, storage rooms, equipment space and parking. A guide to the amount of "support space" required is usually 55% - 65% of the workspace. This space can then be added to the schedule as outlined in [Table 2](#) below.
4. All buildings have some core functions such as circulation, technical support and facilities management areas. Examples of these areas are horizontal and vertical circulation, plant rooms and facilities management areas such as physical security, rest rooms, laundries, waste management and building management control rooms. A guide to the amount of this "core-space" required is usually between 65% - 85% of the workspace area. This area can be added to the schedule.
5. Structural elements such as external and internal walls and columns take up area and an allowance of approximately 10% should be provided for this area and added to the schedule.
6. Once this has been completed an overall space planning schedule has been provided for the organisation. This provides the suggested construction area and workspace areas required for the organisation. In selecting a building for the organisation to move into one should match the accommodation available with these two figures as closely as possible. In a new building this schedule provides a key input in the development of a concept design. Throughout the design process checks should be made to ensure that the designs are within the norms required.

Table 2
Example of a section of space planning schedule (square metres)

	<i>Workspace</i>	<i>Workspace Support</i>	<i>Core space</i>	<i>Structure space</i>	<i>Totals</i>
Norm	Norm: Space allocated to be in accordance with area norms per functional category	Workspace support area to be based on specific needs (usually between 55% and 65% of	Core area to be based on specific needs (usually between 65% and 85% of workspace)	Structural space (approximately 10% of workspace, workspace support and core areas combined)	Construction area

		workspace) Use 60% for planning purposes	Use 75% for planning purposes	Use 10% for planning purposes	
Directorate A					
Executive Senior	20.00	12.00	15.00	4.70	51.70
Management (Post 1)	16.00	9.60	12.00	376	41.36
Technical (Post 1)	8.00	4.80	6.00	1.88	20.68
Technical (Post 2)	8.00	4.80	6.00	1.88	20.68
Technical (Post 3)	8.00	4.80	6.00	1.88	20.68
Administration (Post 1)	6.00	3.60	4.50	1.41	15.51
Administration (Post 2)	6.00	3.60	4.50	1.41	15.51
Administration (Post 3)	6.00	3.60	4.50	1.41	15.51
Subtotals	78.00	46.80	58.50	18.33	201.63

Once the building has been occupied it is important to check that there is continued compliance with the norms. This is done through space management assessments.

5.2 Space management of office buildings

An accounting officer should carry out a space assessment on an annual basis of office buildings used by organs of state. This is carried out in the following steps:

1. Determine the FTE users in the building.
2. Determine the Gross Construction Area and Workspace of the building.
3. Divide the Gross Construction Areas and Workspace with the number of FTEs.
4. Compare these figures with the norms.
5. If these figures are in line with the norm no changes need to be made.
6. Where these figures are significantly lower or higher than the norm further investigation should be carried out.
7. If the figures are significantly lower than the norm it is likely that there is overcrowding. This may be solved through strategies to maximise space use such as hot-desking or increased use of ICT. However if these do not appear to solve the problem, and staff are unproductive as a result of the situation, alternative accommodation should be sought and a space planning exercise carried out (see above).
8. Where the figures are significantly over the norm it is likely that space is being wasted. An investigation should be performed to identify areas where this is occurring and measures taken to address this. If it appears that the organisation, for the foreseeable future, is too small for the building, and strategies for improved space use (such as making space available for other users or tenants) will not work, alternative accommodation should be sought and a space planning exercise as described above should be carried out.

GN 1534 of 20 November 2009: Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Government Gazette No. 32722)

DEPARTMENT OF TRANSPORT

PUBLICATION FOR GENERAL INFORMATION

Since [section 231 \(2\)](#) of the Constitution of the Republic of South Africa, 1996, provides that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces; and

Since the National Assembly, on 23 October 1997, and the National Council of Provinces, on 15 March 1999, approved the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

I, Sibusiso J Ndebele, hereby publish the said Protocol, the English text of which is set out in [the Schedule](#) hereto, for general information.

SCHEDULE

CONTENTS

Part A1	Text of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Part A2	Text of the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Part A3	Text of Resolution LEG.2 (82): Adoption of Amendments of the Limits of Compensation in the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Part B	Consolidated text of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

PART A1

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

(Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969)

The States Parties to the present Convention,

BEING PARTIES to the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969,

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

CONSIDERING that the International Convention of 29 November 1969, on Civil Liability for Oil Pollution Damage, by providing a regime for compensation for pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievement of this aim,

CONSIDERING HOWEVER that this regime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on shipowners,

CONSIDERING FURTHER that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests,

CONVINCED of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the ship-owners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention,

TAKING NOTE of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage,

HAVE AGREED as follows:

GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

1. "Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969.

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident" and "Organization", have the same meaning as in Article I of the Liability Convention, provided however that, for the purposes of these terms, "oil" shall be confined to persistent hydrocarbon mineral oils.

3. "Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

- (a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).
- (b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

4. "Franc" means the unit referred to in Article V, paragraph 9 of the Liability Convention.

5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the Liability Convention.

6. "Ton", in relation to oil, means a metric ton.

7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the Liability Convention.

8. "Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

Article 2

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund" and hereinafter referred to as "The Fund", is hereby established with the following aims:

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate;
- (b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions;
- (c) to give effect to the related purposes set out in this Convention.

2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

Article 3

This Convention shall apply:

1. With regard to compensation according to Article 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage;

2. With regard to indemnification of shipowners and their guarantors according to Article 5, exclusively in respect of pollution damage caused on the territory, including the territorial sea, of a State party to the Liability Convention by a ship registered in or flying the flag of a Contracting State and in respect of preventive measures taken to prevent or minimize such damage.

COMPENSATION AND INDEMNIFICATION

Article 4

1. For the purpose of fulfilling its function under Article 2, paragraph 1 (a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,

- (a) because no liability for the damage arises under the Liability Convention;
- (b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;
- (c) because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purpose of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person provided, however, that there shall be no such exoneration with regard to such preventive measures which are compensated under paragraph 1. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the Liability Convention.

4. (a) Except as otherwise provided in subparagraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 450 million francs.

(b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 450 million francs.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 450 million francs referred to in paragraph 4, subparagraphs (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 900 million francs or be lower than 450 million francs. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

Article 5

1. For the purpose of fulfilling its function under Article 2, paragraph 1 (b), the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of liability under the Liability Convention which:

- (a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less; and
- (b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less,

provided, however, that the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the wilful misconduct of the owner himself.

2. The Assembly may decide that the Fund shall, on conditions to be laid down in the Internal Regulations, assume the obligations of a guarantor in respect of ships referred to in Article 3, paragraph 2, with regard to the portion of liability referred to in paragraph 1 of this Article. However, the Fund shall assume such obligations only if the owner so requests and if he maintains adequate insurance or other financial security covering the owner's liability under the Liability Convention up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less. If the Fund assumes such obligations, the owner shall in each Contracting State be considered to have complied with Article VII of the Liability Convention in respect of the portion of his liability mentioned above.

3. The Fund may be exonerated wholly or partially from its obligations under paragraph 1 towards the owner and his guarantor if the Fund proves that as a result of the actual fault or privity of the owner:

- (a) the ship from which the oil causing the pollution damage escaped did not comply with the requirements laid down in:
 - (i) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962; or
 - (ii) the International Convention for the Safety of Life at Sea, 1960; or
 - (iii) the International Convention on Load Lines, 1966; or

(iv) the International Regulations for Preventing Collisions at Sea, 1960; or

(v) any amendments to the above-mentioned Conventions which have been determined as being of an important nature in accordance with Article XVI (5) of the Convention mentioned under (i), Article IX (e) of the Convention mentioned under (ii) or Article 29 (3) (d) or (4) (d) of the Convention mentioned under (iii), provided, however, that such amendments had been in force for at least twelve months at the time of the incident; and

(b) the incident or damage was caused wholly or partially by such non-compliance.

The provisions of this paragraph shall apply irrespective of whether the Contracting State in which the ship was registered or whose flag it was flying is a Party to the relevant Instrument.

4. Upon the entry into force of a new Convention designed to replace, in whole or in part, any of the Instruments specified in paragraph 3, the Assembly may decide at least six months in advance a date on which the new Convention will replace such Instrument or part thereof for the purpose of paragraph 3. However, any State Party to this Convention may declare to the Director before that date that it does not accept such replacement; in which case the decision of the Assembly shall have no effect in respect of a ship registered in, or flying the flag of, that State at the time of the incident. Such a declaration may be withdrawn at any later date and shall in any event cease to have effect when the State in question becomes a party to such new Convention.

5. A ship complying with the requirements in an amendment to an Instrument specified in paragraph 3 or with requirements in a new Convention, where the amendment or Convention is designed to replace in whole or in part such Instrument, shall be considered as complying with the requirements in the said Instrument for the purposes of paragraph 3.

6. Where the Fund, acting as a guarantor by virtue of paragraph 2, has paid compensation for pollution damage in accordance with the Liability Convention, it shall have a right of recovery from the owner if and to the extent that the Fund would have been exonerated pursuant to paragraph 3 from its obligations under paragraph 1 to indemnify the owner.

7. Expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this Article.

Article 6

1. Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

2. Notwithstanding paragraph 1, the right of the owner or his guarantor to seek indemnification from the Fund pursuant to Article 5, paragraph 1, shall in no case be extinguished before the expiry of a period of six months as from the date on which the owner or his guarantor acquired knowledge of the bringing of an action against him under the Liability Convention.

Article 7

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 or indemnification under Article 5 of this Convention shall be brought only before a court competent under Article IX of the Liability Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that Convention, have been liable for pollution damage caused by the relevant incident.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.

3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation or indemnification under the provisions of Article 4 or 5 of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the Liability Convention has been brought before a court in a State Party to the Liability Convention but not to this Convention, any action against the Fund under Article 4 or under Article 5, paragraph 1, of this Convention shall at the option of the claimant be brought either before a court of the State where the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the Liability Convention.

4. Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the Liability Convention before a competent court of that State against the owner of a ship or his guarantor.

5. Except as otherwise provided in paragraph 6, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

6. Without prejudice to the provisions of paragraph 4, where an action under the Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon

the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the Liability Convention.

Article 9

1. Subject to the provisions of Article 5, the Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention against the owner or his guarantor.

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation or indemnification has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

CONTRIBUTIONS

Article 10

1. Contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 11, paragraph 1, as regards initial contributions and in Article 12, paragraphs 2 (a) or (b), as regards annual contributions, has received in total quantities exceeding 150,000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

(b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article 11

1. In respect of each Contracting State initial contributions shall be made of an amount which shall for each person referred to in Article 10 be calculated on the basis of a fixed sum for each ton of contributing oil received by him during the calendar year preceding that in which this Convention entered into force for that State.

2. The sum referred to in paragraph 1 shall be determined by the Assembly within two months after the entry into force of this Convention. In performing this function the Assembly shall, to the extent possible, fix the sum in such a way that the total amount of initial contributions would, if contributions were to be made in respect of 90 per cent of the quantities of contributing oil carried by sea in the world, equal 75 million francs.

3. The initial contributions shall in respect of each Contracting State be paid within three months following the date at which the Convention entered into force for that State.

Article 12

1. With a view to assessing for each person referred to in Article 10 the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

- (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
- (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed 15 million francs;

- (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of 15 million francs;

(ii) *Income*

- (a) surplus funds from operations in preceding years, including any interest;
- (b) initial contributions to be paid in the course of the year;
- (c) annual contributions, if required to balance the budget;
- (d) any other income.

2. For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Assembly and shall be calculated in respect of each Contracting State:

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The Assembly shall decide the portion of the annual contribution which shall be immediately paid in cash and decide on the date of payment. The remaining part of each annual contribution shall be paid upon notification by the Director.

5. The Director may, in cases and in accordance with conditions to be laid down in the Internal Regulations of the Fund, require a contributor to provide financial security for the sums due from him.

6. Any demand for payments made under paragraph 4 shall be called rateably from all individual contributors.

Article 13

1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined by the Assembly for each calendar year provided that different rates may be fixed for different circumstances.

2. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3. Where a person who is liable in accordance with the provisions of Articles 10 and 11 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrears for a period exceeding three months, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article 14

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Article 15

1. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by

the Director in accordance with the subsequent provisions of this Article.

2. For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with Article 10, paragraph 1, and of establishing where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prime facie* evidence of the facts stated therein.

ORGANIZATION AND ADMINISTRATION

Article 16

The Fund shall have an Assembly, a Secretariat headed by a Director and, in accordance with the provisions of Article 21, an Executive Committee.

Assembly

Article 17

The Assembly shall consist of all Contracting States to this Convention.

Article 18

The functions of the Assembly shall, subject to the provisions of Article 26, be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;
2. to determine its own rules of procedure, subject to the provisions of this Convention;
3. to adopt Internal Regulations necessary for the proper functioning of the Fund;
4. to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
5. to adopt the annual budget and fix the annual contributions;
6. to appoint auditors and approve the accounts of the Fund;
7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;
8. to elect the members of the Assembly to be represented on the Executive Committee, as provided in Articles 21, 22 and 23;
9. to establish any temporary or permanent subsidiary body it may consider to be necessary;
10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly, the Executive Committee, and subsidiary bodies;
11. to give instructions concerning the administration of the Fund to the Director, the Executive Committee and subsidiary bodies;
12. to review and approve the reports and activities of the Executive Committee;
13. to supervise the proper execution of the Convention and of its own decisions;
14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

Article 19

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director; provided, however, that if the Assembly allocates to the Executive Committee the functions specified in Article 18, paragraph 5, regular sessions of the Assembly shall be held once every two years.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of the Executive Committee or of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 20

A majority of the members of the Assembly shall constitute a quorum for its meetings.

Executive Committee

Article 21

The Executive Committee shall be established at the first regular session of the Assembly after the date on

which the number of Contracting States reaches fifteen.

Article 22

1. The Executive Committee shall consist of one-third of the members of the Assembly but of not less than seven or more than fifteen members. Where the number of members of the Assembly is not divisible by three, the one-third referred to shall be calculated on the next higher number which is divisible by three.

2. When electing the members of the Executive Committee the Assembly shall:

- (a) secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Contracting States particularly exposed to the risks of oil pollution and of Contracting States having large tanker fleets; and
- (b) elect one half of the members of the Committee, or in case the total number of members to be elected is uneven, such number of the members as is equivalent to one half of the total number less one, among those Contracting States in the territory of which the largest quantities of oil to be taken into account under Article 10 were received during the preceding calendar year, provided that the number of States eligible under this subparagraph shall be limited as shown in the table below:

<i>Total number of Members on the Committee</i>	<i>Number of States eligible under subparagraph (b)</i>	<i>Number of States to be elected under subparagraph (b)</i>
7	5	3
8	6	4
9	6	4
10	8	5
11	8	5
12	9	6
13	9	6
14	11	7
15	11	7

3. A member of the Assembly which was eligible but was not elected under sub-paragraph (b) shall not be eligible to be elected for any remaining seat on the Executive Committee.

Article 23

1. Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.

2. Except to the extent that may be necessary for complying with the requirements of Article 22, no State Member of the Assembly may serve on the Executive Committee for more than two consecutive terms.

Article 24

The Executive Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

Article 25

At least two-thirds of the members of the Executive Committee shall constitute a quorum for its meetings.

Article 26

1. The functions of the Executive Committee shall be:

- (a) to elect its Chairman and adopt its own rules of procedure, except as otherwise provided in this Convention;
- (b) to assume and exercise in place of the Assembly the following functions:
 - (i) making provision for the appointment of such personnel, other than the Director, as may be necessary and determining the terms and conditions of service of such personnel;
 - (ii) approving settlements of claims against the Fund and taking all other steps envisaged in relation to such claims in Article 18, paragraph 7;
 - (iii) giving instructions to the Director concerning the administration of the Fund and supervising the proper execution, by him of the Convention, of the decisions of the Assembly and of the Committee's own decisions; and
- (c) to perform such other functions as are allocated to it by the Assembly.

2. The Executive Committee shall each year prepare and publish a report of the activities of the Fund during the previous calendar year.

Article 27

Members of the Assembly who are not members of the Executive Committee shall have the right to attend its meetings as observers.

Secretariat

Article 28

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.
2. The Director shall be the legal representative of the Fund.

Article 29

1. The Director shall be the chief administrative officer of the Fund and shall, subject to the instructions given to him by the Assembly and by the Executive Committee, perform those functions which are assigned to him by this Convention, the Internal Regulations, the Assembly and the Executive Committee.

2. The Director shall in particular:

- (a) appoint the personnel required for the administration of the Fund;
- (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
- (c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;
- (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly or the Executive Committee where these Regulations so provide;
- (f) prepare and submit to the Assembly or to the Executive Committee, as the case may be, the financial statements and budget estimates for each calendar year;
- (g) assist the Executive Committee in the preparation of the report referred to in Article 26, paragraph 2;
- (h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly, the Executive Committee and subsidiary bodies.

Article 30

In the performance of their duties the Director and the staff and experts appointed by him shall not seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from any action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

Finances

Article 31

1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on the Executive Committee and on subsidiary bodies.
2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

Voting

Article 32

The following provisions shall apply to voting in the Assembly and the Executive Committee:

- (a) each member shall have one vote;
- (b) except as otherwise provided in Article 33, decisions of the Assembly and the Executive Committee shall be by a majority vote of the members present and voting;
- (c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;
- (d) for the purpose of this Article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

Article 33

1. The following decisions of the Assembly shall require a three-fourths majority:
 - (a) an increase in accordance with Article 4, paragraph 6, in the maximum amount of compensation payable by the Fund.
 - (b) a determination, under Article 5, paragraph 4 relating to the replacement of the Instruments referred to in that paragraph;
 - (c) the allocation to the Executive Committee of the functions specified in Article 18, paragraph 5.

2. The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
- (b) the appointment of the Director under Article 18, paragraph 4;
- (c) the establishment of subsidiary bodies, under Article 18, paragraph 9.

Article 34

1. The Fund, its assets, income, including contributions and other property shall enjoy in all Contracting States exemption from all direct taxation.

2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported on conditions agreed by the government of that country.

5. Persons contributing to the Fund and victims and owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.

7. Independently of existing or future regulations concerning currency or transfer, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

TRANSITIONAL PROVISIONS

Article 35

1. The Fund shall incur no obligation whatsoever under Article 4 or 5 in respect of incidents occurring within a period of one hundred and twenty days after the entry into force of this Convention.

2. Claims for compensation under Article 4 and claims for indemnification under Article 5, arising from incidents occurring later than one hundred and twenty days but not later than two hundred and forty days after the entry into force of this Convention may not be brought against the Fund prior to the elapse of the two hundred and fortieth day after the entry into force of this Convention.

Article 36

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

FINAL CLAUSES

Article 37

1. This Convention shall be open for signature by the States which have signed or which accede to the Liability Convention, and by any State represented at the Conference on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The Convention shall remain open for signature until 31 December 1972.

2. Subject to paragraph 4, this Convention shall be ratified, accepted or approved by the States which have signed it.

3. Subject to paragraph 4, this Convention is open for accession by States which did not sign it.

4. This Convention may be ratified, accepted, approved or acceded to, only by States which have ratified, accepted, approved or acceded to the Liability Convention.

Article 38

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing Contracting States or after the completion of all measures required for the entry into force of the amendment with respect to those Parties shall be deemed to apply to the Convention as modified by the amendment.

Article 39

Before this Convention comes into force a State shall, when depositing an instrument referred to in Article 38, paragraph 1, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

Article 40

1. This Convention shall enter into force on the ninetieth day following the date on which the following requirements are fulfilled:

- (a) at least eight States have deposited instruments of ratification, acceptance approval or accession with the Secretary-General of the Organization, and
- (b) the Secretary-General of the Organization has received information in accordance with Article 39 that those persons in such States who would be liable to contribute pursuant to Article 10 have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil.

2. However, this Convention shall not enter into force before the Liability Convention has entered into force.

3. For each State which subsequently ratifies, accepts, approves or accedes to it, this Convention shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article 41

1. This Convention may be denounced by any Contracting State at any time after the date on which the Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the Liability Convention shall be deemed to be a denunciation of this Convention. Such denunciation shall take effect on the same date as the denunciation of the Liability Convention takes effect according to paragraph 3 of Article XVI of that Convention.

5. Notwithstanding a denunciation by a Contracting State pursuant to this Article, any provisions of this Convention relating to obligations to make contributions under Article 10 with respect to an incident referred to in Article 12, paragraph 2 (b), and occurring before the denunciation takes effect shall continue to apply.

Article 42

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions for the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which that denunciation takes effect, denounce this Convention with effect from the same date.

Article 43

1. This Convention shall cease to be in force on the date when the number of Contracting States falls below three.

2. Contracting States which are bound by this Convention on the date before the day it ceases to be in force shall enable the Fund to exercise its functions as described under Article 44 and shall, for that purpose only, remain bound by this Convention.

Article 44

1. If this Convention ceases to be in force, the Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 45

1. A Conference for the purpose of revising or amending this Convention may be convened by the

Organization.

2. The Organization shall convene a Conference of the Contracting States for the purpose of revising or amending this Convention at the request of not less than one-third of all Contracting States.

Article 46

1. This Convention shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature or deposit of instrument and the date thereof;
 - (ii) the date of entry into force of the Convention;
 - (iii) any denunciation of the Convention and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to the Convention.

Article 47

As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 48

This Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorized for that purpose have signed the present Convention.

DONE at Brussels this eighteenth day of December one thousand nine hundred and seventy-one.¹

Footnotes

* Signatures omitted.

PART A2

PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE 1971

THE PARTIES TO THE PRESENT PROTOCOL,

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING the advantage for the States Parties of arranging for the amended Convention to coexist with and be supplementary to the original Convention for a transitional period,

CONVINCED that the economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the oil cargo interests,

BEARING IN MIND the adoption of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

HAVE AGREED AS FOLLOWS:

Article 1

The Convention which the provisions of this Protocol amend is the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the "1971 Fund Convention". For States Parties to the Protocol of 1976 to the 1971 Fund Convention, such reference shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

Article 2

Article 1 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.
2. After paragraph 1 a new paragraph is inserted as follows:
 - 1*bis*. "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.
3. Paragraph 2 is replaced by the following text:
 2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article 1 of the 1992 Liability Convention.
4. Paragraph 4 is replaced by the following text:
 4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.
5. Paragraph 5 is replaced by the following text:
 5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.
6. Paragraph 7 is replaced by the following text:
 7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.

Article 3

Article 2 of the 1971 Fund Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. An international Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1992" and hereinafter referred to as "the Fund", is hereby established with the following aims:
 - (a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;
 - (b) to give effect to the related purposes set out in this Convention.

Article 4

Article 3 of the 1971 Fund Convention is replaced by the following text:

This Convention shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 5

The heading to Articles 4 to 9 of the 1971 Fund Convention is amended by deleting the words "and indemnification".

Article 6

Article 4 of the 1971 Fund Convention is amended as follows:

1. In paragraph I the five references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".
2. Paragraph 3 is replaced by the following text:
 3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.
3. Paragraph 4 is replaced by the following text:
 4. (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate

amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.

- (b) Except as otherwise provided in [subparagraph \(c\)](#), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 135 million units of account.
- (c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.
- (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.
- (e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

4. Paragraph 5 is replaced by the following text:

- 5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

5. Paragraph 6 is replaced by the following text:

- 6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4 (e) of this Article applies accordingly.

Article 7

Article 5 of the 1971 Fund Convention is deleted.

Article 8

Article 6 of the 1971 Fund Convention is amended as follows:

- 1. In paragraph 1 the paragraph number and the words "or indemnification under Article 5" are deleted.
- 2. Paragraph 2 is deleted.

Article 9

Article 7 of the 1971 Fund Convention is amended as follows:

- 1. In paragraphs 1, 3, 4 and 6 the seven references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".
- 2. In paragraph 1 the words "or indemnification under Article 5" are deleted.
- 3. In the first sentence of paragraph 3 the words "or indemnification" and "or 5" are deleted.
- 4. In the second sentence of paragraph 3 the words "or under Article 5, paragraph 1," are deleted.

Article 10

In Article 8 of the 1971 Fund Convention the reference to "the Liability Convention" is replaced by a reference to "the 1992 Liability Convention".

Article 11

Article 9 of the 1971 Fund Convention is amended as follows:

- 1. Paragraph 1 is replaced by the following text:
 - 1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
- 2. In paragraph 2 the words "or indemnification" are deleted.

Article 12

Article 10 of the 1971 Fund Convention is amended as follows:

The opening phrase of paragraph 1 is replaced by the following text:

Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2 (a) or (b), has received in total quantities exceeding 150,000 tons:

Article 13

Article 11 of the 1971 Fund Convention is deleted.

Article 14

Article 12 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase of paragraph 1 the words "for each person referred to in Article 10" are deleted.
2. In paragraph 1 (i), subparagraphs (b) and (c), the words "or 5" are deleted and the words "15 million francs" are replaced by the words "four million units of account".
3. Subparagraph 1 (ii) (b) is deleted.
4. In paragraph 1 (ii), [subparagraph \(c\)](#) becomes (b) and subparagraph (d) becomes (c).
5. The opening phrase in paragraph 2 is replaced by the following text:

The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:

6. Paragraph 4 is replaced by the following text:
 4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.
7. Paragraph 5 is replaced by the following text:
 5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2 (a) and funds received in accordance with Article 12.2 (b).
8. Paragraph 6 is deleted.

Article 15

Article 13 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.
2. In paragraph 3 the words "Articles 10 and 11" are replaced by the words "Articles 10 and 12" and the words "for a period exceeding three months" are deleted.

Article 16

A new paragraph 4 is added to Article 15 of the 1971 Fund Convention:

4. Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

Article 17

Article 16 of the 1971 Fund Convention is replaced by the following text:

The Fund shall have an Assembly and a Secretariat headed by a Director.

Article 18

Article 18 of the 1971 Fund Convention is amended as follows:

1. In the opening sentence of the article the words ", subject to the provisions of Article 26," are deleted.
2. Paragraph 8 is deleted.
3. Paragraph 9 is replaced by the following text:
 9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of

Procedure of the Assembly may be applied, mutatis mutandis, for the work of such subsidiary body;

4. In paragraph 10 the words ", the Executive Committee," are deleted.
5. In paragraph 11 the words ", the Executive Committee" are deleted.
6. Paragraph 12 is deleted.

Article 19

Article 19 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. In paragraph 2 the words "of the Executive Committee or" are deleted.

Article 20

Articles 21 to 27 of the 1971 Fund Convention and the heading to these articles are deleted.

Article 21

Article 29 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.
2. In paragraph 2 (e) the words "or the Executive Committee" are deleted.
3. In paragraph 2 (f) the words "or to the Executive Committee, as the case may be," are deleted.
4. Paragraph 2 (g) is replaced by the following text:
 - (g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;
5. In paragraph 2 (h) the words ", the Executive Committee" are deleted.

Article 22

In Article 31, paragraph 1, of the 1971 Fund Convention, the words "on the Executive Committee and" are deleted.

Article 23

Article 32 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase the words "and the Executive Committee" are deleted.
2. In subparagraph (b) the words "and the Executive Committee" are deleted.

Article 24

Article 33 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is deleted.
2. In paragraph 2 the paragraph number is deleted.
3. [Subparagraph \(c\)](#) is replaced by the following text:
 - (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

Article 25

Article 35 of the 1971 Fund Convention is replaced by the following text:

Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article 26

After Article 36 of the 1971 Fund Convention four new articles are inserted as follows:

Article 36 bis

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

- (a) In the application of paragraph 1 (a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.
- (b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.
- (c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.
- (d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article 36 ter

1. Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.

2. If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

Article 36 quater

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

- (a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund.
- (b) If, in accordance with subparagraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.
- (c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of this Convention in so far as they discharge their duties in accordance with this Article.
- (d) The Assembly of the Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.
- (e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article 44, paragraph 2, of the 1971 Fund Convention.
- (f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

Article 36 quinquies

Final clauses

The final clauses of this Convention shall be Articles 28 to 39 of the Protocol of 1992 to amend the 1971 Fund

Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 27

1. The 1971 Fund Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 36 *quinquies* of the 1971 Fund Convention as amended by this Protocol shall be known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention).

FINAL CLAUSES

Article 28

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.

2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.

3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.

4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.

5. Ratification, acceptance, approval or accession shall be affected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

6. A state which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.

7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 29

Information on contributing oil

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 28, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol.

Article 30

Entry into force

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

- (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.

2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.

3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.

4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.

5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General, of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed

to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article 31

Denunciation of the 1969 and 1971 Conventions

Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

- (a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and
- (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if Party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

Article 32

Revision and amendment

1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

Article 33

Amendment of compensation limits

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1, of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force

eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 34

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the 1992 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1969 Liability Convention takes effect according to Article 16 of that Protocol.

5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an instrument of ratification, acceptance, approval or accession to the 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.

6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.

7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2 (b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article 35

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 36

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article 37

Winding up of the Fund

1. If this Protocol ceases to be in force, the Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the

Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 38

Depositary

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument together with the date thereof;
 - (ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;
 - (iii) the date of entry into force of this Protocol;
 - (iv) the date by which denunciations provided for in Article 31 are required to be made;
 - (v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;
 - (vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;
 - (vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
 - (viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
 - (ix) any denunciation deemed to have been made under Article 34, paragraph 5;
 - (x) any communication called for by any Article in this Protocol;
- (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 39

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Protocol. 2

Footnotes

- 2 Signatures omitted.

PART A3 RESOLUTION LEG.2 (82)

(adopted on 18 October 2000)

ADOPTION OF AMENDMENTS OF THE LIMITS OF COMPENSATION IN THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

THE LEGAL COMMITTEE at its eighty-second session:

RECALLING Article 33 (b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when

exercising the functions conferred on it by or under any international convention or instrument,

RECALLING FURTHER Article 33 of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter referred to as the "1992 Fund Protocol") concerning the procedures for amending the limits of the amounts of compensation set out in Article 6 (3) of the 1992 Fund Protocol,

HAVING CONSIDERED amendments to the limits of the amounts of compensation proposed and circulated in accordance with the provisions of Article 33 (1) and (2) of the 1992 Fund Protocol,

1. ADOPTS, in accordance with Article 33 (4) of the 1992 Fund Protocol, amendments to the limits of the amounts of compensation set out in Article 6 (3) of the 1992 Fund Protocol, as set out in the Annex to this resolution;

2. DETERMINES, in accordance with Article 33 (7) of the 1992 Fund Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;

3. FURTHER DETERMINES that, in accordance with Article 33 (8) of the 1992 Fund Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;

4. REQUESTS the Secretary-General, in accordance with Articles 33 (7) and 38 (2) (vi) of the 1992 Fund Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 Fund Protocol; and

5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 Fund Protocol.

Annex

AMENDMENTS OF THE LIMITS OF COMPENSATION IN THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

Article 6 (3) of the 1992 Fund Protocol is amended as follows:

the reference in paragraph 4 (a) to "135 million units of account" shall read "203,000,000 units of account";

the reference in paragraph 4 (b) to "135 million units of account" shall read "203,000,000 units of account"; and

the reference in paragraph 4 (c) to "200 million units of account" shall read "300,740,000 units of account".

PART B CONSOLIDATED TEXT OF THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

(Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969)

GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.

1*bis*. "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article 1 of the 1992 Liability Convention.

3. "Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

(a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

(b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.

5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.

6. "Ton", in relation to oil, means a metric ton.

7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.

8. "Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

Article 2

1. An international Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1992" and hereinafter referred to as "the Fund", is hereby established with the following aims:

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;
- (b) to give effect to the related purposes set out in this Convention.

2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

Article 3

This Convention shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

COMPENSATION

Article 4

1. For the purpose of fulfilling its function under Article 2, paragraph 1 (a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,

- (a) because no liability for the damage arises under the 1992 Liability Convention;
- (b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;
- (c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purpose of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

- (a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
- (b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with

regard to preventive measures.

4. (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203,000,000 units of account.

(b) Except as otherwise provided in [subparagraph \(c\)](#), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 203,000,000 units of account.

(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 300,740,000 units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4 (e) of this Article applies accordingly.

7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

Article 5

[deleted]

Article 6

Rights to compensation under Article 4 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

Article 7

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 of this Convention shall be brought only before a court competent under Article IX of the 1992 Liability Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that Convention, have been liable for pollution damage caused by the relevant incident.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.

3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article 4 of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this Convention, any action against the Fund under Article 4 of this Convention shall at the option of the claimant be brought either before a court of the State where the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the 1992 Liability Convention.

4. Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the 1992 Liability Convention before a competent court of that State against the owner of a ship or his guarantor.

5. Except as otherwise provided in paragraph 6, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

6. Without prejudice to the provisions of paragraph 4, where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent

court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

Article 9

1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

CONTRIBUTIONS

Article 10

1. Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2 (a) or (b), has received in total quantities exceeding 150,000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

(b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article 11

[deleted]

Article 12

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) *Expenditure*

- (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
- (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account;
- (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account;

(ii) *Income*

- (a) surplus funds from operations in preceding years, including any interest;
- (b) annual contributions, if required to balance the budget;
- (c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2 (a) and funds received in accordance with Article 12.2 (b).

Article 13

1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3. Where a person who is liable in accordance with the provisions of Articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article 14

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Article 15

1. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.

2. For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund

in accordance with Article 10, paragraph 1, and of establishing where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.

4. Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

ORGANIZATION AND ADMINISTRATION

Article 16

The Fund shall have an Assembly and a Secretariat headed by a Director.

Assembly

Article 17

The Assembly shall consist of all Contracting States to this Convention.

Article 18

The functions of the Assembly shall be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;
2. to determine its own rules of procedure, subject to the provisions of this Convention;
3. to adopt Internal Regulations necessary for the proper functioning of the Fund;
4. to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
5. to adopt the annual budget and fix the annual contributions;
6. to appoint auditors and approve the accounts of the Fund;
7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;
8. [deleted]
9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;
10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
11. to give instructions concerning the administration of the Fund to the Director and subsidiary bodies;
12. [deleted]
13. to supervise the proper execution of the Convention and of its own decisions;
14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

Article 19

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 20

A majority of the members of the Assembly shall constitute a quorum for its meetings.

Articles 21 to 27

[deleted]

Secretariat

Article 28

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.
2. The Director shall be the legal representative of the Fund.

Article 29

1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.

2. The Director shall in particular:

- (a) appoint the personnel required for the administration of the Fund;
- (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
- (c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;
- (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly where these Regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;
- (h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly and subsidiary bodies.

Article 30

In the performance of their duties the Director and the staff and experts appointed by him shall not seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from any action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

Finances

Article 31

1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

Voting

Article 32

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in Article 33, decisions of the Assembly shall be by a majority vote of the members present and voting;
- (c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;
- (d) for the purpose of this Article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

Article 33

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
- (b) the appointment of the Director under Article 18, paragraph 4;
- (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

Article 34

1. The Fund, its assets, income, including contributions and other property shall enjoy in all Contracting

States exemption from all direct taxation.

2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported on conditions agreed by the government of that country.

5. Persons contributing to the Fund and victims and owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.

7. Independently of existing or future regulations concerning currency or transfer, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

TRANSITIONAL PROVISIONS

Article 35

Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article 36

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

Article 36 *bis*

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

- (a) In the application of paragraph 1 (a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.
- (b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.
- (c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.
- (d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article 36 *ter*

1. Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.

2. If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

Article 36 quater

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

- (a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund.
- (b) If, in accordance with subparagraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.
- (c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of this Convention in so far as they discharge their duties in accordance with this Article.
- (d) The Assembly of the Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.
- (e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article 44, paragraph 2, of the 1971 Fund Convention.
- (f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

Article 36 quinquies

Final clauses

The final clauses of this Convention shall be Articles 28 to 39 of the Protocol of 1992 to amend the 1971 Fund Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

FINAL CLAUSES

[Articles 28 to 39 of the Protocol of 1992 to Amend the 1971 Fund Convention]

Article 28

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.
2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.
3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.
4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.
5. Ratification, acceptance, approval or accession shall be affected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
6. A state which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.
7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 29

Information on contributing oil

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred

to in Article 28, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol.

Article 30

Entry into force

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

- (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.

2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.

3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.

4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.

5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General, of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article 31

Denunciation of the 1969 and 1971 Conventions

Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

- (a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and
- (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil; each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if Party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

Article 32

Revision and amendment

1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

Article 33

Amendment of compensation limits

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting

States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1, of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 34

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the 1992 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1969 Liability Convention takes effect according to Article 16 of that Protocol.

5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an instrument of ratification, acceptance, approval or accession to the 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.

6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.

7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2 (b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article 35

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 36

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article 37

Winding up of the Fund

1. If this Protocol ceases to be in force, the Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 38

Depositary

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument together with the date thereof;
 - (ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;
 - (iii) the date of entry into force of this Protocol;
 - (iv) the date by which denunciations provided for in Article 31 are required to be made;
 - (v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;
 - (vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;
 - (vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
 - (viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
 - (ix) any denunciation deemed to have been made under Article 34, paragraph 5;
 - (x) any communication called for by any Article in this Protocol;
- (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 39

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Protocol.³

Footnotes

* Signatures omitted.

GN 1535 of 20 November 2009: Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969: Publication for general information (Government Gazette No. 32723)

DEPARTMENT OF TRANSPORT

Since [section 231 \(2\)](#) of the Constitution of the Republic of South Africa, 1996, provides that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces; and

Since the National Assembly, on 23 October 1997, and the National Council of Provinces, on 15 March 1999, approved the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

I, Sibusiso J Ndebele, hereby publish the said Protocol, the English text of which is set out in the Schedule hereto, for general information.

(Signed)

SIBUSISO J NDEBELE
MINISTER OF TRANSPORT

SCHEDULE

CONTENTS

Part A1	Text of the International Convention on Civil Liability for Oil Pollution Damage, 1969
Part A2	Text of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
Part A3	Text of Resolution LEG.1 (82): Adoption of Amendments of the Limitation Amounts in the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
Part B	Consolidated text of the International Convention on Civil Liability for Oil Pollution Damage, 1992

PART A1

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

The States Parties to the present Convention,

CONSCIOUS of the dangers of pollution posed by the worldwide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED as follows:

Article I

For the purposes of this Convention:

1. "Ship" means any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
4. "State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.
5. "Oil" means any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
6. "Pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the cost of preventive measures and further loss or damage caused by preventive measures.
7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage.
9. "Organization" means the Inter-Governmental Maritime Consultative Organization.

Article II

This Convention shall apply exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State and to preventive measures taken to prevent or minimize such damage.

Article III

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.
2. No liability for pollution damage shall attach to the owner if he proves that the damage:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
 - (b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
 - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.
4. No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention. No claim for pollution damage under this Convention or otherwise may be made against the servants or agents of the owner.
5. Nothing in this Convention shall prejudice any right of recourse of the owner against third parties.

Article IV

When oil has escaped or has been discharged from two or more ships, and pollution damage results there from, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article V

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount of 2,000 francs for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 210 million francs.
2. If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article.
3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or another competent authority.
4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.
5. If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution

damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.

9. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amount mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which the fund is being constituted on the basis of the official value of that currency by reference to the unit defined above on the date of the constitution of the fund.

10. For the purpose of this Article the ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage. In the case of a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to be 40 per cent of the weight in tons (of 2240 lbs) of oil which the ship is capable of carrying.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even in the event of the actual fault or privity of the owner but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article VI

1. Where the owner, after an incident, has constituted a fund in accordance with Article V, and is entitled to limit his liability,

- (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
- (b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Article VII

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship. It shall be issued or certified by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 of this Article have been complied with. This certificate shall be in the form of the annexed model and shall contain the following particulars:

- (a) name of ship and port of registration;
- (b) name and principal place of business of owner;
- (c) type of security;
- (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security

3. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of those languages.

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to

these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

6. The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

7. Certificates issued or certified under the authority of a Contracting State shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them. A Contracting State may at any time request consultation with the State of a ship's registry should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, irrespective of the actual fault or privity of the owner, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available exclusively for the satisfaction of claims under this Convention.

10. A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12 of this Article.

11. Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.

12. If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by Article V, paragraph 1. Such a certificate shall follow as closely as practicable the model prescribed by paragraph 2 of this Article.

Article VIII

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article IX

1. Where an incident has caused pollution damage in the territory including the territorial sea of one or more Contracting States, or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After the fund has been constituted in accordance with Article V the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article X

1. Any judgment given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgment recognized under paragraph 1 of this Article shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article XI

1. The provisions of this Convention shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

2. With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

Article XII

This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions.

Article XIII

1. The present Convention shall remain open for signature until 31 December 1970 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

Article XIV

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Convention with respect to all existing Contracting States, or after the completion of all measures required for the entry into force of the amendment with respect to those Contracting States shall be deemed to apply to the Convention as modified by the amendment.

Article XV

1. The present Convention shall enter into force on the ninetieth day following the date on which Governments of eight States including five States each with not less than 1,000,000 gross tons of tanker tonnage have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. For each State which subsequently ratifies, accepts, approves or accedes to it the present Convention shall come into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XVI

1. The present Convention may be denounced by any Contracting State at any time after the date on which the Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

Article XVII

1. The United Nations, where it is the administering authority for a territory, or any Contracting State responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territory or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting State which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

Article XVIII

1. A Conference for the purpose of revising or amending the present Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the Contracting States for revising or amending the present Convention at the request of not less than one-third of the Contracting States.

Article XIX

1. The present Convention shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed or acceded to the Convention of:
- (i) each new signature or deposit of instrument together with the date thereof;
 - (ii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit;
 - (iii) the extension of the present Convention to any territory under paragraph 1 of Article XVII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;
- (b) transmitted certified true copies of the present Convention to all Signatory States and to at States which accede to the present Convention.

Article XX

As soon as the present Convention comes into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XXI

The present Convention is established in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this twenty-ninth day of November 1969.¹

Annex

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1969.

<i>Name of Ship</i>	<i>Distinctive Number or Letters</i>	<i>Port of Registry</i>	<i>Name of Address of Owner</i>

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1969.

Type of Security

Duration of Security

Name and Address of the Insurer(s) and/or Guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

At

On

(Place)

(Date)

Signature and Title of issuing or
certifying official

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of the Security" must stipulate the date on which such security takes effect.

Footnotes

* Signatures omitted.

PART A2 PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

THE PARTIES TO THE PRESENT PROTOCOL,

HAVING CONSIDERED the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING that special provisions are necessary in connection with the introduction of corresponding amendments to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

HAVE AGREED as follows:

Article 1

The Convention which the provisions of this Protocol amend is the International Convention on Civil Liability for Oil Pollution Damage, 1969, hereinafter referred to as the "1969 Liability Convention". For States Parties to the Protocol of 1976 to the 1969 Liability Convention, such reference shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 2

Article I of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. "Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2. Paragraph 5 is replaced by the following text:

5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

3. Paragraph 6 is replaced by the following text:

6. "Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

4. Paragraph 8 is replaced by the following text:

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

5. Paragraph 9 is replaced by the following text:

9. "Organization" means the International Maritime Organization.

6. After paragraph 9 a new paragraph is inserted reading as follows:

10. "1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 3

Article II of the 1969 Liability Convention is replaced by the following text:

This Convention shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 4

Article III of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.
2. Paragraph 4 is replaced by the following text:
 4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:
 - (a) the servants or agents of the owner or the members of the crew;
 - (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
 - (c) any character (howsoever described, including a bareboat charterer), manager or operator of the ship;
 - (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
 - (e) any person taking preventive measures;
 - (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 5

Article IV of the 1969 Liability Convention is replaced by the following text:

When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 6

Article V of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
 - (a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;
 - (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in subparagraph (a);

provided, however, that this aggregate amount shall not in any event exceed 59.7 million units of account.

2. Paragraph 2 is replaced by the following text:
 2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
3. Paragraph 3 is replaced by the following text:
 3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article

IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority.

4. Paragraph 9 is replaced by the following text:

- 9 (a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.
- 9 (b). Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9 (a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9 (a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.
- 9 (c). The calculation mentioned in the last sentence of paragraph 9 (a) and the conversion mentioned in paragraph 9 (b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9 (a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9 (a), or the result of the conversion in paragraph 9 (b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

5. Paragraph 10 is replaced by the following text:

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

6. The second sentence of paragraph 11 is replaced by the following text:

Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 7

Article VII of the 1969 Liability Convention is amended as follows:

1. The first two sentences of paragraph 2 are replaced by the following text:

A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State.

2. Paragraph 4 is replaced by the following text:

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

3. The first sentence of paragraph 7 is replaced by the following text:

Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State.

4. In the second sentence of paragraph 7 the words "with the State of a ship's registry" are replaced by the words "with the issuing or certifying State".

5. The second sentence of paragraph 8 is replaced by the following text:

In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1.

Article 8

Article IX of the 1969 Liability Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

Article 9

After Article XII of the 1969 Liability Convention two new Articles are inserted as follows:

Article XII *bis*

Transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
- (b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;
- (c) in the application of Article III, paragraph 4, of this Convention the expression "this Compensation" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;
- (d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with subparagraph (a) of this Article.

Article XII *ter*

Final clauses

The final clauses of this Convention shall be Articles 12 to 18 of the Protocol of 1992 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 10

The model of a certificate annexed to the 1969 Liability Convention is replaced by the model annexed to this Protocol.

Article 11

1. The 1969 Liability Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles I to XII *ter*, including the model certificate, of the 1969 Liability Convention as amended by this Protocol shall be known as the International Convention of Civil Liability for Oil Pollution Damage, 1992 (1992 Liability Convention).

FINAL CLAUSES

Article 12

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by all States.

2. Subject to paragraph 4, any State may become a Party to this Protocol by:

- (a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (b) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

4. Any Contracting State to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the 1971 Fund Convention, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1992 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date

when this Protocol enters into force for that State.

5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Conventions amended by this Protocol in relation to other State Parties hereto, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties thereto.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 13

Entry into force

1. This Protocol shall enter into force twelve months following the date on which ten States including four States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article 31 of the Protocol of 1992 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol of 1992 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.

3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

Article 14

Revision and amendment

1. A Conference for the purposes of revising or amending the 1992 Liability Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Liability Convention at the request of not less than one third of the Contracting States.

Article 15

Amendments of limitation amounts

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1969 Liability Convention as amended by this Protocol whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting there from, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

6 (a) No amendment of the limits of liability under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limits laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen

months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 16, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 16

Denunciation

1. This Protocol may be denounced by any Party at any time after the date which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.

5. Denunciation of the Protocol of 1992 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

Article 17

Depositary

1. This Protocol and any amendments accepted under Article 15 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

- (i) each new signature or deposit of an instrument together with the date thereof;
- (ii) each declaration and notification under Article 13 and each declaration and communication under Article V, paragraph 9, of the 1992 Liability Convention;
- (iii) the date of entry into force of this Protocol;
- (iv) any proposal to amend limits of liability which has been made in accordance with Article 15, paragraph 1;
- (v) any amendment which has been adopted in accordance with Article 15, paragraph 4;
- (vi) any amendment deemed to have been accepted under Article 15, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
- (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
- (viii) any denunciation deemed to have been made under Article 16, paragraph 5;
- (ix) any communication called for by any Article of this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 18

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON, this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.²

Annex

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of Ship	Distinctive Number or Letters	Port of Registry	Name of Address of Owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security

Duration of Security

Name and Address of the Insurer(s) and/or Guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

At

On

(Place)

(Date)

Signature and Title of issuing or
certifying official

Explanatory notes:

1. If desirable, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

Footnotes

- * Signatures omitted.

PART A3 RESOLUTION LEG.1 (82)

(adopted on 18 October 2000)

ADOPTION OF AMENDMENTS OF THE LIMITATION AMOUNTS IN THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

THE LEGAL COMMITTEE at its eighty-second session:

RECALLING Article 33 (b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on it by or under any international convention or instrument,

RECALLING FURTHER Article 15 of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the "1992 CLC Protocol") concerning the procedures for amending the limitation amounts set out in Article 6 (1) of the 1992 CLC Protocol,

HAVING CONSIDERED amendments to the limitation amounts proposed and circulated in accordance with the provisions of Article 15 (1) and (2) of the 1992 CLC Protocol,

1. ADOPTS, in accordance with Article 15 (4) of the 1992 CLC Protocol, amendments to the limitation amounts set out in Article 6 (1) of the 1992 CLC Protocol, as set out in the Annex to this resolution;

2. DETERMINES, in accordance with Article 15 (7) of the 1992 CLC Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;

3. FURTHER DETERMINES that, in accordance with Article 15 (8) of the 1992 CLC Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;

4. REQUESTS the Secretary-General, in accordance with Articles 15 (7) and 17 (2) (v) of the 1992 CLC Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 CLC Protocol; and

5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 CLC Protocol.

Annex

AMENDMENTS OF THE LIMITATION AMOUNTS IN THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

Article 6 (1) of the 1992 CLC Protocol is amended as follows:

the reference to "3 million units of account" shall read "4,510,000 units of account"; the reference to "420 units of account" shall read "631 units of account"; and the reference to "59.7 million units of account" shall read "89,770,000 units of account".

PART B

CONSOLIDATED TEXT OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1992

Article I

For the purposes of this Convention:

1. "Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

4. "State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.

5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

6. "Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution

damage or creates a grave and imminent threat of causing such damage.

9. "Organization" means the International Maritime Organization.

10. "1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article II

This Convention shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article III

1. Except as provided in paragraph 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

2. No liability for pollution damage shall attach to the owner if he proves that the damage:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs service for the ship;
- (c) any character (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e) unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Convention shall prejudice any right of recourse of the power of the owner against third parties.

Article IV

When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article V

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

- (a) 4,510,000 units of account for a ship not exceeding 5,000 units of tonnage;
- (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph (a) provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.

2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution

damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority

4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.

9 (a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

9 (b). Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9 (a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9 (a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

9 (c). The calculation mentioned in the last sentence of paragraph 9 (a) and the conversion mentioned in paragraph 9 (b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9 (a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9 (a), or the result of the conversion in paragraph 9 (b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article VI

1. Where the owner, after an incident, has constituted a fund in accordance with Article V, and is entitled to limit his liability,

- (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
- (b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Article VII

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. This certificate shall be in the form of the annexed model and shall contain the following particulars:

- (a) name of ship and port of registration;
- (b) name and principal place of business of owner;
- (c) type of security;
- (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

3. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of those languages.

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

6. The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

7. Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State. A Contracting State may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available exclusively for the satisfaction of claims under this Convention.

10. A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12 of this Article.

11. Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.

12. If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by Article V, paragraph 1. Such a certificate shall follow as closely as practicable the model prescribed by paragraph 2 of this Article.

Article VIII

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after

six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article IX

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After the fund has been constituted in accordance with Article V the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article X

1. Any judgment given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgment recognized under paragraph 1 of this Article shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article XI

1. The provisions of this Convention shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

2. With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

Article XII

This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions.

Article XII *bis*

Transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

- (a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
- (b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;
- (c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;
- (d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with subparagraph (a) of this Article.

Article XII *ter*

Final clauses

The final clauses of this Convention shall be Articles 12 to 18 of the Protocol of 1992 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

FINAL CLAUSES

Article 12

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by all States.
2. Subject to paragraph 4, any State may become a Party to this Protocol by:
 - (a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (b) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
4. Any Contracting State to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the 1971 Fund Convention, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1992 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date when this Protocol enters into force for that State.
5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Convention as amended by this Protocol in relation to other State Parties hereto, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties thereto.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 13

Entry into force

1. This Protocol shall enter into force twelve months following the date on which ten States including four States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.
2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article 31 of the Protocol of 1992 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol of 1992 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.
3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.
4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

Article 14

Revision and amendment

1. A Conference for the purposes of revising or amending the 1992 Liability Convention may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Liability Convention at the request of not less than one third of the Contracting States.

Article 15

Amendments of limitation amounts

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the 1969 Liability Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting

States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

6 (a). No amendment of the limits of liability under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b). No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from 15 January 1993.

(c). No limit may be increased so as to exceed an amount which corresponds to the limits laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 16, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 16

Denunciation

1. This Protocol may be denounced by any Party at any time after the date which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.

5. Denunciation of the Protocol of 1992 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

Article 17

Depositary

1. This Protocol and any amendments accepted under Article 15 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

- (i) each new signature or deposit of an instrument together with the date thereof;
- (ii) each declaration and notification under Article 13 and each declaration and communication under Article V, paragraph 9, of the 1992 Liability Convention;
- (iii) the date of entry into force of this Protocol;
- (iv) any proposal to amend limits of liability which has been made in accordance with Article 15, paragraph 1;

- (v) any amendment which has been adopted in accordance with Article 15, paragraph 4;
- (vi) any amendment deemed to have been accepted under Article 15, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
- (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
- (viii) any denunciation deemed to have been made under Article 16, paragraph 5;
- (ix) any communication called for by any Article of this Protocol;
- (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 18

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON, this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol. 3

Annex

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of Ship	Distinctive Number or Letters	Port of Registry	Name of Address of Owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security

Duration of Security

Name and Address of the Insurer(s) and/or Guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

At

(Place)

On

(Date)

Signature and Title of issuing or
certifying official

Explanatory notes:

1. If desirable, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

Footnotes

* Signatures omitted.

* Signatures omitted.

GN 217 of 15 March 2011: Institution of medal: "Soccer World Cup 2010 "Support" Medal, 11 June to 11 July 2010"

(Government Gazette No. 34106)

SOUTH AFRICAN POLICE SERVICES



by the president of the Republic of South Africa, by which the "Soccer World Cup 2010 "Support" Medal, 11 June to 11 July 2010" is instituted

To all to whom the presents shall come:

Greetings!

Whereas it is deemed desirable to commemorate the successful Soccer World Cup 2010 International Event from 11 June 2010 to 11 July 2010, I therefore deem it appropriate to distinguish the said period in a suitable manner.

Now, therefore, by virtue of the powers vested in me in terms of Section 84 (2) (K) of the Constitution of the Republic of South Africa 1996 read together with [Section 44 \(2\)](#) of the South African Police Service Act, ([Act No. 68 of 1995](#)); I hereby institute a medal, which shall be known as the "Soccer World Cup 2010 Support Medal", which shall be reserved exclusively for that purpose, and I further ordain that, henceforth, Rules and Regulations embodied in the schedule hereto, shall govern the design and the Award of the said medal as well as the forfeiture, annulment and restoration of an Award of the medal.

SCHEDULE

1. PRECEDENCE

In the respect of decorations or medals which may be awarded exclusively to members of the South African Police Service, the medal shall have precedence immediately after the South African Police Service 10 year Commemoration Medal 1995 - 2005, and also hold the position in the National Precedence list as determined by the Precedency from time to time.

2. DESCRIPTION

The Soccer World Cup 2010 Support Medal shall be gold plated minted and in circular with a diameter of 38 millimetres. The obverse consists of the map of Africa in the middle and on the sides of the map there are Laurels on each side that indicate the honour and the successful achievement of this International Event on African soil. On the upper part of the medal between the Laurels, the year 2010 to protrude off the background while at the bottom in between the Laurels, the commencement date and the end date of the event to protrude off the background.

At the bottom part of the map the Republic of South Africa is highlighted depicting a drawing of a soccer ball to indicate the Host Country in Africa.

The reverse depicts the soccer in the middle of the medal while the letters Soccer World Cup Support are engraved in the semi-circle above the soccer in the middle. The medal shall be pendent from a plain suspender.

3. RIBBON

The Soccer World Cup 2010 Support Medal shall be pendent from ribbon, 32mm wide, with nine (9) vertical colours or stripes, black, gold, red, white, green, white, navy, gold and black from left to right and 5mm, 2mm, 4mm, 3mm, 4mm, 3mm, 4mm, 2mm and 5mm respectively.

4. CONFERMENT REQUIREMENTS

4.1 The Soccer World Cup 2010 Support Medal may be awarded to a Member of the South African Police Service, a Reservist or a Civilian employee of the Service who has served during the event, from 11 June

to 11 July 2010, who is still in the employment of the service, and who has displayed an irreproachable character and exemplary conduct, excluding those who have committed criminal/departmental offences during the said period.

- 4.2 The medal may also be awarded to any person who distinguished himself or herself through outstanding services rendered to the event, Soccer World Cup 2010.

5. QUALIFICATION (MEDAL)

Except for the Provision of Rule 4, the medal may be awarded to a person:

Who has served during the event or occasion until the end.

6. CONFERMENT, FORFEITURE OR RESTORATION OF MEDAL

The medal shall be awarded by the Minister of Police of the Republic of South Africa on recommendation of the National Commissioner of the South African Police Service, and also be cancelled, annulled, declared forfeited or restored by the Minister of Police of the Republic of South Africa on recommendation of the National Commissioner of the South African Police Service, subject to such conditions as may be prescribed by the Regulations.

7. POSTHUMOUS AWARD

The medal may be awarded posthumously.

8. ENGRAVING / STAMPING OF A SERIAL NUMBER

On the reverse of each medal awarded shall be stamped/engraved a serial number that is linked to the personal number of the recipient, but excluding the miniature medal.

9. PUBLICATION IN NATIONAL DISTRIBUTION LIST AND RECORDING IN THE REGISTER

The names of the members to whom the medal is awarded, shall be published in a National Distribution list and shall, together with such particulars as the National Commissioner of the South African Police Service may deem fit, be recorded in a register kept in his or her office.

10. WEARING OF THE MEDAL

The medal shall be worn on the left breast. When the medal is not worn, only the ribbon bar in respect thereof shall be worn on the left breast.

11. The award of the medal shall not entitle the recipient to any individual precedence.

12. A reproduction of the medal, half size of the medal may be worn on appropriate occasions.

13. A sealed model for the medal as well as the ribbon in respect hereof and of the miniature reproduction thereof, shall be kept in safe custody in the office of the National Commissioner of the South African Police Service or in such other place as the President of the Republic of South Africa may determine.

Given under my hand and seal of the Republic of South Africa at Cape Town on 21st day of February of the year 2011.

(Signed)
J.G. ZUMA
President

By Order of the President-in-Council:
(Signed)
E.N. MTHETHWA
Minister of Police.

**GN 1088 of 22 December 2011: National Executive intervention in Limpopo Province in terms of [section 100 \(1\) \(b\)](#) of the Constitution of the Republic of South Africa, 1996
(Government Gazette No. 34898)**

	as corrected by	
Notice	Government Gazette	Date
GN 140	35060	21 February 2012

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

81/172488(Z19E)



The National Executive, at its meeting on 5 December 2011, decided that some Ministers in national government, will assume responsibility for relevant functions of the Provincial Executive of the Limpopo Province, in terms of [section 100 \(1\) \(b\)](#) of the Constitution with effect from 12 December 2011. These are as follows-

1. Minister of Finance assumes responsibility for the Provincial Treasury;
2. Minister of Health assumes responsibility for the provincial Department of Health;
[Item 2 substituted by GN 140 of 21 February 2012.]
3. Minister of Transport assumes responsibility for the provincial Department of Roads and Transport;
4. Minister of Basic Education assumes responsibility for the provincial Department of Education; and
5. Minister of Public Works assumes responsibility for the provincial Department of Public Works.

This intervention is effective from the date of implementation thereof, and shall remain effective until terminated by the national executive or in terms of [section 100 \(2\) \(b\)](#) of the Constitution, whichever comes first.

The Minister of Finance has been asked to coordinate a team of Ministers to oversee and monitor implementation of the National Executive's decision.

The Province remains responsible for the funding of the Provincial Departments referred to above during the period of this intervention.

**GN 210 of 27 March 2014: Presidential warrant: By the President of the Republic of South Africa for the institution of Order of South Africa honouring Heads of State and Government
(Government Gazette No. 37472)**

THE PRESIDENCY

To all to whom these presents may come,

GREETING!

Whereas it is desirable that Heads of State and Government who have distinguished themselves to the President of the Republic of South Africa and as a reciprocal to an Order or award that the President of the Republic of South Africa have received from that particular Head of State and Government, be honoured in an appropriate manner;

Now, therefore, I hereby institute in terms of [section 84 \(2\) \(k\)](#) of the Constitution of the Republic of South Africa, 1996, a National Order which shall be known as:

The Order of South Africa (gold), which shall be awarded to the Heads of State and Government who have distinguished themselves to the President of the Republic of South Africa

I ordain further that the Rules and Regulations governing the Order of South Africa shall govern the design award of the National Order, as well as its annulment, forfeiture and restoration.

Given under my Hand and the Seal at Pretoria on this 21 day of March Two Thousand and Fourteen.

(Signed)
PRESIDENT

RULES

CATEGORY

1. The Order is awarded in Gold category;
 - (i) Category I: (Gold)

Heads of State and Government as an honour and also as a reciprocal or an exchange to an Order or award that the President of the Republic of South Africa may receive from Heads of State and Government.

INSIGNIA

2. The Insignia shall consist of-

- (i) the Neck Insignia
- (ii) Miniature
- (ii) the Rosette
- (iii) the Ribbon

(Editorial Note: Numbering as per original *Government Gazette*.)

3. Neck insignia and miniature

- (i) Both the neck insignia and miniatures shall in all other respects be identical except that the miniature will not be set with diamonds
- (iii) The Order shall be an 18 carat Gold Raindrop pendant from a ring suspender affixed to the reverse of the Order. The obverse of the Order shall bear the following in three-dimensional effect:

Sunburst-Element of the National Coat of Arms, Wings of the Secretary bird - The National bird, The Southern Cross in five-point star form set with diamonds, Protea - The National flower

(Editorial Note: Numbering as per original *Government Gazette*.)

- (iii) The metal of Category shall be gold.
- (iv) The overall dimensions of the neck insignia shall be 64mm in height and 50mm in width.
- (v) The dimensions of the miniature shall be 46% of the size of the neck insignia.
- (vi) Both the full-size and miniature insignia shall bear on the reverse the National Coat of Arms, in relief.

4. Ribbon

- (i) The ribbon shall be 35mm in width, white rain drops on beige in colour, shall be manufactured locally, made in accordance with sound manufacturing practices, have been made from uniform and well-prepared yarns, be of acceptable uniform make, width, colour(s) and finish, Be free from defects that impair their appearance of that effect their serviceability, or both, Be delivered in a clean and commercial dry condition, be at least equal in quality, handle and appearance to the corresponding sealed sample held by The Presidency.

The selvedge shall be straight, firm and woven. In case the Ribbon woven shuttles loom, the pick shall be interlocked at or near the selvedge by a locking thread that will prevent the unravelling of the selvedge during use.

- (ii) The miniature ribbon shall be half the width of the full-size ribbon.

5. The Rosette

- (i) The rosette shall be 46% of the size of the Order, in the form of lapel badge with a pin and clutch, and no Coat of Arms on the reverse and shall not be set with diamonds.

OFFICIALS OF THE ORDER

6. The officials of the Order are the following:

- (i) The President as the Grand Patron of the Order; and
- (ii) The Chancellor of Orders, who administers and keeps the Order.

AWARD OF THE ORDER

7. The President may subject to the rules and Regulations concerning:

"The Order of South Africa" (hereinafter referred to as the Regulations)

- (i) Award the Order, also posthumously;

WEARING OF THE ORDER

8. The insignia shall be worn pendent from a ribbon worn around the neck, while the miniature shall be worn on the left breast.

The lapel badge shall be worn on the left lapel of the jacket, in the case of ladies, as a brooch.

GENERAL RULES

9. The President as Grand Patron of the Order is, on assumption of office and after relinquishing office, the holder of the Order in the highest category and may wear insignia of the Order on appropriate occasions.
10. All unawarded insignia and ribbons shall be kept at the Chancery and shall be supplied to recipients by the Chancery only.
11. The names of the persons who have been awarded the Order, shall be published in the *Government Gazette*.
12. The President may make Regulations to give effect to the provisions of this Warrant.

REGULATION GOVERNING "THE ORDER OF SOUTH AFRICA"

The President has, in terms of rule 12 of this Warrant, dated the 21st of March 2014, by which "the Order of South Africa" (hereinafter referred to as the Order) approved that the following regulations governing the Order be promulgated:

1. Upon award, the Order shall be presented by the President or by any other person designated by him to the person to whom the Order has been awarded. If at all possible, in the case of a posthumous award, to the next of kin, a blood relation or legal heir of the deceased, as the President may determine.
2. A scroll/certificate of Award bearing the Seal of the Chancery of Orders and signed by the Chancellor of Orders or any officer designated by him/her, shall be issued in respect of each award.
3. The insignia shall be worn only by the person to whom they have been awarded.
4.
 - (i) If the insignia or scroll/certificate of award is stolen, lost, destroyed or damaged, the circumstances must be reported to the Chancellor of Orders.
 - (ii) If the Chancellor, after due investigation and upon sworn information is of the opinion that the theft, loss destruction or damage to the insignia or Certificate of award was not due to negligence or carelessness of the recipient, he may authorize the replacement of thereof at the state expense, otherwise the recipient shall bear the cost of replacement.
5. The holder shall not pledge, barter, sell or in any way alienate the insignia except by testamentary bequest. In case of any doubt, the Chancellor or the Chancery of Orders must be consulted.
6. Before the Order may be awarded, an unequivocal assurance, confirmed through diplomatic channels, that the nominee is prepared and has been granted approval by his Government to accept the Order, must be obtained.
7. The Chancery of Orders shall keep a register in which the following shall be recorded:
 - (i) The name of the recipient, the date of award and the serial number of the insignia; and
 - (ii) The loss or replacement of the Insignia of the Order.
8. The President may-
 - (i) amend or recall the Insignia of the Order;
 - (ii) and amend or rescind the requirements for award of the Order.

GN 637 of 22 August 2014: The National Policy on Food and Nutrition Security for The Republic of South Africa
(Government Gazette No. 37915)

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES



THE NATIONAL POLICY ON FOOD AND NUTRITION SECURITY FOR THE REPUBLIC OF SOUTH AFRICA

The right to have access to sufficient food is embedded in [section 26](#) and [27](#) of the South African Constitutional Law of 1996. The Bill of Rights enshrined in the Constitution states that "every citizen has a right to have access to sufficient food, water and social security" and that "the State must take reasonable legislative and other measures,

within its available resources, to achieve the realisation of this right". The Policy provides a broad framework for the fulfilment of this Constitutional imperative, and will serve as a guide to national, provincial and local government in pursuit of food and nutrition security at every level.

In South Africa, food security received much attention after 1994 when South Africa became a democratic country. The National Development Plan, Vision 2030, further entrenched the need for the country to continue addressing this challenge. The Policy will therefore be a key pillar in delivering the objectives of the National Development Plan. Cabinet approved the Policy in September 2013 and mandated the Department of Agriculture, Forestry and Fisheries and the Department of Social Development supported by other line function Ministries to lead the implementation of the Policy.

The lead Departments are at advanced stages of developing an implementation plan for the Policy which will be consulted widely upon finalisation.

For more information please contact Mr. Molatelo Mamadi on (012) 319 6705 or send an email to: MolateloMAM@daff.gov.za.

Annexure A



NATIONAL POLICY

on

FOOD AND NUTRITION SECURITY

Department of Social Development and Department of Agriculture, Forestry and Fisheries

August 2013

CONTENTS

1.	Introduction
2.	Mandates
3.	Strategic Goal
4.	Approach
5.	Defining Food and Nutrition Security
6.	Indicators of Food and Nutrition Security
7.	Country assessment
8.	Factors affecting Food Security
9.	Food Security Response Mechanisms
10.	Policy Leadership
11.	Legislation
12.	Building the Pillars of Food and Nutrition Security

A NATIONAL POLICY ON FOOD AND NUTRITION SECURITY FOR THE REPUBLIC OF SOUTH AFRICA

1. INTRODUCTION

1.1 BACKGROUND

In 2002, Cabinet approved the national Integrated Food Security Strategy (IFSS) in order to streamline, harmonize and integrate the diverse food security programmes. Some successes have been recorded in different priority areas of the Strategy, and South Africa is presently able to boast national food sufficiency through a combination of own production and food imports. The General Household Survey (GHS) has also indicated that the food access index has been improving, and the incidence of hunger declining.

However secure access to food by all is still not guaranteed. Household food security is threatened by globalisation, international trade regimes, climate change, and the poor storage and distribution of food. Without co-coordinated interventions, increasing numbers of the population may experience inadequate access to food and many more will fail to benefit from proper nutrition.

In addition, the global economic slowdown, increased food price volatility and the impact of climate change have compelled a review of the IFSS and the development of a comprehensive National Food

and Nutrition Security Policy.

1.2 THE NEED FOR A FOOD SECURITY POLICY

These are three reasons why a Food and Nutrition Security Policy is urgently needed in South Africa.

First of these is the need for a common definition and measures on Food and Nutrition Security. There are a number of conceptual interpretations and definitions of Food Security which are used by key stakeholders, including government, the international community, research institutions and civil society. A Food and Nutrition Security Policy is therefore needed to specify the key elements and scope of the concept, and to establish a common understanding which can be owned by all, in line with Vision 2030.

Second, Food and Nutrition Security is a complex issue characterised by inter-disciplinary approaches. This National Policy on Food Security and Nutrition seeks to provide an overarching guiding framework to maximise synergy between the different strategies and programmes of government and civil society.

Third, as a member of the Southern African Development Community (SADC), South Africa contributes substantially to Regional Food and Nutrition Security, and needs to play a leadership role in this regard. This Policy thus will create a platform to understand the parameters and boundaries of our international obligations.

1.3 CHALLENGES

South Africa still faces serious food security challenges, which can be summarised as follows:

- . There are inadequate safety nets and food emergency management systems to provide for all those who are unable to meet their immediate food needs or to mitigate the impact of natural and non-natural disasters on food security;
- . Citizens have inadequate access to knowledge and resources to make optimal choices for nutritious and safe diets;
- . In cases where productive land is available, it is not always optimally utilised for food production, often for want of inputs (including finance, equipment and water), or skills; at the same time, there is a need to ensure that over-production does not drive down prices to the point that farming becomes unprofitable.
- . There is limited access to processing facilities or markets for small-scale primary producers, including farmers, fishers and foresters;
- . Climate change and altered patterns of land use pose a threat to domestic production;
- . There is not adequate, timely and relevant information on food security.

In 2011, a Report by the United Nations (UN) Special Rapporteur on the Right to Food identified numerous concerns and challenges, with recommendations on each, many of which are addressed in this Policy. These included:

- . The need to streamline data collection and analysis;
- . The need to strengthen existing strategies and policies related to food security;
- . Steps to improve access to markets for smallholder farmers; and
- . An emphasis on agro-ecological approaches to farming.

2. MANDATES

2.1 CONSTITUTIONAL MANDATE

The Bill of Rights guarantees every citizen "*the right to have access to . sufficient food and water*" and that "*the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*" (Constitution, 1996: 12)

This Food and Nutrition Security Policy provides a broad framework for the fulfilment of this Constitutional imperative and should serve as a guide to national, provincial and local government in pursuing food security at every level.

2.2 STRATEGIC MANDATE

The 2013 State of the Nation Address (SONA) reaffirmed the National Development Plan: Vision 2030 as the development blueprint, and recognised the proposals for "*tackling the problems of poverty, inequality and unemployment. It is a roadmap to a South Africa where all will have water, electricity, sanitation, jobs, housing, public transport, adequate nutrition, education, social protection, quality healthcare, recreation and a clean environment.*"

The National Development Plan (NDP) sets out various methods and targets to eradicate poverty, reduce unemployment and eliminate inequality by 2030. It identifies Food and Nutrition Security as a key element of both poverty and inequality: it is both a consequence of poverty and inequality as well

as a cause. As a result the NDP makes reference to a number of steps that will improve food security, including the expanded use of irrigation, security of land tenure, especially for women, and the promotion of nutrition education. This Food and Nutrition Security Policy will therefore be a key pillar in achieving the objectives of the NDP.

3. STRATEGIC GOAL

The strategic goal of the National Food and Nutrition Security Policy is to ensure the availability, accessibility and affordability of safe and nutritious food at national and household levels.

South Africa has about 13.8 million individuals that experience inadequate access to food (STATS-SA, GHS 2011). The aim is to reduce this number and thereby contribute towards overall poverty eradication.

The essence of this Policy is to build on existing initiatives and systems, and to put in place mechanisms that ensure stricter alignment, better coordination, and stronger oversight. Moreover, the Policy seeks to ensure that our response to food and nutrition insecurity is ambitious, rigorous and dynamic.

The Policy therefore provides a platform for various strategies which will include:

- . Increased and better targeted public spending in social programmes which impact on food security;
- . Efforts to increase food production and distribution, including increased access to production inputs for the emerging agricultural sector;
- . Leveraging Government food procurement to support community-based food production initiatives and smallholders; and
- . The strategic use of market interventions and trade measures which will promote food security.

4. APPROACH

Food and nutrition security is a multifaceted and multidimensional issue which will not be attained through a single approach - be it in the form of social relief or agricultural production. Food and nutrition security requires well-managed inter-sectoral co-ordination, and the genuine integration of existing policies and programmes in health, education, and environmental protection, as well as in agrarian reform and agricultural development.

This can be attained through the implementation of the following five pillars, which constitute the foundations of the Food and Nutrition Security Policy, and which allow for multi-sectoral initiatives and programmes under each of the pillars:

- . The availability of **improved nutritional safety nets**, including government run and supported nutrition and feeding programmes, emergency food relief, as well as private sector, CBO and NGO interventions.
- . Improved **nutrition education**, including District level nutrition services to assist households and communities monitoring nutritional indices, providing consumer literacy and assisting with better food management and improved meal planning.
- . The alignment of **investment in agriculture** towards local economic development, particularly in rural areas. This includes the provision or subsidisation of inputs and support services for increased food production, as well as more effective food storage and distribution networks, involving both government and private agencies, to eliminate waste and ensure better access to food for all.
- . Improved **market participation** of the emerging agricultural sector through public-private partnerships, including off-take and other agreements, a government food purchase programme that supports smallholder farmers, as well as through the implementation of the Agri-BEE Charter, which requires agro-processing industries to broaden their supply bases to include the emerging agricultural sector.
- . Food and Nutrition Security **Risk Management**, including increased investment in research and technology to respond to the production challenges currently facing the country, such as climate change and bio-energy. It would also include the protection of prime agricultural land, and limitations on its alienation for other activities, including mining, game farming, and property development. Improved food security information management systems would also be required, with periodic scientific reviews of the state of food security in the country.

Each of the above pillars will be pursued in line with appropriate Strategy documents, outlining the programmes and activities which will contribute to the attainment of food security. A Household Food and Nutrition Strategy has been developed, and is part of this document, and a Food Production Intervention is similarly included. Further Strategy documents on the other pillars may be developed by relevant Departments.

5. DEFINING FOOD AND NUTRITION SECURITY

A widely accepted definition of Food Security is provided by FAO as being "*access by all people, at all times, to*

the food required for a healthy life". In an expanded form, the World Bank defines food security as "the physical, social and economic access to sufficient, safe and nutritious food by all, at all times, to meet their dietary and food preferences".

The World Food Programme (WFP), when measuring food security levels in time of emergency, "explores what is justifiable and feasible" to calculate food insecurity conditions and to determine the humanitarian needs. Oxfam defines food security as being a state "when everyone has at all times access to and control over sufficient quantities of good quality food for an active healthy life", and they use this definition to determine whether people are able to meet their immediate food needs and also to define the vulnerability and risks faced by different groups in relation to the availability of food.

The 1996 World Food Summit concluded that "Food security exists when all people at all times have physical and economic access to sufficient safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life."

These definitions all incorporate four specific dimensions, which can be used as a platform for the structuring of a National Policy on Food and Nutrition Security:

- . Adequate availability of food;
- . Accessibility (physical, social and economic means) of food;
- . Utilisation, quality and safety of food; and
- . Stability of food supply.

People are considered to be vulnerable to food insecurity or food insecure if any one of these conditions is not fulfilled.

This Policy defines Food and Nutrition Security as:

"Access to and control over the physical, social and economic means to ensure sufficient, safe and nutritious food at all times, for all South Africans, in order to meet the dietary requirements for a healthy life".

6. INDICATORS OF FOOD AND NUTRITION SECURITY

Food and Nutrition Security can and should be measured at both an individual or household level, as well as at a national level.

6.1 MEASURING HOUSEHOLD NUTRITION

At the individual or household level, two measures can be used: the "hunger index" as well as various anthropometric measures.

HUNGER INDEX

The Hunger Index developed from the National Food Consumption Survey of 2005 shows that at the national level over 50% of households reported that they experienced hunger; 28.2% of households were described as being at risk of hunger, and 20.2% appeared to be food secure. In rural areas 58% of households experienced hunger, compared to 46% in urban areas.

At the provincial level, prevalence of households experiencing hunger was highest in the Eastern Cape (66.7%), Northern Cape (65.3%) and Limpopo (63.2%), with the Western Cape having the lowest prevalence (29.3%). Child hunger remains high, ranging from 9% in the Western Cape to 43% in the Eastern Cape and Limpopo.

ANTHROPOMETRIC MEASUREMENT

The existence and extent of malnutrition is an important proxy indicator of access to food. Chronic dietary inadequacy is manifested through stunting and the National Food Consumption survey of 2005 indicated that about 18% of children were stunted in South Africa. Stunting is highest in rural areas (24.5%) and urban informal areas (18.5%), and decreases with age from 23.4% of 1 to 3 year olds to 12% among 7 to 9 year olds.

"Wasting" (from poor nutrition rather than insufficient food) affects 4.5% of South African children. 9.3% of children are underweight, while 4.8% are overweight. Predictably, evidence of poor nutrition is highest (at 5.5%) in urban formal areas. The highest prevalence was recorded in Gauteng (6.4%) and Kwa-Zulu Natal (6.3%). It is also reported that overweight and obesity combined occur in 51.5% of women.

Nutrition levels can be used as an indicator of the state of food security. The World Health Organisation recommends the "adequate daily energy intake" of people with different nutritional needs as follows:

	INFANT	CHILD	YOUTH/ADULT
ENERGY REQUIREMENTS	3 121kJ	5 693kJ	11 113kJ

This Policy requires the Department of Health to determine an acceptable minimum adult daily energy intake level, below which an individual would be considered as being under-nourished.

Expenditure on food can also be used as an indicator, and a per capita 'food-poverty' value could be determined. Households would be regarded as being in a situation of food poverty when their monthly spending on food, plus the value of food aid received, together with own-produced food, is less than the combined food poverty value of the individuals living in that household.

6.2 MEASURING FOOD SECURITY

At a national level, food security is primarily reflected in food price levels, food inflation indices, and by measures of local production. All of these are collated on a regular basis, and will be reported on as part of the monitoring of the policy.

Other indicators are available, including an economic review of food security, which takes a global view of resource inputs, marketing and logistics, and other factors like climate change, which impact on national food security. Such modelling may be considered in implementing this aspect of the policy.

7. COUNTRY ASSESSMENT

A recent assessment of Food Security in South Africa showed that in relation to the affordability, availability and quality of food, the country ranked 40th out of 105 countries, with an aggregate score of 61%. Nutritional standards in South Africa and food safety standards were highly rated, as was the tariff regime, while scoring lower on support to farmers, volatility of production and diversity of diets and micro-nutrient intakes.

This assessment, together with the Report of the UN Special Rapporteur on the Right to Food in 2011, suggests that South Africa faces the following over-arching challenges in attaining national food security:

- . At a national level, the country is able to produce or procure sufficient food, but distribution inequalities threaten household level food security, with up to 9 million tons of food wasted each year;
- . There is an inadequate knowledge and information, as well as the financial resources, to enable citizens to make optimal choices for the consumption of safe and nutritious food;

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "There is an inadequate knowledge" is intended to be "There is an inadequate knowledge".)

- . Food safety nets and food emergency management systems are not always in place to assist people who are unable to meet their food needs or to mitigate the impact of natural and human disasters;
- . Rising input costs, especially electricity and fuel, as well as labour costs, which undermine the ability to sustain production;
- . Climate change and poor land management (over grazing and other practices), together with the use of land for mining and urban development, pose a threat to domestic food production;
- . There are limited opportunities and platforms for smallholder farmers to gain access to markets and hence participate in economically productive activities;
- . There is a need to improve the availability of adequate, timely and relevant information for analysis, monitoring, evaluation and reporting on the state of food security;
- . These challenges can best be considered through the lenses provided by the four dimensions of food security identified above - availability, accessibility, utilisation, and stability of food supply.

8. FACTORS AFFECTING FOOD SECURITY

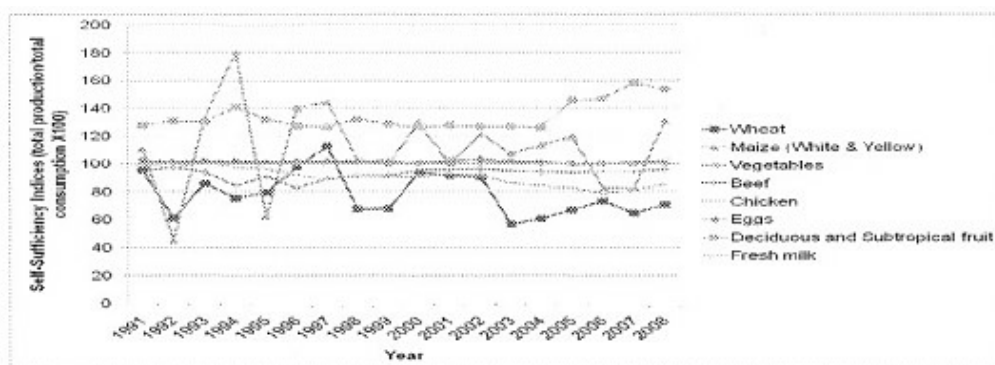
The FAO uses four measures to assess Food and Nutrition Security: availability and accessibility of food, food utilisation, and stability of supply.

8.1 AVAILABILITY OF FOOD

Food availability relies primarily on the overall performance of the agricultural sector, but is also dependent on the country's ability to import, store, process and distribute food. Domestic production is supplemented by food import options and food consumption patterns prescribe the production and distribution of certain food products. The South African food situation has been and is still characterized by an overall state of sufficiency for the nation, as measured in terms of demand and supply indicators.

South Africa has always relied on imports to meet its wheat and meat requirements but is currently importing significantly more agricultural products than it did just five years ago. Currently the country is importing sufficient wheat to satisfy domestic demand but projections are that the demand will grow by almost 90% by 2020. This can be compared to modest growth in demand for chicken, beef and milk products. Figure 1 illustrates the domestic supply and demand for various products, in the form of a self-sufficiency index.

Figure 1:
Self-sufficiency indices of selected agricultural commodities (DAFF, 2009)



The pattern of increasing food demand necessitates that the agriculture sector should become more efficient to supply sufficient food now and in the future. Currently about 20.7% of households are involved in agriculture production, but over 65% of these households are only producing for their own consumption. Without addressing the following challenges production levels will not match the projected food demands of the country.

LAND UTILISATION

Currently there are about 40 000 farming units in the country (DAFF, 2009). There has been an overall loss of high agricultural potential land to non-agricultural activities such as mining and housing developments, and in the period between 1994 and 2009 the overall area under food production declined by 30%.

FOOD STORAGE AND DISTRIBUTION NETWORKS

Food storage facilities are essential for food security, particularly in addressing fluctuations in production such as seasonal supply variations and harvest failures, which result in unpredictable price hikes and drops. Poor storage and distribution also results in some 9 million tons of food being wasted each year.

The need for government-led food storage facilities, especially in remote areas where there is no proper road or market infrastructure, becomes an urgent policy intervention. Attention must also be given to household food storage to reduce wastage and promote healthier eating.

REFORM OF DOMESTIC MARKETS

Since 1996 agricultural markets have been actively deregulated. By early 1998, all Control Boards had ceased operations, and their assets were transferred to industry trusts, which are expected to provide services such as market information, export advice, and product development. The Marketing of Agricultural Products Act (1996) does provides for limited government interventions such as registration, regulation and information collection, but food price controls were removed and single-channel markets disappeared with the abolition of these Control Boards. As a result, many new farmers entered the domestic and export markets, which offered good prospects for future job creation and marketing services to new farmers.

This deregulation had its benefits, in particular the introduction of a futures and options market, which improved transparency in the marketing of agricultural products and enhanced productivity in the agricultural sector. However it has not always served to enhance the economic viability of the emerging agricultural sector, and the small-scale farming sector remains characterised by low productivity, lack of access to markets, and insufficient market information, as well as poor capacity and lack of production and marketing infrastructure. This sector urgently requires assistance in the market in order to develop, and support in terms of access to finance, to skills, and to markets.

8.2 ACCESSIBILITY OF FOOD

Despite adequate food supply and distribution on a national level, the determinant of food security is accessibility and affordability of food by individual households. Poverty and unemployment cause 20% of households to be food insecure.

The costs of food production have increased during the last decade. South Africa imports many of its production inputs, especially fuels and fertilisers, and the price of these affect the costs of food.

In turn, food prices are one of the major contributors to consumer price inflation, particularly for poor households who spend a disproportionate amount of their income on food. The Quarterly Food Price Monitoring report produced by the National Agricultural Marketing Council (NAMC) indicates strong rural and urban food prices disparities; consumers in rural areas pay more than consumers in urban areas to buy the same basket of selected food products.

8.3 UTILISATION OF FOOD

It is essential that people make the best use of available food resources for their nutritional wellbeing.

Food must be prepared and consumed in a proper way to ensure maximum nutrition.

8.3.1 DIETARY DIVERSITY

The diversity of diet is pivotal to the attainment of food and nutrition security, since diverse diets tend to be richer in micro and macro nutrients. However most diets are dominated by staple foods that contain mostly macro nutrients, resulting in low dietary diversity. The consequences are high levels of micro-nutrient deficiency induced diseases in South Africa, arising from insufficient Vitamin A and Zinc, and manifesting as anaemia.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "arsing" is intended to be "arising".)

Food security programmes should also concentrate on the production and consumption of foods which are aimed at improving the identified deficient micro-nutrient at the household level. The WHO recommends a daily intake of up to 500 grams of fresh fruit and vegetables (including berries, green leafy and other vegetables and legumes) to reduce nutrient induced illnesses. The inclusion of micro-nutrients in all state-supported food aid schemes must be attended to. These are low cost, and produce high gains.

The neglect of indigenous foods also exacerbates micro nutrient deficiencies. Indigenous crops like "Amaranth" (*amaranthus hypochondriacus*) and "Spider plant" (*cleome gynandra*) contain more micro nutrients than exotic vegetables such as cabbage and lettuce. The promotion of indigenous crops such as bambara ground nuts (*vigna subterranae*), amadumbe (*colocasia esculenta*) and cowpeas (*vigna inguiculata*) is integral to ensuring that households consume more diverse diets. Increased consumption will also induce their production and assist in the creation of markets for these commodities, which will in turn enhance rural economies.

8.3.2 FOOD PRESERVATION AND UTILISATION

Health risk factors such as obesity, high blood pressure, and high cholesterol are strongly associated with dietary intake. Five of the leading causes of death - heart disease, stroke, atherosclerosis, some cancers and diabetes - are linked to nutrition, and learning about better choices for healthy eating is integral to sustaining a healthy society.

Storage conditions, temperature and exposure to light are some of the factors that modify the nutritional value of foods. Nutrients may be lost prior to consumption - for example nutrients such as vitamin C are lost when food is bruised. Processing techniques can enhance or interfere with the nutritive values of foods; dehydration, canning, and freezing yield foods of high nutritive value, but each process modifies the nutrient contribution of a given food product. In preparing food, the amount of peelings removed, the size of pieces exposed to the air, and the length of time food is held before it is served for example are some of the potential methods on how nutrients loss from food can be realized. In addition, overcooking of certain food products, which is common, can reduce the amount of nutrients consumed.

The provision of nutrition education is therefore crucial to the efficient use of food resources. Nutrition education should assist individuals to improve their meal planning, interpretation of product nutritional indices and correct preparation methodologies to prevent food nutrient loss before consumption.

8.4 STABILITY OF FOOD SUPPLY

Although the South African food situation is characterized by a state of sufficiency, factors with the potential to compromise the stability of food supply need urgent attention. As part of the global community, South Africa's food supply is affected by natural, market, political and economic forces, and by international agreements. The following are some of the challenges that require attention.

8.4.1 CLIMATE CHANGE

Since 1906 temperatures have increased by 0.74% and the years 1995-2006 ranked amongst the warmest years on record. Despite international concern, greenhouse gas concentrations in the atmosphere are set to increase, and due to its low adaptive capacity, the African continent is one of the most vulnerable to climate variability and to "extreme events" such as flooding or droughts.

8.4.2 REVITALISING THE AGRICULTURAL SECTOR

A food production and marketing strategy that clearly outlines state support to farmers and the agricultural industry is a prerequisite for food security. International comparisons show massive state support to farmers by developed and developing, mostly in the form of subsidies and tariffs, and South Africa needs to consider such measures in order to protect and promote agricultural production.

9. FOOD SECURITY RESPONSE MECHANISMS

The following systems are required, with appropriate institutional support.

9.1 INFORMATION MANAGEMENT SYSTEMS

Timeous, accurate and relevant information about food is pivotal to the policy goal of eradicating hunger, malnutrition and food insecurity.

A comprehensive Food and Nutrition Security and Vulnerability analysis will require data to monitor each of the four dimensions (availability, access, utilisation, stability), and regular scientific reviews should identify risk factors. This should serve as a national data set on food availability (production, imports), access (income, markets), utilization (health, nutrition & sanitation) and stability of supply (climate change), and ensure that the food needs of the country are protected against shocks and disasters.

9.2 A CENTRALIZED FOOD SAFETY CONTROL SYSTEM

The current food safety and quality control systems in South Africa are fragmented, with different agencies administering the implementation of various regulations determined by different pieces of legislation. Custodians include:

- . The Department of Health (Food Inspection Services)
- . The Department of Agriculture, Forestry and Fisheries (Perishable Products Export Control Board); and
- . The Department of Trade and Industry (South African Bureau of Standards).

The Policy therefore proposes the formation of a centralised food safety and quality controlling system for South Africa, and the creation of a body that will amalgamate the different entities responsible for implementing food safety regulations.

The mandate of this body will be to develop a food safety policy for South Africa to regulate domestic and international food safety standards obligations, to develop and/or review the current legislation regulating food safety, integrate the enforcement of regulations industry, and harmonise the domestic food safety standards with international standards.

9.3 FOOD AND NUTRITION SECURITY RISK MANAGEMENT SYSTEM

The attainment of food sufficiency within the SADC Region will assist in promoting economic stability. Government will support the development of the region by encouraging investment in agricultural production and processing infrastructure (including roads, ports & rail transport), and leading the processes of institutional reform, human resource development and other development initiatives including capital investment projects. Consideration could also be given to the development of Regional Food Reserves, although these could be costly. An analysis conducted previously is attached, for information purposes.

9.4 AGRICULTURAL RESEARCH AND TECHNOLOGY DEVELOPMENT

In the decades ahead, the challenge of ensuring food security for our rapidly expanding population calls for profound improvements in agricultural knowledge systems. Environmental degradation like soil erosion, deforestation, pollution and loss of plant and animal genetic diversity will limit our country's ability to produce food now and for the future.

Our food needs will exceed resource limits if investment on research and technology development is not prioritized. Climate change, production input costs, development of crop varieties adapted to adverse conditions, biological pest and disease control methods, biogas digesters and improved irrigation management and farming systems that blend traditional knowledge with innovative research are some of the matters to be researched.

10. POLICY LEADERSHIP

The Food Security Policy will be led in a manner which entrenches public, private and civil society partnerships.

Overall leadership will be provided by government, advised by a National Food and Nutrition Advisory Committee, comprised of recognised experts from organized agriculture, food security and consumer bodies, as well as climate change and environmental practitioners and representatives of organised communities. The Committee would be chaired by the Deputy President.

Similar structures could be established at provincial and local levels, and should be supported by relevant government Departments.

11. LEGISLATION

In line with its international obligations, South Africa has to consider the recommendation of the Food and Agriculture Organisation of the United Nations (FAO) that Member States should consider the enactment of legislation on the right to access to food. The approval of this National Food and Nutrition Security policy could be an initial step towards a Food and Nutrition Security Act for South Africa, which would give statutory force to such structures. A Green and White Paper process is envisaged to prepare for this.

12. BUILDING THE PILLARS OF FOOD AND NUTRITION SECURITY

The pillars of food and nutrition security are identified as the following:

- Effective **food assistance** networks, involving both government and non-governmental agencies, to ensure better access to food for all, through the availability of improved nutritional safety nets. These could include an expanded and improved school nutrition programme, fortification of foods, and the use of foodbanks and food kitchens.
- Improved **nutrition education**, including District level nutrition services to assist households and communities monitoring nutritional indices, providing consumer literacy, and assisting with better food management and improved meal planning. Programmes are available, and could be made available on a mass scale.
- Alignment of investments in agriculture towards **local economic development**. This will focus on the revitalisation of irrigation schemes, and the development of production, storage and distribution of food.
- Improved **market participation** of the emerging agricultural sector through public-private partnerships, including off-take and other agreements, a government food purchase programme that supports smallholder farmers, as well as through the implementation of the Agri-BEE Charter, which requires agro-processing industries to broaden their supply bases to include the emerging agricultural sector.
- Food and Nutrition Security **Risk Management**, including increased investment in research and technology to respond to the production opportunities and challenges inherent to climate change, bio-energy, green technologies and the like. It would also include the protection of prime agricultural land, and limitations on its alienation for other activities, including mining, game farming, and property development. Improved food security information management systems would also be required, with periodic scientific reviews of the state of food security in the country. This information could be used to ensure that informed decisions were made in regard to the management of food supplies.

Giving effect to each of these pillars involves a wide range of activities, and requires the participation of numerous government departments. Contributions will range from economic transformation initiatives, to social development programmes such as nutrition education and the establishment of home and community gardens, as well as assistance programmes for the poor. Each of these would contribute to one of the four identified dimensions of food security:

- Adequate availability of food;
- Physical, social and economic accessibility of food;
- Utilisation, quality and safety of food; and
- Stability of food supply.

The supporting strategies are related to these four dimensions and focused on one of the following aspects:

- The utilisation of existing food supplies at a household level, with a view to addressing the short-term concerns of hunger and malnutrition (as proposed in the Household Food and Nutrition Strategy); or
- Increasing the overall supply of food through improved production, as well as various market interventions, with a view to ensuring a sufficient and sustainable supply of food for the country as a whole.

GN 263 of 30 March 2015: Governance Rules of the Public Service Commission (Government Gazette No. 38620)

PUBLIC SERVICE COMMISSION

A. PREAMBLE

Whereas the Public Service Commission ("the Commission") is an independent, impartial constitutional institution, which must exercise its powers and perform its functions without fear, favour or prejudice.

We recognize, as Public Service Commissioners, that the Commission is the only constitutional institution established in Chapter 10 of the Constitution of the Republic of South Africa, Act [108 of 1996](#) ("the Constitution") with a specific focus on the public service.

Furthermore, the prominence given to the Commission in Chapter 10 of the Constitution, 1996, illustrates its importance as an institution supporting democracy and strengthening the public service and administration.

Given our Constitutional mandate, we as a single Public Service Commission, are committed to setting standards of excellence in governance that we will hold the public service to.

Whereas [sections 11](#) of the Public Service Commission Act, 1997 ("the Act") provides that the Commission may

make rules which are not inconsistent with the Act or the Constitution as to-

- (a) the investigation, monitoring and evaluation of those matters to which [section 196 \(4\)](#) of the Constitution relates, the procedure to be followed at any such investigation, the documents to be submitted to the Commission in connection with any such investigation, and the manner in which and the time within which the said documents shall be submitted;
- (b) the powers and duties of the Chairperson, the Deputy Chairperson or any other commissioner, and the delegation or assignment of any power and duty entrusted to the Commission by or under this Act, the Constitution or the Public Service Act to a commissioner referred to in [section 196 \(7\) \(b\)](#) of the Constitution;
- (c) the manner in which meetings of the Commission shall be convened, the procedure to be followed at those meetings and the conduct of its business, the quorum at those meetings, and the manner in which minutes of those meetings shall be kept;
- (d) any matter required or permitted to be prescribed by rule under the Act.

Whereas [sections 13](#) of the Act provides that the Commission may-

- (1)
 - (a) delegate to one or more commissioners, or to an officer or officers, any power conferred upon the Commission by or under this Act, the Constitution or the Public Service Act, excluding the power referred to in this subsection or in [section 11](#); or
 - (b) authorise one or more commissioners, or an officer or officers, to perform any duty assigned to the Commission by or under this Act, the Constitution or the Public Service Act, excluding the duty referred to in [section 196 \(6\)](#) of the Constitution, on such conditions as the Commission may determine.
- (2) Any delegation or authorisation may at any time be amended or revoked by the Commission.

In line with our constitutional and legislative objectives, we dedicate ourselves to ensuring that the standard of our own internal deliberations and decision-making processes meet the tests of accountability, transparency and responsiveness.

We therefore adopt these Governance Rules in the spirit of guaranteeing coherence, predictability, collegiality and joint responsibility in the internal deliberations of the Commission, whilst at the same time ensuring efficiency, effectiveness and responsiveness in decision-making.

B. APPLICATION

- 1. The Governance Rules are promulgated and issued in terms of sections 11 (b) and (c) of the Act and are binding on all commissioners appointed under the Act.
- 2. These Governance Rules, inter alia, define the-
 - (a) powers and duties of commissioners;
 - (b) delegations and assignment of powers and duties; and
 - (c) manner in which the meetings of the commission must be convened.
- 3. The Governance Rules must be read in conjunction with the prevailing legislation, policies (protocols and guidelines) and rules of the Commission promulgated in terms of section 11 (a) which are listed in [Schedule A](#).

C. DEFINITIONS

- 1. In these Governance Rules the following words have the following meaning, unless the context indicates otherwise:

"Chairperson" means the Chairperson of the Commission contemplated in [section 5](#) of the Act;

"Commission" means the Public Service Commission as contemplated in [section 196](#) of the Constitution;

"Commissioner" means a person contemplated in [section 196 \(7\)](#) of the Constitution and appointed in terms of [section 4](#) of the Act;

"Constitution" means the Constitution of the Republic of South Africa, Act [108 of 1996](#);

"Delegation framework" means the delegations as contemplated in [section 13](#) of the Act;

"Deputy Chairperson" means the person contemplated in [section 5](#) of the Act;

"Director-General" means the person contemplated in [section 14](#) of the Act;

"employee" means an employee as defined in the Public Service Act;

"EXCO" means the Executive Committee of the Public Service Commission as contemplated in rule E.2;

"investigations" means those investigations referred to in [section 196 \(4\) \(f\)](#) of the Constitution;

"MTEF" means Medium Term Expenditure Framework;

"Office of the Commission" means the office of the Public Service Commission referred to in [section 14](#) of the Act which Office provides administrative support to the Commission;

"Plenary" means the meetings contemplated in rule E.1;

"Public Finance Management Act" means the Public Finance Management Act, Act [1 of 1999](#);

"Public Service Act" means the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#));

"the Act" means Public Service Commission Act, 1997 (Act [No. 46 of 1997](#));

"nationally based commissioner" means a person contemplated in [section 196 \(7\) \(a\)](#) of the Constitution and appointed in terms of [section 4](#) of the Act;

"provincially based commissioner" means a person contemplated in [section 196 \(7\) \(b\)](#) of the Constitution and appointed in terms of [section 4](#) of the Act;

"Serving Commissioners" means a commissioner serving at any point in time; and

"Stakeholder Management Framework" means the Framework contemplated in Rule E.4 (b) (i).

D. POWERS AND DUTIES OF COMMISSIONERS

1. All powers and functions of the Commission are reflected in [section 196 \(4\)](#) of the Constitution, Public Service Commission Act, Public Service Act and Treasury Regulations.

2. Additional powers and duties of the Commissioners are as follows:

2.1 All Commissioners-

- (a) must exercise their mandate as a single commission in accordance with the Constitution or as assigned or delegated by the Commission;
- (b) may interact with all relevant stakeholders reflected within the Stakeholder Management Framework and any other body or person relevant to the work of the Commission;
- (c) must as mandated, represent the Commission at governmental and other meetings or functions;
- (d) must maintain integrity in working closely with Parliament, Provincial Legislatures, the Executive and Departments; and
- (e) must observe and maintain an environment of transparency and accountability internally.

2.2 Nationally based Commissioners-

- (a) must represent the Commission nationally in accordance with the delegations contemplated in [section 13](#) of the Act; and
- (b) must report to the Commission on any developments emerging nationally that has an impact on the work of the Commission.

2.3 Provincially based Commissioners-

- (a) must exercise the powers and functions of the Commission in [section 196 \(4\)](#) in their provinces in accordance with the delegations in schedule B;
- (b) must represent the Commission in their respective provinces in terms of [section 196 \(13\)](#) of the Constitution and section 11 (b) of the Act; and
- (c) must report to the Commission on any developments emerging provincially that has an impact on the work of the Commission.

2.4 The Chairperson-

- (a) is the Chairperson of the Commission, assigned by the President in terms of [section 5](#) of the Act;
- (b) is also a Commissioner and must perform the functions in Rule D.2.1 and D.2.2 or D.2.3;
- (c) must provide overall leadership to the Commission, ensuring its effectiveness in all aspects of its role without limiting the principle of joint responsibility for the Commission's decisions;
- (d) must report to the Commission any action taken in terms of subrule (c);
- (e) is responsible for-
 - (i) facilitating and coordinating the functioning of the Commission;
 - (ii) ensuring that the Commission's decisions are executed;
 - (iii) overseeing the planning and execution of the work of both the Commission and the Office of the Commission and ensuring alignment and consistency of approach;
 - (iv) protecting the dignity of the Commission;
 - (v) ensuring effective stakeholder management; and
 - (vi) convening the scheduled meetings of the Commission and any other special meeting determined in consultation with the Commissioners; and
- (f) is the executive authority of the Office, as contemplated in the Public Service Act.

2.5 The Deputy Chairperson-

(a) is the Deputy Chairperson of the Commission assigned by the President in terms of [section 5](#) of the Act; and

(b) is also a Commissioner and must perform the functions in Rule D.2.1 and D.2.2 or D.2.3.

E. OPERATIONAL FUNCTIONING OF THE MEETINGS OF THE COMMISSION

1. Plenary meetings

- (a) Plenary meetings are constituted by the Commissioners and is the highest decision-making body of the Commission.
- (b) Plenary meetings are convened and chaired by the Chairperson or, if the Chairperson is absent or unavailable, by the Deputy Chairperson.
- (c) All decisions on policy of the Commission must be approved at Plenary meetings.
- (d) Plenary meetings must be scheduled to discharge the powers and functions of the Commission as set out in the Constitution, subject to a minimum of one meeting per quarter of a calendar year.
- (e) All Plenary meetings take precedence. Commissioners who are unable to attend Plenary meetings must advise the Chairperson in writing at least five (5) days prior to the meeting or as soon as practically possible.
- (f) Fifty percent plus one of the serving commissioners constitutes a quorum.
- (g) If there is no quorum, the Plenary meeting must be postponed and reconvened on a suitable date.
- (h) Decisions must be reached by consensus of all commissioners present. In the event of an impasse, there must be a vote. Minority views should be recorded.
- (i) Plenary meetings in addition to those scheduled may be held at the instance of the Chairperson. Alternatively, the majority of serving Commissioners may request a meeting, which the Chairperson must convene within 7 days of receiving such a request.
- (j) Discussions in Plenary meetings must be confidential and documents must be classified accordingly.
- (k) The Plenary meetings must be at the national office, unless circumstances determine otherwise.
- (l) The Director-General or employees designated by him or her must keep a register of attendance of Commissioners and include it in the Annual Report.

2. Executive Committee (EXCO)

- (a) EXCO of the Commission is constituted by the Chairperson, Deputy Chairperson, conveners of Specialist Teams and one provincially based Commissioner, selected on a 6 monthly rotational basis.
- (b) Fifty percent plus one of the commissioners referred to in subrule (a) constitute a quorum.
- (c) EXCO-
 - (i) must monitor the implementation of the decisions of Plenary meetings;
 - (ii) must, subject to rule E.1. (c), take operational decisions within the parameters of the policy framework of the Commission; and
 - (iii) must be scheduled to provide strategic direction, subject to a minimum of one meeting per month.
- (d) The Chairperson, Deputy Chairperson and the Director-General may proceed to take a decision on any urgent operational matter and report to the EXCO and the Commission.
- (e) If the EXCO cannot reach consensus on any operational decision to be taken, such decision will be referred to the Plenary meeting. In the event of an *impasse*, a special Plenary meeting must be convened.
- (f) The Chairperson will report on all decisions taken by the EXCO to the Plenary meeting.

3. Specialist Teams

- (a) In order to execute the mandate, subcommittees are established in the form of Specialist Teams.
- (b) Plenary meetings must constitute Specialist Teams.
- (c) Each commissioner must be a member of a Specialist Team.
- (d) When a new Commissioner is appointed, the Chairperson must consult the Commissioner and the Specialist Team and report to the Commission on the assignment of the new Commissioner.
- (e) Commissioners may request through the Chairperson to be re-assigned to other Specialist Teams.
- (f) Each Specialist Team must be made up of at least three commissioners.
- (g) Each Specialist Team must assign a Convenor to coordinate the operations of the Specialist Team.
- (h) Commissioners through the Specialist Teams must provide strategic oversight of the key performance areas in accordance with the powers and functions of the Commission as contemplated in the Constitution, the Act and the Public Service Act.
- (i) Specialist Teams must take decisions and make findings and recommendations on behalf of the Commission in line with the delegations framework, which decisions, findings and recommendations must be ratified by the Commission at the following Plenary meeting.
- (j) Commissioners who are allocated to Specialist Teams may on a twelve month (calendar year) rotational

basis convene the work of the Specialist Team and convene Specialist Team meetings at designated project milestones informed by provincial and national needs supported by the relevant Deputy Director-General.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "calender" is intended to be "calendar".)

- (k) Where a Specialist Team deals with a matter that falls within the geographical area of a commissioner who is not a member of the Specialist Team for purposes of performing its functions in respect of that matter, the Commissioner from the relevant Province must be consulted on such a matter and be invited as a participant.
- (l) The Director-General or employees designated by him or her must be present at Specialist Team meetings and they may fully participate in such meetings to support and advise the Commission.

3.1 Operational structures of Specialist Teams

- (a) Working committees of Specialist Teams in the form of panels are established to deal with decision-making in respect of investigations in terms of [section 196 \(4\) \(f\)](#) of the Constitution, in line with the Rules and the delegations framework.

4. Communication

- (a) The Chairperson will be the primary communicator at national level and provincial commissioners at provincial level.
- (b) All communication protocols must be read in conjunction with the Communication Strategy, which as a minimum must include-
 - (i) a Stakeholder Management Framework of the Commission;
 - (ii) protocols;
 - (iii) internal communication;
 - (iv) external communication; and
 - (v) dissemination strategy.
- (c) Information must be exchanged and shared between the Chairperson and commissioners, commissioners themselves and commissioners and the Office of the Commission.
- (d) Communication and stakeholder engagement must be co-ordinated and should be undertaken in a manner consistent with the Stakeholder Management Framework approved by the Commission.
- (e) The Commission must convey information on various digital platforms.
- (f) The Office of the Commission must provide technical assistance and advice to the Commission in its interaction with stakeholders.

5. Planning

- (a) The Commission must give direction for overall strategic planning and must ensure alignment with the Framework for Strategic Plans and Annual Performance Plans, issued in terms of the Public Finance Management Act.
- (b) The annual work plans must be approved by the Commission and the MTEF must be dealt with in terms of the annual National Treasury guidelines for the preparation of budget submissions.
- (c) Nationally and Provincially based commissioners must conduct a review annually to inform the planning session for the drafting of work plans and the MTEF.
- (d) Where necessary, the Commission must hold strategic sessions to, amongst others, reprioritise programs to align them with demands on the implementation of the mandate of the Commission.

6. Reporting

- (a) Reports must be compiled-
 - (i) at least once a year in compliance with [sections 196 \(4\) \(e\)](#) and [196 \(6\)](#) of the Constitution to the National Assembly and in respect of its activities in a province, to the legislature of that province;
 - (ii) in line with the annual Workplan and as required in terms of [section 196 \(4\) \(f\) \(i\)](#); and
 - (iii) in compliance with the requirements of section 40 (1) (e) the Public Finance Management Act.

7. Role of the Director-General: Office of Commission

- (a) The Director-General: Office of the Commission is in accordance with applicable legislation responsible for-
 - (i) ensuring that administrative, including secretarial, logistical and legal support is provided towards the effective functioning of the Commission;
 - (ii) the efficient management and administration of the Office of the Commission, subject to the control and directions of the Commission; and
 - (iii) ensuring that provincially based commissioners are adequately supported to carry out their Constitutional powers and functions.

8. Amendment to the Rules

- (a) As the environment within which the public service operates is complex and subject to change, the

Commission may review its rules from time to time to ensure that these remain relevant.

9. Date of Implementation

- (a) These Governance Rules were duly adopted at this Plenary meeting, held on 18 February 2015 and will be implemented with effect from 01 April 2015.

(Signed) RK Sizani Deputy Chairperson Date: 30/3/2015	(Signed) SS Nkosi Date: 30/3/2015	(Signed) CP Nzimande Date: 30/3/2015
(Signed) LV Sizani Date: 30/3/2015	(Signed) S Mafanya Date: 30/3/2015	(Signed) WH Boshoff Date: 30/3/2015
(Signed) DS Mkhwanazi Date: 30/3/2015	(Signed) GG Woods Date: 30/3/2015	(Signed) MH Seloane Date: 30/3/2015
(Signed) MD Sejosingoe Date: 30/3/2015		

SCHEDULE A

LIST OF RULES MADE IN RESPECT OF [SECTION 11](#) (A) OF THE PUBLIC SERVICE COMMISSION ACT

- (a) Rules for Dealing with Grievances of Employees in the Public Service, published in *Government Gazette* No. 25209 dated 25 July 2003 ([http://www.psc.gov.za/documents/docs/government gazettes](http://www.psc.gov.za/documents/docs/government%20gazettes))
- (b) Rules for the summoning of witnesses in connection with inquiries and investigations of the Public Service Commission, published in *Government Gazette* No. 23267 dated 28 March 2002 ([http://www.psc.gov.za/documents/docs/government gazettes](http://www.psc.gov.za/documents/docs/government%20gazettes))
- (c) Rules of the Public Service Commission: Lodging of complaints regarding the Public Service, published in *Government Gazette* No. 23635 dated 19 July 2003 (<http://www.psc.gov.za/documents/docs/governmentgazettes>)
- (d) Rules for dealing with grievances of members of the Senior Management Service, including Heads of Department, published in *Government Gazette* No. 33540 of 17 September 2010 (<http://www.psc.gov.za/documents/docs/legislation>)
- (e) Rules of the Public Service Commission: Managing Conflicts of Interest identified through the Financial Disclosure Framework for Senior Managers, published in *Government Gazette* No. 32298 of 12 June 2009 (<http://www.psc.gov.za/documents/docs/legislation>)

GN 296 of 31 March 2015: Artscape Language Policy (Government Gazette No. 38662)

DEPARTMENT OF ARTS AND CULTURE



an agency of the
Department of Arts and Culture

CONTEXT

*The **Artscape Language Policy** gives effect to:

- [Sections 6](#) and [9](#) of the Constitution of the Republic of SA (Act [No. 108 of 1996](#))
- The National Language Policy Framework (2003)
- The Use of Official Languages Act (Act [12 of 2012](#))

- The Pan South African Languages Board Act (Act [59 of 1995](#))
- [Section 5](#) of the Constitution of the Western Cape (Act [1 of 1998](#))
- The Western Cape Language Act (Act [13 of 1998](#))

*Afrikaans, isiXhosa and English are the three official languages of the Western Cape.

ARTSCAPE LANGUAGE POLICY

1. Being in the Western Cape, Artscape acknowledges the provincial language policy of three official languages.
2. Policies should be practical implementable, affordable and sustainable.
(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "be practical implementable" is intended to be "be practical, implementable".)
3. Generally, target audiences should be the determining factor regarding the language(s) used.
4. Implementation guidelines:
 - 4.1 The Artscape Theatre Centre's corporate signage reflects the official languages.
 - 4.2 Invitations from Artscape to guests should be in all three official languages.
 - 4.3 The Artscape website has international reach and should be in English.
 - 4.4 The media should receive communication in the language of their preference.
 - 4.5 Artscape should prepare the Artscape News in all three official languages.
 - 4.6 Artscape publications should speak to the target audience without being exclusive.
 - 4.7 Artscape should engage with outside producers and influence them to recognise the trilingual language policy.

Please refer all comments to theresal@artscape.co.za

GN 228 of 8 March 2016: The Use of Official Languages in the South African Police Service (*Government Gazette* No. 39788)

DEPARTMENT OF POLICE

POLICY 1 OF 2016

ARRANGEMENT OF REGULATIONS

- | | |
|---------------------|---|
| 1. | Background |
| 2. | Purpose |
| 3. | Scope of application |
| 4. | The Nature of the South African Police Service |
| 5. | Definitions |
| 6. | Legal Framework |
| 7. | Underlying principles |
| 8. | Policy Description |
| 9. | Roles and responsibilities of Language Management |
| 10. | Other language stakeholders |
| 11. | Policy implementation |
| 12. | Publication of and access to the language policy |
| 13. | Complaints mechanism |
| 14. | Monitoring and evaluation |
| 15. | Policy review |

1. Background

- (1) This Policy is formulated within the framework set by the Constitution of the Republic of South Africa, 1996 (the Constitution) and the Use of Official Languages Act, 2012 (Act [No. 12 of 2012](#)).
- (2) [Section 6 \(3\) \(a\)](#) of the *Constitution* provides that "the national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned".
- (3) Paragraph 3 (1) (a) of the Use of Official Languages Regulations, 2013 provides that every national department must, in order to determine the official languages contemplated in section 4 (2) of the Act,

consider the factors stipulated in [section 6 \(3\)](#) of the *Constitution* including-

- (a) language usage of members of the public that access the services of the national department, having regard to-
 - (i) language needs of members of the public accessing the services;
 - (ii) language statistics in the population census; and
 - (iii) research that the national department may conduct;
 - (b) expenses associated with adopting official languages for government purpose.
- (4) Regulation 3 (1) (b) of the above mentioned Regulations provides that "the national department must consider practical and positive measures that it will take to elevate the status and advance the use of indigenous languages of historically diminished use and status, in accordance with [section 6 \(2\)](#) of the *Constitution*".
- (5) *Language Management*, the national language unit of the *Service*, is responsible for all matters pertaining to language and language policies.

2. Purpose

The purpose of this Policy is to establish an acceptable and equitable operational language dispensation that is economically feasible for the *Service* by-

- (a) providing guidelines regarding the use of *official languages* when administering service to clients and members of the public;
- (b) ensuring the use of all the 11 official South African languages, in particular domains of use in the *Service*;
- (c) ensuring effective communication in and between the different substructures of the *Service*, as well as access to services, resources, programmes, information and knowledge for all *employees*, clients and members of the public;
- (d) supporting progressive elimination of language barriers to *enhance* the participation of its *employees* in cultural, social and economic life;
- (e) giving effect to the concept of cooperative governance in terms of language policy development and implementation by encouraging substructures and other security services to share capacity and build capacity to perform language functions;
- (f) responding to the need for minimum standards in respect of the use of official languages in and by the *employees* of the *Service*; and
- (g) encouraging the use of plain language when communicating in the *Service*.

3. Scope of application

This policy applies to all employees of the *Service*, internal and external clients and members of the public.

4. The Nature of the South African Police Service

- (1) South Africa became an internationally-accepted democracy in 1994. This new democratic order brought about many changes in the country and also had a substantial impact on policing. With the adoption of the interim Constitution in 1994, the Homelands and old development regions were abolished and integrated into a united South Africa with nine provinces. The new Constitution established a single Police Service for South Africa under the command and control of a National Commissioner who is appointed by the President.

- (2) The Vision of the South African Police Service

The vision of the *Service* is to create a safe and secure environment for all people in South Africa.

- (3) The Mission of the South African Police Service

The mission of the *Service* is to-

- . prevent anything that may threaten the safety or security of any community;
- . investigate any crime that may threaten the safety or security of any community;
- . ensure criminals are brought to justice; and
- . participate in efforts to address the root causes of crime.

- (4) The values of the South African Police Service

The values of the *Service* are to-

- . protect everyone's rights and to be impartial, respectful, open and accountable to the community;
- . use powers in a responsible way;
- . provide a responsible, effective *and* high quality service with honesty and integrity;
- . evaluate services continuously and make effort to improve on it;
- . use resources in the best way possible;
- . develop the skills of all *employees* through equal opportunity; and
- . cooperate with the community, all spheres of Government and other role players.

5. Definitions

In this Policy, unless the context indicates otherwise-

- (a) "*Constitution*" means the Constitution of the Republic of South Africa, 1996;
- (b) "*employee*" means a member of the South African Police Service appointed in terms of the South African Police Service Act, 1995 (Act [No. 68 of 1995](#)) and an *employee* employed by the South African Police Service in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#));
- (c) "*external communication*" means communication with an external environment or with a member(s) of the public and excludes communication within or between the substructures of the South African Police Service;
- (d) "*functional multilingualism*" means the use of two or more official languages for specific tasks or target groups in those instances where the use of all 11 official languages or the use of a *working language* only, will not ensure effective communication or compliance with constitutional obligations with regard to language;
- (e) "*internal communication*" means formal communication (verbal or written) between the sub-structures of the Service and excludes communication with an external environment or a member of the public;
- (f) "*language policy*" means an official decision or decree on the status of various languages spoken in diverse multilingual communities;
- (g) "*language rights*" means laws determining the situations in which citizens can make language choices;
- (h) "*language management*" means the section that provides language services, which include editing, translating, interpreting, transcribing, *terminology development* and, language planning;
- (i) "*language units*" means units in departments and provinces that deal with specific language issues of that department or province arising from the National Language Policy and liaise with other departments on language matters;
- (j) "*multilingualism*" means the use of three or more languages by an individual or by a group of speakers, such as the inhabitants of a particular region or a nation;
- (k) "*official language*" means the language used in government, courts of law, education, business and the media referred to in [section 6](#) of the Constitution;
- (l) "*PanSALB*" means the Pan South African Language Board, established by the Pan South African Language Board Act, 1995 (Act [No. 59 of 1995](#));
- (m) "*Service*" means the South African Police Service;
- (n) "*South African sign language*" means a language that uses a system of manual facial and other body movements as the means of communication;
- (o) "*South African Police Service Act*" means the South African Police Service Act, 1995 (Act [No 68 of 1995](#));
- (p) "*terminology*" means standardised terms established for a specific subject field; and
- (q) "*working language(s)*" means an *official language(s)* chosen by the Service as the language(s) most practicable to use in a particular communication situation.

6. Legal Framework

The following constitute the legal framework for this Policy:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Pan South African Language Board Act 1995 (Act [No. 59 of 1995](#));
- (c) Promotion of Access to Information Act, 2000 (Act [No. 2 of 2000](#));
- (d) Public Finance Management Act, 1999 (Act [No. 1 of 1999](#));
- (e) South African Police Service Act, 1995 (Act [No. 68 of 1995](#));
- (f) Statistics Act, 1999 (Act [No. 6 of 1999](#)): and

7. Underlying principles

The *language policy* of the *Service* is based on the following underlying principles-

- (a) *Functional multilingualism* - language preference(s), use and proficiency of the target audience; a broad acceptance of linguistic diversity; and recognition of linguistic human rights (also referred to as *language rights*);
- (b) social justice; and
- (c) Batho Pele Principles.

8. Policy Description

(1) Internal and External Communication

- (a) Plain English is the main *working language* of the *Service* and it should be used in all official documents. In promoting the use of indigenous languages, the *Service* will take into consideration a rotation principle and will undertake the following process:

Head office	All the official <i>languages</i> of South Africa and applicable foreign languages.
Gauteng	English, Afrikaans, Sepedi and isiZulu
Eastern Cape	IsiXhosa, English and Afrikaans
Free State	Sesotho, isiXhosa, English and Afrikaans
KwaZulu-Natal	isiZulu, English and Afrikaans
Limpopo	Tshivenda, Sepedi, Xitsonga, isiNdebele, English and Afrikaans
Mpumalanga	SiSwati, isiNdebele, Xitsonga, English, Afrikaans, isiZulu and Sepedi
Northern Cape	English, Afrikaans, isiXhosa and Setswana
North West	Setswana, English and Afrikaans
Western Cape	English, Afrikaans and isiXhosa

- (b) Foreign languages and all other languages that are not catered for will be outsourced by *Language Management*, following all set prescripts for the use of languages, such as the realistic turn-around time to render the service and the availability of freelancers.
- (c) The *Service* may, when reasonably practicable, adopt *working languages* based on the preferences of the *employees*, while at the same time honouring the spirit of the *Constitution*, by making provision for the use of additional languages in particular domains of use, for instance written communication, such as newsletters, instructions and conditions of service, and the provision of interpreting services during disciplinary hearings, interaction with the public and certain meetings.
- (d) The nature of the message and the language proficiency of the target audience will be the main factors to be considered in choosing a particular language(s) in particular circumstances, in order to communicate with the entire target audience as effectively as possible.
- (e) Documents that are produced in more than one language will be made available in three languages immediately including English, with the additional languages added as soon as possible thereafter, but not more than six months later. If required, provincial offices will obtain additional translations of documents to provide for the requirements of their respective target audiences.
- (f) Verbal (meetings and instructions) communication will be in English and the applicable indigenous languages as provided for in paragraph 8 (1) (a). This also applies to radio communication. However, the *employees* must ensure that the transmission of the message over the radio is understood by all involved *employees* for effective and efficient service delivery taking into consideration the allocation of languages per province.
- (g) All request for editing, translation, interpreting and transcriptions in official *and* foreign languages should be referred to *Language Management* at Head Office.

(2) International communication

International communication shall be in English or the preferred language of the country in question. Whenever a written submission or any other document is in a foreign language, translation services should be used to reply in the relevant language.

(3) People with language disabilities and barriers

The *Service* will provide for the needs of people with language disabilities or language barriers, *Employees* and clients of the *Service* who are blind and those with hearing impairment must be provided

for by using sign language and braille (a written language for blind people, in which characters are represented by patterns of raised dots) in all major projects. This may happen where practicable and assistance will be provided for in collaboration with the Component: Employee Health and Wellness, Division: Human Resource Development and Section: Disability Management of the *Service*.

(4) **Signage in the Service**

The signage on all buildings of the *Service* at Head Office and Provincial Offices will be based on the allocation languages as provided for in paragraph 8 (1) (a) above.

9. Roles and responsibilities of Language Management

Language Management will be responsible for the following:

- (a) Marketing the *language policy* and capacity building at Head Office;
- (b) facilitating and coordinating the implementation of this policy by providing the translation, editing, interpreting, transcription, terminology development and language training services;
- (c) establishing of *language units* in all provinces, advising provinces on language policy matters and capacity building;
- (d) monitoring and evaluation of the implementation of the language policy;
- (e) promoting multilingualism in the workplace;
- (f) referring requests for language services to the relevant service providers;
- (g) arranging training programmes for *employees* in collaboration with Division: Human Resource Development; and
- (h) coordinating in-service training on language skills in collaboration with Division: Human Resource Development.

10. Other language stakeholders

Language Management will work in collaboration with other language structures, such as the National Language Service of the Department of Arts and Culture, other language units in government, *PanSALB*, institutions of higher learning, and the National Foreign Languages Forum and the National Language Forum to monitor the implementation of the *language policy* and the use of *official languages* in the *Service* regarding multilingualism, language research, training and development.

11. Policy implementation

- (1) *Language Management*: Corporate Communication at Head Office is responsible for the implementation of this policy in collaboration with all Divisions in the *Service*.
- (2) More resources will be channelled to cluster and station level where challenges will be greater.
- (3) This policy will be implemented in four phases, which can be divided in five financial years as indicated below, as approved by the National Commissioner of the *Service*.

	<i>Financial Year</i>	<i>Unit/Section</i>	<i>Activities</i>	<i>Responsible Section</i>	<i>Financing</i>
Phase 1	2015/2017	Language Management	Marketing the <i>language policy</i> and capacity building at HO	Language Management: HO	To be determined
Phase 2	2017/2019	Provincial Corporate Communication offices and Language Management	The establishment of <i>language units</i> in all provinces, advising provinces on language policy matters and capacity building	Provincial offices and Language Management: HO	To be determined
Phase 3	2019/2020	Language Management and provinces	Monitoring and evaluation of the implementation of the <i>language policy</i>	Language Management: HO	To be determined

Phase 4	2020/2021	Language Management	Review of <i>language policy</i>	Language Management: HO	To be determined
------------	-----------	------------------------	-------------------------------------	-------------------------------	---------------------

12. Publication of and access to the language policy

- (1) The *Service* will publish this policy in 11 *official languages* of South Africa on its website (www.saps.gov.za).
- (2) The printed versions of this policy will also be available at Head Office, provincial offices and police stations across the country.

13. Complaints mechanism

- (1) Any person who is dissatisfied with the use of *official languages* by the *Service* may lodge a complaint in writing addressed to the National Commissioner of the *Service* as follows:

Postal Address: Private Bag X94

Pretoria

0001

Physical Address: 231 Pretorius Street

Pretoria

0001

Email natcomm@saps.gov.za

- (2) The complainant must-
 - (a) lodge the complaint within three months of the complaint arising;
 - (b) state the name, contact information and address of the person lodging it; and
 - (c) provide full and detailed description of the complaint,
- (3) The National Commissioner, in consultation with *Language Management*, may request the complainant to supply further information on the complaint.
- (4) The National Commissioner will respond to the complaint in writing regarding the decision made, no later than three months after the complaint was lodged.

14. Monitoring and evaluation

It is the responsibility of *Language Management* to ensure that the implementation of the *language policy* is effectively monitored and evaluated.

15. Policy review

The *language policy* of the *Service* will be reviewed every three years to assess the implementation of the *language policy* and effect the required changes, in order to address the continuously changing demographics in an effort to develop indigenous languages.

11/1/3/1/9

INFORMATION NOTE

To: The Acting National Commissioner

DRAFT LANGUAGE POLICY OF THE SOUTH AFRICAN POLICE SERVICE

1. Background

- 1.1 The draft language policy of the South African Police Service (hereinafter referred to as "the Draft Policy") was approved by the National Commissioner for the purposes of public comment. Section 4 (2) (h) of the Use of Official Languages Act, 2012 (Act No.12 of 2012) provides that the language policy must be published in the *Government Gazette* for public comment.
- 1.2 The Draft Policy was published on 21 October 2015, and the members of the public were granted 21 days from the date of publication to provide their comments (see *Government Gazette* no: 39308, vol.604, dated 21 October 2015, a copy is attached for easy reference).
- 1.3 Twenty-one (21) days had elapsed and no public comments were received.

2. Recommendation

It is recommended that the Acting National Commissioner approves the Draft Policy for distribution and Implementation.

(Signed)

MAJOR GENERAL
HEAD: GOVERNANCE, POLICY AND LEGISLATION MANAGEMENT
PR LESESE
DATE: 2015-12-02

DRAFT LANGUAGE POLICY OF THE SOUTH AFRICAN POLICY SERVICE

Recommended/not recommended

(Signed)

LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: LEGAL AND POLICY SERVICES
JF MOLEFE
DATE: 2/12/2015

Recommended/not recommended

(Signed)

LIEUTENANT GENERAL
HEAD: CORPORATE COMMUNICATION
SM MAKGALE
DATE:

Approved/Not Approved

(Signed)

LIEUTENANT GENERAL
ACTING NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
JK PHAHLANE
DATE: 2016-01-13

Information Note Compiled by:

Brighter Motshela NJ

Telephone number:

(012) 393 7022/3

Proc NR.28 of 14 July 2008: Transfer of the administration of the Land and Agricultural Development Bank Act, 2002 (Act [15 of 2002](#)) (the Act) and powers and functions entrusted by the Act, from the Minister responsible for agriculture to the Minister of Finance
(Government Gazette No. 31246)

In terms of [section 97](#) of the constitution of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and any power or function entrusted to the Minister responsible for agriculture by the Land and Agricultural Development Bank Act, 2002 (Act [15 of 2002](#)) to the Minister of Finance.

Given under my Hand at Pretoria on this 11th day of July Two Thousand and Eight.

(Signed)

PRESIDENT
By order of the President-in-Cabinet

(Signed)

MINISTER OF AGRICULTURE AND LAND AFFAIRS

(Signed)

MINISTER OF FINANCE

Proc N 44 of 1 July 2009: Transfer of administration and powers and functions entrusted by legislation to certain cabinet members in terms of [section 97](#) of the Constitution
(Government Gazette No. 32367)

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member as set out in the Schedule in English and isiZulu with effect from the date of publication of this Proclamation in the *Gazette*.

(Signed)

President

By Order of the President-in-Cabinet:

(Signed)

Minister of the Cabinet

SCHEDULE

1. The administration and the powers and functions entrusted by the legislation, mentioned in column 1 of the tables in paragraphs 1.1 to 1.14 below, to a Cabinet member mentioned in column 2 of the tables, immediately before the President assumed office on 9 May 2009, is transferred to the Cabinet member mentioned in column 3 of the tables.

1.1 **AGRICULTURE RELATED LEGISLATION:**

Legislation	Previous Cabinet member	New Cabinet member
Performing Animals Protection Act, 1935 (Act No. 24 of 1935)	Minister of Agriculture and Land Affairs	Minister of Agriculture, Forestry and Fisheries
Animals Protection Act, 1962 (Act No. 71 of 1962)	Minister of Agriculture and Land Affairs	Minister of Agriculture, Forestry and Fisheries
Perishable Products Export Control Act, 1983 (Act No. 9 of 1983)	Minister of Agriculture and Land Affairs	Minister of Agriculture, Forestry and Fisheries

1.2 **BASIC EDUCATION RELATED LEGISLATION:**

Legislation	Previous Cabinet member	New Cabinet member
National Education Policy Act, 1996 (Act No. 27 of 1996)	Minister of Education	Minister of Basic Education, except the administration and the powers and functions transferred to the Minister of Higher Education and Training as set out in paragraph 1.7 below
South African Schools Act, 1996 (Act No. 84 of 1996)	Minister of Education	Minister of Basic Education
Employment of Educators Act, 1998 (Act No. 76 of 1998)	Minister of Education	Minister of Basic Education, except the administration and the powers and functions transferred to the Minister of Higher Education and Training as set out in paragraph 1.7 below
South African Council for Educators Act, 2000 (Act No. 31 of 2000)	Minister of Education	Minister of Basic Education, except the administration and the powers and functions transferred to the Minister of Higher Education and Training as set out in paragraph 1.7 below
General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001)	Minister of Education	Minister of Basic Education, except the administration and the powers and functions transferred to the Minister of Higher Education and Training as set out in paragraph 1.7 below

1.3 **ENERGY RELATED LEGISLATION:**

Legislation	Previous Cabinet member	New Cabinet member
--------------------	--------------------------------	---------------------------

Central Energy Fund Act, 1977 (Act No. 38 of 1977)	Minister of Minerals and Energy	Minister of Energy
Petroleum Products Act, 1977 (Act No. 120 of 1977)	Minister of Minerals and Energy	Minister of Energy
Abolition of the National Energy Council Act, 1991 (Act No. 95 of 1991)	Minister of Minerals and Energy	Minister of Energy
Nuclear Energy Act, 1993 (Act No. 131 of 1993)	Minister of Minerals and Energy	Minister of Energy
Nuclear Energy Act, 1999 (Act No. 46 of 1999)	Minister of Minerals and Energy	Minister of Energy
National Nuclear Regulator Act, 1999 (Act No. 47 of 1999)	Minister of Minerals and Energy	Minister of Energy
Gas Act, 2001 (Act No. 48 of 2001)	Minister of Minerals and Energy	Minister of Energy
Gas Regulator Levies Act, 2002 (Act No. 75 of 2002)	Minister of Minerals and Energy	Minister of Energy
Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)	Minister of Minerals and Energy	Minister of Energy
Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004)	Minister of Minerals and Energy	Minister of Energy
National Energy Regulator Act, 2004 (Act No. 40 of 2004)	Minister of Minerals and Energy	Minister of Energy
Electricity Regulation Act, 2006 (Act No. 4 of 2006)	Minister of Minerals and Energy	Minister of Energy
National Energy Act, 2008 (Act No. 34 of 2008)	Minister of Minerals and Energy	Minister of Energy

1.4

ENVIRONMENTAL RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Sea-Shore Act, 1935 (Act No. 21 of 1935)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Prince Edwards Islands Act, 1948 (Act No. 43 of 1948)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Parks Act, 1976 (Act No. 57 of 1976)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Dumping at Sea Control Act, 1980 (Act No. 73 of 1980)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Sea Fisheries Act, 1988 (Act No. 12 of 1988)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Environment Conservation Act, 1989 (Act No. 73 of 1989)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Antarctic Treaties Act, 1996 (Act No. 60 of 1996)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Wreck and Salvage Act, 1996 (Act No. 94 of 1996)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
Environment Conservation Act Extension Act, 1996 (Act No. 100 of 1996)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
		Minister of Water and Environmental Affairs,

Marine Living Resources Act, 1998 (Act No. 18 of 1998)	Minister of Environmental Affairs and Tourism	except the administration and the powers and functions pertaining to mariculture, as defined in section 1 of the Act, which is transferred to the Minister of Agriculture, Forestry and Fisheries as set out in paragraph 1.8 below
National Environmental Management Act, 1998 (Act No. 107 of 1998)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
World Heritage Convention Act, 1999 (Act No. 49 of 1999)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
South African Weather Service Act, 2001 (Act No. 8 of 2001)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs

1.5 FORESTRY RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Management of State Forests Act, 1992 (Act No. 128 of 1992)	Minister of Water Affairs and Forestry	Minister of Agriculture, Forestry and Fisheries
National Forests Act, 1998 (Act No. 84 of 1998)	Minister of Water Affairs and Forestry	Minister of Agriculture, Forestry and Fisheries
National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998)	Minister of Water Affairs and Forestry	Minister of Agriculture, Forestry and Fisheries

1.6 GENDER RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Commission on Gender Equality Act, 1996 (Act No. 39 of 1996)	Minister of Justice and Constitutional Development	Minister of Women, Children and People with Disabilities

1.7 HIGHER EDUCATION AND TRAINING RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
National Education Policy Act, 1996 (Act No. 27 of 1996)	Minister of Education	Minister of Higher Education and Training insofar as the administration and the powers and functions pertain to the determination of policy for- (a) public and private centres offering adult

		basic education and training established as envisaged in the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000); and
		(b) public and private colleges providing further education as envisaged in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), including, but not limited to, the powers and functions entrusted by sections 2, 3, 4, 7, 8 and 11 of the National Education Policy Act
Higher Education Act, 1997 (Act No. 101 of 1997)	Minister of Education	Minister of Higher Education and Training
Employment of Educators Act, 1998 (Act No. 76 of 1998)	Minister of Education	Minister of Higher Education and Training insofar as the administration and the powers and functions pertain to an adult basic education centre, as defined in section 1 of the Act
National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999)	Minister of Education	Minister of Higher Education and Training
South African Council for Educators Act, 2000 (Act No. 31 of 2000)	Minister of Education	Minister of Higher Education and Training insofar as the administration and the powers and functions pertain to the powers and functions of the South African Council for Educators in relation to adult learning centres, as defined in section 1 of the Act, including but not limited to the powers and functions entrusted by section 5 of the Act in relation to those centres
Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000)	Minister of Education	Minister of Higher Education and Training
General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001)	Minister of Education	Minister of Higher Education and Training insofar as the administration and the powers and functions pertain to the powers and functions entrusted to Umalusi, the Council for General and Further Education and Training Quality Assurance, established by section 4 of the General and Further Education and Training Quality Assurance Act in relation to- (a) public and private centres offering adult basic education and training as envisaged in the Adult Basic Education and Training Act, 2000; and (b) public and private

		colleges providing further education as envisaged in the Further Education and Training Colleges Act, 2006, including, but not limited to, the powers and functions entrusted by sections 2 (b) and (c), 3 , 16 to 21 , 23 , 26 and 28 of the General and Further Education and Training Quality Assurance Act
Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006)	Minister of Education	Minister of Higher Education and Training
National Qualifications Framework Act, 2008 (Act No. 67 of 2008)	Minister of Education	Minister of Higher Education and Training

1.8 MARICULTURE (I.E. CULTURE OR HUSBANDRY OF FISH IN SEA WATER) RELATED LEGISLATION

Legislation	Previous Cabinet member	New Cabinet member
Marine Living Resources Act, 1998 (Act No. 18 of 1998)	Minister of Environmental Affairs and Tourism	Minister of Agriculture, Forestry and Fisheries insofar as the administration and the powers and functions pertain to mariculture, as defined in section 1 of the said Act, and includes the powers and functions entrusted by sections 12 , 13 , 18 , 25 , 26 , 28 , 77 (with respect to mariculture and other matters pertaining to any of the provisions of the said Act mentioned in this paragraph), 78, 79, 80, 81 and 83 of the said Act
<ul style="list-style-type: none"> Regulations 60 to 73 of the Regulations in terms of the Marine Living Resources Act, 1998 (promulgated under Government Notice R. 1111 of 2 September 1998) Regulations 1, 5, 6 and 96 and any other provision of these Regulations insofar as it relates to the said regulations 60 to 73 	Minister of Environmental Affairs and Tourism	Minister of Agriculture, Forestry and Fisheries

1.9 MINERAL RESOURCES RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Mining Titles Registration Act, 1967 (Act No. 16 of 1967)	Minister of Minerals and Energy	Minister of Mineral Resources
Diamonds Act, 1986 (Act No. 56 of 1986)	Minister of Minerals and Energy	Minister of Mineral Resources
Mineral Technology Act, 1989 (Act No. 30 of 1989)	Minister of Minerals and Energy	Minister of Mineral Resources
Geoscience Act, 1993 (Act No. 100 of 1993)	Minister of Minerals and Energy	Minister of Mineral Resources
Mine Health and Safety Act, 1996 (Act No. 29 of 1996)	Minister of Minerals and Energy	Minister of Mineral Resources

Abolition of Lebowa Mineral Trust Act, 2000 (Act No. 67 of 2000)	Minister of Minerals and Energy	Minister of Mineral Resources
Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)	Minister of Minerals and Energy	Minister of Mineral Resources
Precious Metals Act, 2005 (Act No. 37 of 2005)	Minister of Minerals and Energy	Minister of Mineral Resources

1.10

RURAL DEVELOPMENT AND LAND REFORM RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Deeds Registries Act, 1937 (Act No. 47 of 1937)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Black Authorities Act, 1951 (Act No. 68 of 1951)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Kimberley Leasehold Conversion to Freehold Act, 1961 (Act No. 40 of 1961)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
State Land Disposal Act, 1961 (Act No. 48 of 1961), insofar as it entrusts its administration and powers and functions to the Minister of Regional and Land Affairs	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Removal of Restrictions Act, 1967 (Act No. 84 of 1967)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Physical Planning Act, 1967 (Act No. 88 of 1967)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Sectional Titles Act, 1986 (Act No. 95 of 1986)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Physical Planning Act, 1991 (Act No. 125 of 1991)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Land Titles Adjustment Act, 1993 (Act No. 111 of 1993)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3KZ of 1994)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform

Land Administration Act, 1995 (Act No. 2 of 1995)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Development Facilitation Act, 1995 (Act No. 67 of 1995)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Communal Property Associations Act, 1996 (Act No. 28 of 1996)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Land Survey Act, 1997 (Act No. 8 of 1997)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Abolition of Certain Title Conditions Act, 1999 (Act No. 43 of 1999)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Planning Profession Act, 2002 (Act No. 36 of 2002)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform
Communal Land Rights Act, 2004 (Act No. 11 of 2004)	Minister of Agriculture and Land Affairs	Minister of Rural Development and Land Reform

1.11 STATISTICS RELATED LEGISLATION

Legislation	Previous Cabinet member	New Cabinet member
Statistics Act, 1999 (Act No. 6 of 1999)	Minister of Finance	Minister in The Presidency responsible for national planning

1.12 TOURISM RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Tourism Act, 1993 (Act No. 72 of 1993)	Minister of Environmental Affairs and Tourism	Minister of Tourism

1.13 WATER RELATED LEGISLATION:

Legislation	Previous Cabinet member	New Cabinet member
Water Services Act, 1997 (Act No. 108 of 1997)	Minister of Water Affairs and Forestry	Minister of Water and Environmental Affairs
National Water Act, 1998 (Act No. 36 of 1998)	Minister of Water Affairs and Tourism	Minister of Water and Environmental Affairs

1.14 YOUTH RELATED LEGISLATION:

Legislation	Previous Cabinet Member	New Cabinet member
National Youth Commission Act, 1996 (Act No. 19 of 1996)	Minister in The Presidency	The President

2. The administration and the powers or functions entrusted by legislation to a Cabinet member mentioned in column 1 of the table below, immediately before the President assumed office on 9 May 2009, is transferred to the Cabinet member mentioned in column 2 of the table below.

Previous Cabinet member	New Cabinet member
--------------------------------	---------------------------

Minister of Provincial and Local Government	Minister of Co-operative Governance and Traditional Affairs
Minister of Housing	Minister of Human Settlements
Minister of Foreign Affairs	Minister of International Relations and Cooperation
Minister of Safety and Security	Minister of Police
Minister for Intelligence Services	Minister of State Security

3. With respect to the departments mentioned below, the powers and functions entrusted by the Public Service Act, 1994 (promulgated under [Proclamation No. 103 of 1994](#)), mentioned in column 1 of the tables in paragraphs 3.1 and 3.2 below, to a Cabinet member as executive authority of that department mentioned in column 2 of the tables below, immediately before the President assumed office on 9 May 2009, is transferred to the Cabinet member mentioned in column 3 of the tables below.

3.1 **GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM:**

<i>Powers and functions under the Public Service Act</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department	Minister in The Presidency	Minister in The Presidency responsible for performance monitoring and evaluation

3.2 **STATISTICS SOUTH AFRICA:**

<i>Powers and functions under the Public Service Act</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department, subject to the Statistics Act, 1999 (Act No. 6 of 1999)	Minister of Finance	Minister in The Presidency responsible for national planning

**Proc N 51 of 19 August 2009: Transfer of administration of the National Youth Development Agency Act, 2008 (Act 54 of 2008) and National Youth Commission Act, 1996 (Act 19 of 1996)
(Government Gazette No. 32513)**

In terms of [section 97 \(a\)](#) of the Constitution of the Republic of South Africa, 1996, I hereby, transfer the administration of the National Youth Development Agency, Act, 2008 ([Act 54 of 2008](#)) and the National Youth Commission Act, 1996 (Act 19 of 1996), to the Minister in The Presidency responsible for Performance Monitoring and Evaluation as well as Administration.

Given under my Hand at Pretoria on this 28th day of July, Two thousand and nine.

(Signed)
PRESIDENT

(Signed)
MINISTER

**Proc N 56 of 4 September 2009: Transfer of administration and powers and functions entrusted by legislation in terms of [section 97](#) of the Constitution
(Government Gazette No. 32549)**

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted to the Minister of Labour by the legislation mentioned in column 1 of the Schedule, including all amendments thereto, whether or not any of the provision of the legislation or amendments are in force, to the Minister of Higher Education and Training to the extent indicated in column 2 of the Schedule with effect from 1 November 2009.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, this 12th day of August, Two

Thousand and Nine.

(Signed)

President

By Order of the President-in-Cabinet:

(Signed)

Minister of the Cabinet

SCHEDULE

<i>Legislation</i>	<i>Extent of transfer</i>
Skills Development Act, 1998 (Act No. 97 of 1998)	All the provisions except- (a) sections 2 (1) (g) and (h) , 2 (2) (a) (v) , (vi) and (xii) , 5 (4) (only with respect to Productivity South Africa), 22 (1) , 23 (1) (a) and (d) , (2) and (3) , 24 , 25 , 26 , 26K , 26L , 26M , 26N , 32 (2) , 36 (o) , (p) and (q) , item 7 of Schedule 2A and Schedule 4 ; and (b) sections 32 (1) , 33 and 36 (a) and (s) and any other provision to the extent that these provisions apply to "employment services", as defined in section 1 , or Productivity South Africa, as established by section 26K , but excluding section 23 (1) (b) and (c) .
Skills Development Levies Act, 1999 (Act No. 9 of 1999)	All the provisions
National Qualifications Framework Act, 2008 (Act No. 67 of 2008)	Section 9

**Proc 86 of 11 December 2009: Transfer of powers and functions entrusted by Public Service Act, 1994, to certain cabinet members
(Government Gazette No. 32780)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the specified powers and functions entrusted by the Public Service Act, 1994 (promulgated under [Proclamation No. 103 of 1994](#)), to the specified Cabinet members as set out in [the Schedule](#) in English and Afrikaans, with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at [PRETORIA](#) this [27th](#) day of [NOVEMBER](#), Two Thousand and Nine.

(Signed)

President

By Order of the President-in-Cabinet:

(Signed)

Minister of the Cabinet

SCHEDULE

With respect to the departments mentioned in paragraphs 1 and 2 below, all the powers and functions entrusted by the Public Service Act, 1994 (promulgated under [Proclamation No. 103 of 1994](#)), mentioned in column 1 of the tables below, to a Cabinet member as executive authority of the department mentioned in column 2 of the tables below, immediately before the President assumed office on 9 May 2009, is transferred to the Cabinet member mentioned in column 3 of the tables below.

1. DEPARTMENT OF EDUCATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Powers and functions		

entrusted to an executive authority under the Public Service Act	Previous Cabinet member	New Cabinet member
1. Powers and functions of an executive authority in respect of career incidents of employees of the Department primarily performing work related to Main Division 6 (Higher Education) within Vote 13 in the Schedule to the Appropriation Act, 2009 (Act No. 16 of 2009)	Minister of Education	Minister of Higher Education and Training
2. Powers and functions of an executive authority in respect of career incidents of employees of the Department primarily performing work related to Main Divisions 1 (Administration), 2 (System Planning and Monitoring), 3 (General Education), 4 (Further Education and Training), 5 (Social and School Enrichment) and 7 (Auxiliary and Associated Services) within Vote 13 in the Schedule to the Appropriation Act, 2009, and all other powers and functions of an executive authority of the Department not mentioned in this item and item 1 above	Minister of Education	Minister of Basic Education

2. DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Powers and functions entrusted to an executive authority under the Public Service Act	Previous Cabinet member	New Cabinet member
1. Powers and functions of an executive authority in respect of career incidents of employees of the Department primarily performing work related to Main Divisions 2 (Environmental Quality and Protection), 3 (Marine and Coastal Management), 5 (Biodiversity and Conservation) and 6 (Sector Services and International Relations) within Vote 25 in the Schedule to the Appropriation Act, 2009 (Act No. 16 of 2009)	Minister of Environmental Affairs and Tourism	Minister of Water and Environmental Affairs
2. Powers and functions of an executive authority in respect of career incidents of employees of the Department primarily performing work related to Main Divisions 1 (Administration) and 4 (Tourism) within Vote 25 in the Schedule to the Appropriation Act, 2009, and all other powers and functions of an executive authority of the Department not mentioned in this item	Minister of Environmental Affairs and Tourism	Minister of Tourism

**Proc 1 of 10 February 2010: Transfer of administration and powers and functions entrusted by legislation in terms of the Constitution
(Government Gazette No. 32945)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

I hereby transfer, with effect from 1 April 2010-

- (a) in terms of [section 97 \(a\)](#) of the Constitution of the Republic of South Africa, 1996, the administration entrusted to the Minister of Water and Environmental Affairs by the legislation mentioned in column 1 to the Schedule, including all amendments thereto, to the Minister of Agriculture, Forestry and Fisheries; and
- (b) in terms of [section 97 \(b\)](#) of the Constitution of the Republic of South Africa, 1996, the powers and functions entrusted to the Minister of Water and Environmental Affairs by the legislation mentioned in column 1 to the Schedule, including all amendments thereto, to the Minister of Agriculture, Forestry and Fisheries to the extent indicated in column 2 of the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at **Pretoria**, this **29th** day of **January**, Two Thousand and Ten.

(Signed)

President

By Order of the President-in-Cabinet:

(Signed)

Minister of the Cabinet

(Signed)

Minister of the Cabinet

SCHEDULE

<i>COLUMN 1: LEGISLATION</i>	<i>COLUMN 2: EXTENT OF TRANSFER</i>
Sea Fishery Act, 1988 (Act No. 12 of 1988)	1. Section 29 2. Sections 1, 47, 48 and 50 insofar as they relate to the powers and functions transferred by section 29
Marine Living Resources Act, 1998 (Act No. 18 of 1998)	1. Sections 5 to 7, 10 to 15, 17, 18 to 27 and 29 to 41, 44 to 50 2. Sections 1 to 4, 8, 9, 13, 16, 28, 42 and 51 to 83 insofar as they relate to the powers and functions transferred under item 1 above
Regulations made in terms of the Marine Living Resources Act, 1998, published in Government Notice R. 1111 on 2 September 1998	The whole
Regulations for the Protection of Wild Abalone made in terms of the Marine Living Resources Act, 1998, published in Government Notice R. 62 on 1 February 2008	The whole

**Proc 6 of 5 March 2010: Transfer of administration of, and powers and functions entrusted by, legislation in terms of [section 97](#)
(Government Gazette No. 33003)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the [Constitution of the Republic of South Africa, 1996](#), I hereby, with effect from 1 April 2010, transfer to the Minister of Economic Development-

- (a) the administration of the Industrial Development Corporation Act, 1940 (Act [No. 22 of 1940](#)), and the Competition Act, 1998 (Act [No. 89 of 1998](#)), including all amendments thereto, entrusted to the Minister of Trade and Industry; and
- (b) the powers and functions entrusted by the legislation mentioned in paragraph (a) to the Minister of Trade and Industry.

Given under my Hand and Seal of the Republic of South Africa at Cape Town this 18th day of February, Two Thousand and Ten.

(Signed)
President

By Order of the President-in-Cabinet

(Signed)
Minister of the Cabinet

(Signed)
Minister of the Cabinet

**Proc NR.17 of 23 April 2010: Transfer of administration, powers and functions entrusted by legislation
(Government Gazette No. 33127)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the [Constitution of the Republic of South Africa, 1996](#), I hereby transfer the administration, powers and functions entrusted to the Minister of Human Settlements by the legislation mentioned in column 1 of the Schedule, including all amendments thereto, whether or not any of the legislation or amendments are in force, to the Minister of Rural Development and Land Reform to the extent indicated in column 1 of the Schedule with effect from the date of publication of this Proclamation in the *Government Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria (place) this 31st day of March (month), Two Thousand and Ten.

(Signed)
PRESIDENT
By Order of the President-in-Cabinet

MINISTER OF THE CABINET
(Signed)

SCHEDULE

<i>Legislation</i>	<i>Extent of transfer</i>
Prevention of Illegal Eviction From And Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998)	All the provisions

**Proc 33 of 23 July 2010: Transfer of administration and powers and functions entrusted by legislation to certain cabinet members in terms of section 97
(Government Gazette No. 33405)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the [Constitution of the Republic of South Africa, 1996](#), I hereby transfer the administration and powers and functions entrusted by the International Trade Administration Act, 2002 ([Act No. 71 of 2002](#)), to the Minister of Trade and Industry to the Minister for Economic Development, save for item 2 of Schedule 2 of this Act read with section 4 (2) of the Board on Tariffs and Trade Act, 1986 (Act 107 of 1986).

The administration and the powers and functions set out in item 2 of Schedule 2 of the International Trade Administration Act, 2002 ([Act No. 71 of 2002](#)), read with the Board on Tariffs and Trade Act, 1986 (Act 107 of 1986), remains entrusted to the Minister of Trade and Industry while item 2 of Schedule 2 is operational.

Given under my Hand and Seal of the Republic of South Africa at Pretoria this 29th Day of May Two Thousand and

Ten

(Signed)

President

By Order of the President- in-Cabinet

(Signed)

Minister of the Cabinet

(Signed)

Minister of the Cabinet

**Proc 39 of 4 August 2010: Assignment of powers and functions in terms of [section 98](#)
(Government Gazette No. 33437)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 98](#) of the Constitution of the Republic of South Africa, 1996, I hereby assign certain powers and functions that are exercised or performed by the Minister of Water and Environmental Affairs in terms of the legislation mentioned in column 1 of [the Schedule](#) to the Minister of Justice and Constitutional Development to the extent indicated in column 2 of [the Schedule](#).

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 22nd day of July, Two Thousand and Ten.

(Signed)

President

By order of the President-in-Cabinet

(Signed)

Minister of the Cabinet

(Signed)

Minister of the Cabinet

SCHEDULE

ASSIGNMENT OF POWERS AND FUNCTIONS IN TERMS OF [SECTION 98](#) OF THE CONSTITUTION

Column 1: Legislation	Column 2: Extent to which assigned
National Environmental Management Act, 1998, section 43 (1)	In so far as the powers and functions pertain to appeals relating to a decision to issue or to refuse to issue environmental authorisations in respect of activities that are undertaken or are to be undertaken by the national departments responsible for water or environmental affairs or any other organ of state performing a regulatory function and reporting to the Minister of Water and Environmental Affairs, and include the powers and functions that are exercised or performed in terms of subsections (1), (4), (5), (6) and (7) of section 43 of the said Act in so far as they relate to the appeals referred to above.

**Proc 78 of 24 December 2010: Transfer of the administration and powers and functions entrusted to the Minister of Agriculture, Forestry and Fisheries by the National Forest Act ([84/1998](#)), for specific mountain catchment areas
(Government Gazette No. 33899)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the [Constitution](#) of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted to the Minister of Agriculture, Forestry and Fisheries by the National Forest Act, 1998 (Act [No. 84 of 1998](#)), and all amendments thereto, for the mountain catchment areas specified in the

Schedule, to the Minister of Water and Environmental Affairs, with effect from the date of publication of this proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 17th day of March Two Thousand and Ten.

(Signed)

J G ZUMA

President

By Order of the President-in-Cabinet:

(Signed)

Minister of the Cabinet

(Signed)

Minister of the Cabinet

Proc R.46 of 19 August 2011: Stock Theft Act ([57/1959](#)) and Game Theft Act: Transfer of functions under [section 97](#) (Government Gazette No. 34535)

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Under [section 97](#) of the [Constitution of the Republic of South Africa, 1996](#), I hereby transfer to the Cabinet member responsible for policing-

- (a) (i) the administration; and
- (ii) the powers that may be performed by the Minister of Justice under [sections 16, 17](#) and [18](#), of the Stock Theft Act, 1959 ([Act No. 57 of 1959](#)); and
- (b) the administration of the Game Theft Act, 1991 ([Act No. 105 of 1991](#)), but excluding the power of the Minister of Justice to determine amounts as provided for in [section 7 \(b\)](#) of the Act.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 5th day of August Two thousand and eleven.

J G Zuma

President

By Order of the President-in-Cabinet:

J T Radebe

Minister of the Cabinet

**Justice and Constitutional
Development**

EN Mthethwa

Minister of the Cabinet

Police

Proc 32 of 17 May 2012: Transfer of administration, powers and functions entrusted by legislation to another Cabinet Member in terms of [section 97](#) of the Constitution (Government Gazette No. 35358)

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration, powers and functions entrusted by the Estate Agency Affairs Act, 1976 (Act [No. 112 of 1976](#)), and all amendments thereto, from the Minister of Trade and Industry to the Minister of Human Settlements with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 26th day of April, Two Thousand and Twelve.

(Signed)

PRESIDENT

By order of the President-in-Cabinet

(Signed)

MINISTER OF THE CABINET

(Signed)

MINISTER OF THE CABINET

**Proc R.47 of 5 September 2012: Transfer of functions under [section 97](#) of the Constitution of the Republic of South Africa, 1996: Public Funding of Represented Political Parties Act, 1997
(Government Gazette No. 35655)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer to the Cabinet member responsible for the home affairs portfolio the administration of the Public Funding of Represented Political Parties Act, 1997 (Act [No. 103 of 1997](#)).

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on this thirteenth day of August Two thousand and twelve.

J G ZUMA
President

By Order of the President in Cabinet:

J T RADEBE
**Minister of the Cabinet
Minister of Justice and Constitutional
Development**

N C DLAMINI ZUMA
**Minister of the Cabinet
Minister of Home
Affairs**

**Proc N 16 of 31 May 2013: Transfer of administration and powers and functions entrusted by legislation to certain Cabinet Members in terms of [section 97](#) of the Constitution
(Government Gazette No. 36527)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member and amend and clarify previous proclamations as set out in the Schedule in English and isiZulu, with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 23rd day of May, Two Thousand and Thirteen.

(Signed)
PRESIDENT

By Order of the President-in-Cabinet:

MINISTER OF THE CABINET
(Signed)

MINISTER OF THE CABINET
(Signed)

SCHEDULE

1. The administration of and the powers and functions entrusted by the legislation, mentioned in Column 1 of the tables below, to a Cabinet member mentioned in Column 2 of the tables below are hereby transferred to the Cabinet member mentioned in Column 3 of the tables below.
2. Column 2 of the Schedule states the Minister or Ministers in whom, immediately prior to the commencement of this Proclamation, by virtue of the following Proclamations, the administration or powers and functions of the legislation mentioned in Column 3 vests-
 - (a) Proclamation No. 44 of 1 July 2009, published in *Government Gazette* No. 32367 of that date; and
 - (b) Proclamation No. 1 of 10 February 2010, published in *Government Gazette* No. 32945 of that date.
3. Column 3 of the Schedule states the relevant Minister and the extent of the transfer of the administration of

legislation and the powers and functions entrusted by legislation to that Minister. Column 3 also states instances where the administration of and powers and functions entrusted by legislation remain with the relevant Minister.

4. In so far as this Schedule may differ from or be in conflict with the Schedules to the Proclamations mentioned in item 2 above, and in so far as those Schedules relate to the Marine Living Resources Act, 1998 (Act [No. 18 of 1998](#)), this Schedule prevails.
5. Below, the Marine Living Resources Act, 1998 (Act [No. 18 of 1998](#)), is referred to as the Marine Living Resources Act, 1998.

ENVIRONMENTAL RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Cabinet member previously responsible</i>	<i>Cabinet member to whom function is transferred and extent of transfer</i>
1. Marine Living Resources Act, 1998: Sections 1 to 4	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<ol style="list-style-type: none"> 1. The Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to the administration of, and the exercise of the powers and performance of the functions contained in- <ol style="list-style-type: none"> (a) section 43 of the Marine Living Resources Act, 1998; and (b) the regulations and other provisions listed in this Proclamation relating to marine protected areas; and (c) the regulations listed in this Proclamation relating to whales, dolphins, turtles and white sharks. 2. The Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to the administration of, and the exercise of the powers and performance of the functions contained in, the provisions of the Marine Living Resources Act, 1998, not mentioned in item 1 and the regulations listed in this Proclamation that relate to fishing within a marine protected area.

2. Marine Living Resources Act, 1998: Sections 5 to 7, 10, 11, 14, 15, 17, 18 to 27, 29 to 41 and 44 to 50	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Forestry and Fisheries: The administration of and the powers and duties provided for in the sections referred to in Column 1 remain with the Minister.
3. Marine Living Resources Act, 1998: Section 8	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Forestry and Fisheries: The administration of and the powers and duties provided for in the section referred to in Column 1.
4. Marine Living Resources Act, 1998: Section 9	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<ol style="list-style-type: none"> 1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to designating persons- <ol style="list-style-type: none"> (a) to perform enforcement functions within marine protected areas; and (b) enforcing the regulations listed in this Proclamation relating to marine protected areas, and those relating to whales, dolphins, turtles and white sharks. 2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to designating persons to enforce all fisheries related and all other matters in terms of the Marine Living Resources Act, 1998, not mentioned in item 1 and the regulations listed in this Proclamation that relate to fishing within a marine protected area.
		<ol style="list-style-type: none"> 1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to the keeping of- <ol style="list-style-type: none"> (a) a register for permits issued in terms of the Marine Living Resources Act, 1998, in

<p>5. Marine Living Resources Act, 1998: Section 12</p>	<p>Minister of Agriculture, Forestry and Fisheries</p>	<p>respect of activities within marine protected areas; and</p> <p>(b) a register for permits issued in terms of the regulations listed in this Proclamation in respect of activities within marine protected areas, excluding a register contemplated in item 2 (a); and</p> <p>(c) a register for permits issued in terms of regulations relating to whales, dolphins, turtles and white sharks.</p> <p>2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to the keeping of-</p> <p>(a) a register relating to permits issued in terms of the regulations listed in this Proclamation in respect of fishing within a marine protected area; and</p> <p>(b) a register relating to any other right, permit and licence issued in terms of the Marine Living Resources Act, 1998, not mentioned in item 1.</p>
		<p>1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to-</p> <p>(a) permits issued in terms of the Marine Living Resources Act, 1998, in respect of activities within marine protected areas; and</p> <p>(b) permits issued in terms of the regulations listed in this Proclamation in respect of activities within marine protected areas, excluding fishing permits</p>

6. Marine Living Resources Act, 1998: Section 13	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<p>contemplated in item 2 (a); and</p> <p>(c) permits issued in terms of regulations relating to whales, dolphins, turtles and white sharks.</p> <p>2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to-</p> <p>(a) fishing permits issued in terms of the regulations listed in this Proclamation in respect of fishing within marine protected areas; and</p> <p>(b) any other permit issued in terms of the Marine Living Resources Act, 1989, not mentioned in item 1.</p>
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "Marine Living Resources Act, 1989" is intended to be "Marine Living Resources Act, 1998".)		
7. Marine Living Resources Act, 1998: Section 16	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Forestry and Fisheries: The administration of and the powers and duties provided for in the section referred to in Column 1.
8. Marine Living Resources Act, 1998:	Minister of Water and Environmental Affairs and	<p>1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to-</p> <p>(a) permits issued in terms of the Marine Living Resources Act, 1998, in respect of activities within marine protected areas; and</p> <p>(b) permits issued in terms of the regulations listed in this Proclamation in respect of activities within marine protected areas, excluding fishing permits contemplated in item 2 (a); and</p> <p>(c) permits issued in terms of regulations</p>

Section 28	Minister of Agriculture, Forestry and Fisheries	<p>relating to whales, dolphins, turtles and white sharks.</p> <p>2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to-</p> <p>(a) fishing permits issued in terms of the regulations listed in this Proclamation in respect of fishing within marine protected areas; and</p> <p>(b) any other permit, right or licence issued in terms of the Marine Living Resources Act, 1998, not mentioned in item 1.</p>
9. Marine Living Resources Act, 1998: Section 42	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<p>1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to any matter relating to marine protected areas and any matter relating to whales, dolphins, turtles and white sharks.</p> <p>2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the section referred to in Column 1 pertain to any matter contained in the Marine Living Resources Act, 1998, not mentioned in item 1.</p>
10. Marine Living Resources Act, 1998: Section 43	Minister of Water and Environmental Affairs	<p>Minister of Water and Environmental Affairs:</p> <p>The administration of and the powers and duties provided for in the section referred to in Column 1, read together with-</p> <p>(a) the regulations and other provisions listed in this Proclamation relating to marine protected areas; and</p> <p>(b) the regulations listed in this</p>

		Proclamation relating to whales, dolphins, turtles and white sharks.
11. Marine Living Resources Act, 1998: Sections 51 to 76	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<ol style="list-style-type: none"> 1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to any matter relating to marine protected areas and any matter relating to whales, dolphins, turtles and white sharks. 2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to any matter contained in the Marine Living Resources Act, 1998, not mentioned in item 1 and the regulations listed in this Proclamation that relate to fishing within a marine protected area.
12. Marine Living Resources Act, 1998: Sections 77 to 86	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	<ol style="list-style-type: none"> 1. Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to any matter relating to marine protected areas and any matter relating to whales, dolphins, turtles and white sharks, including permits, exemptions and research. 2. Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to any matter contained in the Marine Living Resources Act, 1998, not mentioned in item 1 and the regulations listed in this Proclamation that relate to fishing within a marine protected area.
REGULATIONS		

<p>13. Declaration of Areas as Marine Protected Areas, issued in terms of section 43 of the Marine Protected Areas Act, 1998 (Government Notice No. R.1429 of 29 December 2000):</p> <p>Paragraph 1 and paragraph 2 (Description of boundaries of marine protected areas):</p> <p>2 (1) Castle Rock 2 (2) Betty's Bay 2 (3) De Hoop 2 (4) Goukamma 2 (5) Robberg 2 (6) Sardinia Bay 2 (7) Dwesa Cwebe 2 (8) Hluleka 2 (9) Mkambati 2 (10) Trafalgar 2 (11) St Lucia 2 (12) Maputoland 2 (13) Langebaan Lagoon 2 (14) Sixteen Mile beach 2 (15) Malgas Island 2 (16) Jutten Island 2 (17) Marcus Island 2 (18) Helderberg 2 (19) Tsitsikamma; and</p> <p>Paragraphs 3 (2), 3 (3), 3 (4) and 3 (5) (Stipulations Marine Protected Areas).</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Water and Environmental Affairs:</p> <p>The administration of and the powers and duties provided for in the paragraphs referred to in Column 1 remain with the Minister.</p>
<p>14. Declaration of Areas as Marine Protected Areas, issued in terms of section 43 of the Marine Protected Areas Act, 1998 (Government Notice No. R.1429 of 29 December 2000):</p> <p>Paragraph 3 (Stipulations Marine Protected Areas):</p> <p>3 (1) (a) - Betty's Bay, Goukamma and Robberg Marine Protected Areas;</p> <p>3 (1) (b) - Castle Rock Marine Protected Area;</p> <p>3 (1) (c) and 3 (1) (d) - Langebaan Lagoon Marine Protected Area;</p> <p>3 (1) (e) - Sixteen Mile Beach Marine Protected Area;</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Agriculture, Forestry and Fisheries:</p> <p>1. The administration of and the powers and duties provided for in the paragraphs referred to in Column 1 in so far as those matters relate to fisheries management including permitting, fishing rights, fisheries related research and enforcing the paragraphs with regard to the types of fishing specified therein.</p> <p>Minister of Water and Environmental Affairs:</p> <p>2. The administration of and the powers and duties provided for in the Declaration</p>

<p>3 (1) (f) - Malgas Island, Jutten Island and Marcus Island Marine Protected Areas;</p> <p>3 (1) (g) - Trafalgar Marine Protected Area and the restricted areas of the St Lucia and Maputaland Marine Protected Areas.</p>		<p>referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of Water and Environmental Affairs.</p>
<p>(Editorial Note: Wording as per original <i>Government Gazette</i>. It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)</p>		
<p>15. Regulations prescribing the management and protection measures for the Table Mountain Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 695 of 4 June 2004):</p> <p>Regulations 1, 2, 3, 4, 5, 6 (1), 6 (3), 6 (4), 8, 9, 11, 13, 14 and 15.</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Water and Environmental Affairs:</p> <p>The administration of and the powers and duties provided for in the regulations referred to in Column 1 remain with the Minister.</p>
<p>16. Regulations prescribing the management and protection measures for the Table Mountain Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 695 of 4 June 2004):</p> <p>Regulations 6 (2) and 7.</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Agriculture, Forestry and Fisheries:</p> <p>1. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to fisheries management including permitting, fishing rights, fisheries related research and enforcing the regulations with regard to the types of fishing specified therein.</p> <p>Minister of Water and Environmental Affairs:</p> <p>2. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of Water and Environmental Affairs.</p>
<p>(Editorial Note: Wording as per original <i>Government Gazette</i>. It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)</p>		
		<p>Minister of Agriculture, Forestry and Fisheries:</p> <p>1. The administration of</p>

<p>17. Regulations prescribing the management and protection measures for the Table Mountain Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 695 of 4 June 2004):</p> <p>Regulations 10 and 12.</p>	<p>Minister of Water and Environmental Affairs</p>	<p>and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to regulations 6 (2) and 7 transferred to the Minister in Row 16 above.</p> <p>Minister of Water and Environmental Affairs:</p> <p>2. The administration of and the powers and duties provided for in the Regulations, referred to in Column 1, in so far as those matters relate to powers and functions not referred to in item 1 above, remain with the Minister of Water and Environmental Affairs.</p>
<p>18. Regulations prescribing the management and protection measures for the Bird Island Group Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 696 of 4 June 2004):</p> <p>The whole.</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Water and Environmental Affairs:</p> <p>The administration of and the powers and duties provided for in the regulations referred to in Column 1 remain with the Minister.</p>
<p>19. Declaration of Area as Marine Protected Area in terms of section 43 of the Marine Protected Areas Act, 1998 - Walker Bay Whale Sanctuary Marine Protected Area (Government Notice No. 473 of 29 May 2001):</p> <p>Paragraphs 1, 2 (Description of boundaries of marine protected area), 3 (1), 3 (2) (Stipulations: marine protected area) and 4.</p>	<p>Minister of Water and Environmental Affairs</p>	<p>Minister of Water and Environmental Affairs:</p> <p>The administration of and the powers and duties provided for in the Declaration referred to in Column 1 remain with the Minister.</p>
		<p>Minister of Agriculture, Forestry and Fisheries:</p> <p>1. The administration of and the powers and duties provided for in the paragraph, referred to in Column 1, in so far</p>

20. Declaration of Area as Marine Protected Area, issued in terms of section 43 of the Marine Protected Areas Act, 1998 - Walker Bay Whale Sanctuary Marine Protected Area (Government Notice No. 473 of 29 May 2001): Paragraph 3 (3) (Stipulations: Marine Protected Area).	Minister of Water and Environmental Affairs	as those matters relate to fisheries management including permitting, fishing rights, fisheries related research and enforcing the paragraph with regard to the types of fishing specified therein. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the paragraph, referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of Water and Environmental Affairs.
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)		
21. Regulations prescribing the management and protection measures for the Aliwal Shoal Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 697 of 4 June 2004):	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the regulations referred to in Column 1 remain with the Minister.
Regulations 1 to 6, 7 (2), 7 (4), 8, 9, 11, 13, 14 and 15.		
22. Regulations prescribing the management and protection measures for the Aliwal Shoal Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 697 of 4 June 2004): Regulations 7 (1) and 7 (3).	Minister of Water and Environmental Affairs	Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to fisheries management including permitting, fishing rights, fisheries related research and enforcing the regulations with regard to the types of fishing specified therein. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of

		Water and Environmental Affairs.
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)		
23. Regulations prescribing the management and protection measures for the Aliwal Shoal Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 697 of 4 June 2004): Regulations 10 and 12.	Minister of Water and Environmental Affairs	Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to regulations 7 (1) and 7 (3) transferred to the Minister in Row 22 above. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to powers and functions not referred to in item 1 above, remain with the Minister of Water and Environmental Affairs.
24. Regulations prescribing the management and protection measures for the Pondoland Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 694 of 4 June 2004): Regulations 1 to 6, 8, 9, 11, 13, 14, 15 and 16.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the regulations referred to in Column 1 remain with the Minister.
25. Regulations prescribing the management and protection measures for the Pondoland Marine Protected Area, made in terms of section 77 of the Marine Living	Minister of Water and Environmental Affairs	Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulation, referred to in Column 1, in so far as those matters relate to fisheries management including permitting, fishing rights, fisheries related research and enforcing the regulation with regard to the types of fishing specified therein.

Resources Act, 1998 (Government Notice No. 694 of 4 June 2004): Regulation 7.		Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulation, referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of Water and Environmental Affairs.
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)		
26. Regulations prescribing the management and protection measures for the Pondoland Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. 694 of 4 June 2004): Regulations 10 and 12.	Minister of Water and Environmental Affairs	Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to regulation 7 transferred to the Minister in Row 25 above. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to powers and functions not referred to in item 1 above, remain with Minister of Water and Environmental Affairs.
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)		
27. Regulations on the Stilbaai Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.1108 of 17 October 2008): Regulations 1 to 4, 6, 7, 8 and 10.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the regulations referred to in Column 1 remain with the Minister.
28. Regulations on the Stilbaai Marine		Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulations, referred to in Column 1, in so far as those matters relate to fisheries management including permitting, fishing rights, fisheries

Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.1108 of 17 October 2008): Regulation 5.	Minister of Water and Environmental Affairs	related research and enforcing the regulation with regard to the types of fishing specified therein. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulation, referred to in Column 1, in so far as those matters do not relate to the matters mentioned in item 1, remain with Minister of Water and Environmental Affairs.
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "remain with Minister of Water and Environmental Affairs" is intended to be "remain with the Minister of Water and Environmental Affairs".)		
29. Regulations on the Stilbaai Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.1108 of 17 October 2008): Regulation 9.	Minister of Water and Environmental Affairs	Minister of Agriculture, Forestry and Fisheries: 1. The administration of and the powers and duties provided for in the regulation, referred to in Column 1, in so far as those matters relate to regulation 5 transferred to the Minister in Row 28 above. Minister of Water and Environmental Affairs: 2. The administration of and the powers and duties provided for in the regulation, referred to in Column 1, in so far as those matters relate to powers and functions not referred to in item 1 above, remain with the Minister of Water and Environmental Affairs.
30. Notice declaring the Stilbaai Marine Protected Area, issued in terms of section 43 of the Marine Living Resources Act, 1998 (Government Notice No. 1109 of 17 October 2008: The whole.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the Notice referred to in Column 1 remain with the Minister.
31. Regulations for the Management of the Amathole Marine Protected Area, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.731 of 16 September 2011): The whole.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the regulations referred to in Column remain with the Minister.

(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the phrase "in Column remain" is intended to be "in Column 1 remain".)		
32. Declaration of Amathole Marine Protected Area, issued in terms of section 43 of the Marine Living Resources Act, 1998 (Government Notice No. R.730 of 16 September 2011): The whole.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the Declaration referred to in Column 1 remain with the Minister.
33. Regulations in terms of sections 7 (5), 9 (3) , 12 (2) and (3), 39 (2) , 45 , 47 , 50 (1) , 77 and 80 (2) of the Marine Living Resources Act, 1998 (Government Notice No. R.1111 of 2 September 1998): The whole.	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Forestry and Fisheries: The administration of and the powers and duties provided for in the Regulations referred to in Column 1 remain with the Minister.
34. Regulations for the Protection of Wild Abalone (<i>Haliotis</i>), made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.62 of 1 February 2008): The whole.	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Forestry and Fisheries: The administration of and the powers and duties provided for in the Regulations referred to in Column 1 remain with the Minister.
35. Regulations for the Management of Boat Based Whale Watching and Protection of Turtles, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.725 of 4 July 2008): The whole.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the Regulations referred to in Column 1 remain with the Minister.
36. Regulations for the Management of White Shark Cage Diving, made in terms of section 77 of the Marine Living Resources Act, 1998 (Government Notice No. R.724 of 4 July 2008): The whole.	Minister of Water and Environmental Affairs	Minister of Water and Environmental Affairs: The administration of and the powers and duties provided for in the Regulations referred to in Column 1 remain with the Minister.

EXPLANATORY MEMORANDUM

- On 10 May 2009 the President announced the appointment of Ministers and Deputy Ministers in terms of [sections 91 \(2\)](#) and [93 \(1\)](#) of the Constitution of the Republic of South Africa, 1996 (the Constitution). Since the Ministers' portfolios differed from the Ministers' portfolios before the President took the oath on 9 May 2009, it was necessary to align the administration of legislation and powers and functions entrusted by legislation to the new portfolios of Ministers announced by the President.
- The administration and the powers and functions entrusted by the Marine Living Resources Act, 1998 (Act [No.](#)

[18 of 1998](#)), pertaining to mariculture, were transferred from the Minister of Water and Environmental Affairs to the Minister of Agriculture Forestry and Fisheries by Proclamation No. 44 on 1 July 2009.

3. The administration and the powers and functions entrusted by the Marine Living Resources Act, 1998: pertaining to fisheries (excluding marine protected areas and the regulations related to Boat-based Whale Watching and White Shark Cage Diving), were transferred from the Minister of Water and Environmental Affairs to the Minister of Agriculture Forestry and Fisheries by Proclamation No. 1 of 10 February 2010.
4. The Proclamation of 10 February 2010 resulted in confusion as to the extent and exact nature of the transfer of functions, particularly in relation to regulations under the Marine Living Resources Act, 1998 (Act [No. 18 of 1998](#)) that were not mentioned in the 10 February Proclamation. This Proclamation, which is done in terms of [section 97](#) of the Constitution, seeks to provide clarity on the exact nature and extent of the transfer of powers and functions under the Marine Living Resources Act, 1998 (Act [No. 18 of 1998](#)) including regulations. In some instances where the same Minister appears in both Columns 2 and 3, this indicates that no transfer has taken place, thus providing clarity as to the nature of the transfer in the 10 February Proclamation. [Section 97](#) of the Constitution provides that 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."

**Proc N 12 of 25 February 2014: Calling and setting of a date for the election of the National Assembly
(Government Gazette No. 37376)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 49 \(2\)](#) of the Constitution of the Republic of South Africa, 1996, read with [section 17](#) of the Electoral Act, 1998 (Act [No. 73 of 1998](#)), after consultation with the Electoral Commission, I hereby, call an election of the National Assembly and set 7 May 2014 as a date for voting.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 20 day of February Two Thousand and Fourteen.

(Signed)
President

(Signed)
Minister of the Cabinet

**Proc N 47 of 15 July 2014: Transfer of administration and powers and functions entrusted by legislation to certain cabinet members
(Government Gazette No. 37839)**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member as set out in the Schedule in English and isiZulu with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 12th day of July, Two Thousand and Fourteen.

(Signed)
President

By Order of the President-in-Cabinet:

(Signed)
Minister of the Cabinet

SCHEDULE

1. The administration and the powers and functions entrusted by the legislation, mentioned in column 1 of the tables below, to a Cabinet member as executive authority of that department mentioned in column 2 of the tables, immediately before the President assumed office on 24 May 2014, are transferred to the Cabinet member mentioned in column 3 of the tables.

1.1 COMMUNICATION RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet Member</i>	<i>New Cabinet Member</i>
Post and Telecommunication-Related Matters Act, 1958 (Act No. 44 of 1958)	Minister of Communications	Minister of Telecommunications and Postal Services
Films and Publications Act, 1996 (Act No. 65 of 1996)	Minister of Home Affairs	Minister of Communications
Sentech Act, 1996 (Act No. 63 of 1996)	Minister of Communications	Minister of Telecommunications and Postal Services
Former States Posts and Telecommunications Act, 1996 (Act No. 5 of 1996)	Minister of Communications	Minister of Telecommunications and Postal Services
Former States Broadcasting Reorganisation Act, 1996 (Act No. 91 of 1996)	Minister of Communications	Minister of Telecommunications and Postal Services
Postal Services Act, 1998 (Act No. 124 of 1998)	Minister of Communications	Minister of Telecommunications and Postal Services
Department of Communications Rationalisation Act, 1998 (Act No. 10 of 1998)	Minister of Communications	Minister of Telecommunications and Postal Services
Broadcasting Act, 1999 (Act No. 4 of 1999)	Minister of Communications	Minister of Communications
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000)	Minister of Communications	Minister of Communications
Media Development and Diversity Agency Act, 2002 (Act No. 14 of 2002)	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister of Communications
Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)	Minister of Communications	Minister of Telecommunications and Postal Services
Electronic Communications Act, 2005 (Act No. 36 of 2005)	Minister of Communications	Minister of Telecommunications and Postal Services
South African Post Bank Limited Act, 2010 (Act No. 9 of 2010)	Minister of Communications	Minister of Telecommunications and Postal Services
South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011)	Minister of Communications	Minister of Telecommunications and Postal Services
State Information Technology Agency Act, 1998 (Act No. 88 of 1998)	Minister for the Public Service and Administration	Minister of Telecommunications and Postal Services
Telegraph Messages Protection Act, 1963 (Act No. 44 of 1963)	Minister of Communications	Minister of Telecommunications and Postal Services

1.2 ENVIRONMENTAL RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Sea-Shore Act, 1935 (Act No. 21 of 1935)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Prince Edwards Islands Act, 1948 (Act No. 43 of 1948)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Dumping at Sea Control Act, 1980 (Act No. 73 of 1980)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Section 38 of the Sea Fishery	Minister of Water and	Minister of Environmental

Act, 1988 (Act No. 12 of 1988)	Environmental Affairs	Affairs
Environment Conservation Act, 1989 (Act No. 73 of 1989)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Antarctic Treaties Act, 1996 (Act No. 60 of 1996)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Environment Conservation Act Extension Act, 1996 (Act No. 100 of 1996)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
Marine Living Resources Act, 1998 (Act No. 18 of 1998)	Minister of Water and Environmental Affairs to the extent that powers and functions had been transferred to that Minister by Proclamation No. 16 of 2013, published in <i>Government Gazette</i> No. 36527 of 31 May 2013	Minister of Environmental Affairs to the extent set out in paragraph 1.2.1 below
National Environmental Management Act, 1998 (Act No. 107 of 1998)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
World Heritage Convention Act, 1999 (Act No. 49 of 1999)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
South African Weather Service Act, 2001 (Act No. 8 of 2001)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs
National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)	Minister of Water and Environmental Affairs	Minister of Environmental Affairs

1.2.1 The administration of and the powers and functions entrusted to the Minister of Water and Environmental Affairs in relation to the provisions of the Marine Living Resources Act, 1998 (Act [No. 18 of 1998](#)), and subordinate legislation mentioned in column 3 of Proclamation No. 16 of 2013, published in *Government Gazette* No. 36527 of 31 May 2013, are hereby transferred to the Minister of Environmental Affairs.

1.3 GENDER RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Commission on Gender Equality Act, 1996 (Act No. 39 of 1996)	Minister of Women, Children and People with Disabilities	Minister in The Presidency responsible for Women

1.4 SMALL BUSINESS DEVELOPMENT RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Section 2A of the Small Business Development Act, 1981 (Act No. 112 of 1981)	Minister of Trade and Industry	Minister of Small Business Development
Close Corporations Act, 1984 (Act No. 69 of 1984)	Minister of Trade and Industry	Minister of Small Business Development
National Small Enterprise Act, 1996 (Act No. 102 of 1996)	Minister of Trade and Industry	Minister of Small Business Development
Co-operatives Act, 2005 (Act No. 14 of 2005)	Minister of Trade and Industry	Minister of Small Business Development

1.5 STATISTICS RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Statistics Act, 1999 (Act No. 6 of 1999)	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister in The Presidency responsible for Planning, Monitoring and Evaluation

1.6 TRANSPORT RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Wreck and Salvage Act, 1996 (Act No. 94 of 1996)	Minister of Water and Environmental Affairs	Minister of Transport

1.7 WATER AND SANITATION RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Water Research Act, 1971 (Act No. 34 of 1971)	Minister of Water and Environmental Affairs	Minister of Water and Sanitation
Water Services Act, 1997 (Act No. 108 of 1997)	Minister of Water and Environmental Affairs	Minister of Water and Sanitation
National Water Act, 1998 (Act No. 36 of 1998)	Minister of Water and Environmental Affairs	Minister of Water and Sanitation

1.8 YOUTH RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
National Youth Development Agency Act, 2008 (Act No. 54 of 2008)	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister in The Presidency responsible for Planning, Monitoring and Evaluation

2. The administration and the powers or functions entrusted by legislation to a Cabinet member mentioned in column 1 of the table below, immediately before the President assumed office on 24 May 2014, are transferred to the Cabinet member mentioned in column 2 of the table.

<i>Column 1</i>	<i>Column 2</i>
<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Minister of Correctional Services	Minister of Justice and Correctional Services
Minister of Justice and Constitutional Development	Minister of Justice and Correctional Services

3. With respect to the departments mentioned below, the powers and functions entrusted by the Public Service Act, 1994 (promulgated under [Proclamation No. 103 of 1994](#)), mentioned in column 1 of the tables in paragraphs 3.1 to 3.4 below, to a Cabinet member as executive authority of that department mentioned in column 2 of the tables, immediately before the President assumed office on 24 May 2014, are transferred to the Cabinet member mentioned in column 3 of the tables.

3.1 GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Powers and functions under the Public Service Act, 1994</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister of Communications

3.2 STATISTICS SOUTH AFRICA

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Powers and functions under the Public Service Act, 1994</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department, subject to the	Minister in The Presidency responsible for National	Minister in The Presidency responsible for Planning,

Statistics Act, 1999 (Act No. 6 of 1999)	Planning	Monitoring and Evaluation
---	----------	---------------------------

3.3 PERFORMANCE MONITORING AND EVALUATION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Powers and functions under the Public Service Act, 1994</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister in The Presidency responsible for Planning, Monitoring and Evaluation

3.4 WOMEN

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Powers and functions under the Public Service Act, 1994</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
All powers and functions of the executive authority of the Department	Minister of Women, Children and People with Disabilities	Minister in The Presidency responsible for Women

**Proc 79 of 2 December 2014: Transfer of administration of and powers and functions entrusted by legislation to certain Cabinet members in terms of [section 97](#) of the Constitution
(Government Gazette No. 38280)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the constitution of the Republic of South Africa, 1996, I hereby transfer the administration of and the powers and functions entrusted by the specified legislation and all amendments thereto, to the specified Cabinet member as set out in [the Schedule](#) with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this 25 day of November Two Thousand and Fourteen.

(Signed)
PRESIDENT

(Signed)
MINISTER OF THE CABINET

(Signed)
MINISTER OF THE CABINET

SCHEDULE

1. The administration of and powers and functions entrusted by the legislation, mentioned in Column 1 of the table below, to a Cabinet member mentioned in Column 2 of that table, are hereby transferred to the Cabinet member mentioned in Column 3 of the table.

2. Column 3 of the table below states the relevant Minister and the extent of transfer of the administration of and powers and functions entrusted by legislation to that Minister.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Cabinet member responsible</i>	<i>Cabinet member to whom function is transferred and extent of transfer</i>
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4 (3) (a)	Minister of Communications	1. The Minister of Communications in so far as the Independent Communications Authority may make recommendations to that Minister on policy matters and amendments to the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), and the Broadcasting Act, 1999 (Act No. 4 of 1999), which accord

		with the objects of these Acts to promote development in the broadcasting sector.
		2. The Minister of Telecommunications and Postal Services, in so far as the Independent Communications Authority may make recommendations to that Minister on policy matters and amendments to the Electronic Communications Act, 2005 (Act No. 36 of 2005), and the Postal Services Act, 1998 (Act No. 124 of 1998), which accord with the objects of these Acts to promote development in the electronic transactions, postal and electronic communications sectors.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4 (3) (o)	Minister of Communications	Minister of Telecommunications and Postal Services: The administration of the section referred to in Column 1.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4 (3A) (a)	Minister of Communications	1. The Minister of Communications in so far as policy made, and policy directions issued, by that Minister in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999), the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), and any other applicable law.
		2. The Minister of Telecommunications and Postal Services in so far as policy made, and policy directions issued, by that Minister in terms of the Postal Services Act, 1998 (Act No. 124 of 1998), the Electronic Communications Act, 2005 (Act No. 36 of 2005), and any other applicable law.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 6A (2) (a) and (b)	Minister of Communications	1. The Minister of Communications in so far as appropriate key performance indicators and measurable performance targets contemplated in the section referred to in Column 1 relate to the laws administered by that Minister.
		2. The Minister of Telecommunications and Postal Services in so far as appropriate key performance indicators and measurable performance targets contemplated in the section referred to in Column 1 relate to the laws administered by that Minister.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 15 (1A)	Minister of Communications	1. The Minister of Communications in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relate to the laws administered by that Minister.

		2. The Minister of Telecommunications and Postal Services in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relate to the laws administered by that Minister.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 16 (1) and (2)	Minister of Communications	The Minister of Communications and the Minister of Telecommunications and Postal Services: The administration of and powers and functions entrusted by the section referred to in Column 1.
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 3	Minister of Telecommunications	1. The Minister of Communications in so far as policies contemplated in the section referred to in Column 1 relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).
		2. The Minister of Telecommunications and Postal Services in so far as policies contemplated in the section referred to in Column 1 relate to the Electronic Communications Act, 2005 (Act No. 36 of 2005).
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 4 (5)	Minister of Telecommunications	1. The Minister of Communications in so far as regulations proposed in terms of the section referred to Column 1 relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).
		2. The Minister of Telecommunications and Postal Services in so far as regulations proposed in terms of the section referred to Column 1 relate to the Electronic Communications Act, 2005 (Act No. 36 of 2005).
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 5 (6)	Minister of Telecommunications	1. The Minister of Communications in so far as a policy direction contemplated in the section referred to Column 1 relates to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).
		2. The Minister of Telecommunications and Postal Services in so far as a policy direction contemplated in the section referred to Column 1 relates to the Electronic Communications Act, 2005 (Act No. 36 of 2005).
Electronic Communications Act, 2005 (Act No. 36 of 2005): Chapter 9	Minister of Telecommunications	The Minister of Communications: The administration of the Chapter referred to in Column 1.

Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 79B	Minister of Telecommunications	1. The Minister of Communications in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relates to the functions of the Minister.
		2. The Minister of Telecommunications and Postal Services in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relates to the functions of the Minister.

**Proc 88 of 19 December 2014: Transfer of administration and powers and functions entrusted by the Act
(Government Gazette No. 38354)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the South African Airways Act, 2007 (Act [No. 5 of 2007](#)), and all amendments thereto, from the Minister of Public Enterprises to the Minister of Finance.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 12th day of December Two Thousand and Fourteen.

(Signed)

President

By Order of the President-in-Cabinet

(Signed)

Minister Public Enterprises

(Signed)

Minister of Finance

**Proc 34 of 6 November 2017: Transfer of functions under [section 97](#) of the Constitution of the Republic of South Africa, 1996: Executive Member's Ethics Act, 1998
(Government Gazette No. 41230)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer to the Cabinet member responsible for the justice portfolio the administration of the Executive Member's Ethics Act, 1998 ([Act No. 82 of 1998](#)).

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this first day of November Two Thousand and Seventeen.

(Signed)

President

By Order of the President-in-Cabinet

(Signed)

Minister of the Cabinet

**Proc R.24 of 21 September 2018: Transfer of functions under [section 97](#) of the Constitution of the Republic of South Africa, 1996: Recognition of Customary Marriages Act, 1998
(Government Gazette No. 41915)**

In terms of [section 97 \(a\)](#) of the Constitution of the Republic of South Africa, 1996, I hereby, with effect from the date of publication of this proclamation in the *Government Gazette*, transfer from the Cabinet member responsible for the administration of justice, to the Cabinet member responsible for home affairs, the administration of the following provisions of the Recognition of Customary Marriages Act, 1998 (Act [No. 120 of 1998](#)).

- (a) Section 2 dealing with the recognition of customary marriages;
- (b) section 3 dealing with the requirements of validity of customary marriages;
- (c) section 4 dealing with the registration of customary marriages;
- (d) section 5 dealing with the determination of age of minors; and
- (e) section 11 dealing with the making of regulations.

In terms of [section 97 \(b\)](#) of the Constitution of the Republic of South Africa, 1996, I hereby, with effect from the date of publication of this proclamation in the *Government Gazette*, transfer from the Cabinet member responsible for the administration of justice, to the Cabinet member responsible for home affairs, the power to make regulations in terms of [section 11](#) of the Recognition of Customary Marriages Act, 1998 (Act [No. 120 of 1998](#)).

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 22 day of August Two thousand and eighteen.

CM Ramaphosa
President

By Order of the President in Cabinet

TM Masutha
Minister of the Cabinet

TM Masutha
Minister of Justice and Correctional Services

MKN Gigaba
Minister of Home Affairs

Proc 48 of 30 July 2019: Transfer of administration of legislation and power functions in terms of [section 97](#) of the Constitution of the Republic of South Africa (Government Gazette No. 42601)

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA



PROCLAMATION

by the

President of the Republic of South Africa

**TRANSFER OF ADMINISTRATION AND POWERS AND FUNCTIONS ENTRUSTED BY LEGISLATION TO CERTAIN
CABINET MEMBERS IN TERMS OF SECTION 97 OF THE CONSTITUTION**

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member as set out in the Schedule in English and isiZulu with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 29th day of July Two Thousand and Nineteen.

(Signed)
PRESIDENT

By Order of the President-in-Cabinet:

(Signed)
MINISTER OF THE CABINET

SCHEDULE

1. The administration and the powers and functions entrusted by the legislation, mentioned in column 1 of the tables below, to a Cabinet member as executive authority of that Department mentioned in column 2 of the tables below, immediately before the President assumed office on 25 May 2019, are transferred to the Cabinet member mentioned in column 3 of the tables.

1.1 ENVIRONMENTAL, FORESTRY AND FISHERIES RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Prince Edwards Islands Act, 1948 (Act No. 43 of 1948)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Sea Fishery Act, 1988 (Act No. 12 of 1988)	Minister of Environmental Affairs and the Minister of Agriculture, Forestry and Fisheries	Minister of Environment, Forestry and Fisheries
Environment Conservation Act, 1989 (Act No. 73 of 1989)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Management of State Forests Act, 1992 (Act No. 128 of 1992)	Minister of Agriculture, Forestry and Fisheries	Minister of Environment, Forestry and Fisheries
Antarctic Treaties Act, 1996 (Act No. 60 of 1996)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Environment Conservation Act Extension Act, 1996 (Act No. 100 of 1996)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Marine Living Resources Act, 1998 (Act No. 18 of 1998)	Minister of Agriculture, Forestry and Fisheries and the Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998)	Minister of Agriculture, Forestry and Fisheries	Minister of Environment, Forestry and Fisheries
National Environmental Management Act, 1998, (Act No. 107 of 1998)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
World Heritage Convention Act, 1999 (Act No. 49 of 1999)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
South African Weather Service Act, 2001 (Act No. 8 of 2001)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries

National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries
Marine Spatial Planning Act, 2018 (Act No. 16 of 2018)	Minister of Environmental Affairs	Minister of Environment, Forestry and Fisheries

1.2 MINERAL RESOURCES AND ENERGY RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Mines and Works Act, 1956 (Act No. 27 of 1956)	Minister of Mineral and Energy Affairs	Minister of Mineral Resources and Energy
Mining Titles Registration Act, 1967 (Act No. 16 of 1967)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Central Energy Fund Act, 1977 (Act No. 38 of 1977)	Minister of Energy	Minister of Mineral Resources and Energy
Petroleum Products Act, 1977 (Act No. 120 of 1977)	Minister of Energy	Minister of Mineral Resources and Energy
Diamonds Act, 1986 (Act No. 56 of 1986)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Mineral Technology Act, 1989 (Act No. 30 of 1989)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Abolition of the National Energy Council Act, 1991 (Act No. 95 of 1991)	Minister of Energy	Minister of Mineral Resources and Energy
Geoscience Act, 1993 (Act No. 100 of 1993)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Nuclear Energy Act, 1993 (Act No. 131 of 1993)	Minister of Energy	Minister of Mineral Resources and Energy
Mine Health and Safety Act, 1996 (Act No. 29 of 1996)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Nuclear Energy Act, 1999 (Act No. 46 of 1999)	Minister of Energy	Minister of Mineral Resources and Energy
National Nuclear Regulator Act, 1999 (Act No. 47 of 1999)	Minister of Energy	Minister of Mineral Resources and Energy
Abolition of Lebowa Mineral Trust Act, 2000 (Act No. 67 of 2000)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Gas Act, 2001 (Act No. 48 of 2001)	Minister of Energy	Minister of Mineral Resources and Energy
Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Gas Regulator Levies Act, 2002 (Act No. 75 of 2002)	Minister of Energy	Minister of Mineral Resources and Energy
Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)	Minister of Energy	Minister of Mineral Resources and Energy
Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004)	Minister of Energy	Minister of Mineral Resources and Energy
National Energy Regulator Act, 2004 (Act No. 40 of 2004)	Minister of Energy	Minister of Mineral Resources and Energy
Precious Metals Act, 2005 (Act No. 37 of 2005)	Minister of Mineral Resources	Minister of Mineral Resources and Energy
Electricity Regulation Act, 2006 (Act No. 4 of 2006)	Minister of Energy	Minister of Mineral Resources and Energy
National Energy Act, 2008 (Act No. 34 of 2008)	Minister of Energy	Minister of Mineral Resources and Energy
National Radioactive Waste Disposal Institute Act, 2008 (Act No. 53 of 2008)	Minister of Minerals and Energy	Minister of Mineral Resources and Energy

**Proc 49 of 23 August 2019: Transfer of administration, powers and functions entrusted by legislation to certain cabinet members to [section 97](#) of the Constitution
(Government Gazette No. 42657)**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA



PROCLAMATION

by the

President of the Republic of South Africa

In terms of [section 97](#) of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member as set out in [the Schedule](#) in English and isiZulu with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 14th. day of August, Two Thousand and Nineteen.

(Signed)

PRESIDENT

By Order of the President-in-Cabinet:

(Signed)

MINISTER OF THE CABINET

SCHEDULE

1. The administration and the powers and functions entrusted by the legislation, mentioned in column 1 of the tables below, to a Cabinet member mentioned in column 2 of the tables below, immediately before the President assumed office on 25 May 2019, are transferred to the Cabinet member mentioned in column 3 of the tables.

1.1 AGRICULTURE RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet Member</i>	<i>New Cabinet Member</i>
Performing Animals Protection Act 1935, (Act No. 24 of 1935)	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Land Reform and Rural Development

Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Animals Protection Act, 1962 (Act No. 71 of 1962)	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Land Reform and Rural Development
Fencing Act, 1963 (Act No. 31 of 1963)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Plant Improvement Act, 1976 (Act No. 53 of 1976)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Perishable Products Export Control, 1983 (Act No. 9 of 1983)	Minister of Agriculture, Forestry and Fisheries	Minister of Agriculture, Land Reform and Rural Development
Agricultural Pests Act, 1983 (Act No. 36 of 1983)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Animal Diseases Act, 1984 (Act No. 35 of 1984)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Liquor Products Act, 1989 (Act No. 60 of 1989)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Agricultural Research Act, 1990, (Act No. 86 of 1990)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Agricultural Product Standards Act, 1990 (Act No. 119 of 1990)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Abattoir Hygiene Act, 1992 (Act No. 121 of 1992)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Groot Constantia Trust Act, 1993 (Act No. 58 of 1993)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Societies for the Prevention of Cruelty to Animals Act, 1993 (Act No. 169 of 1993)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Agricultural Laws Extension Act, 1996 (Act No. 87 of 1996)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Animal Health Act, 2002 (Act No. 7 of 2002)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Animal Identification Act, 2002 (Act No. 6 of 2002)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development
Plant Improvement Act, 2018 (Act No. 11 of 2018)	Minister of Agriculture	Minister of Agriculture, Land Reform and Rural Development

1.2 COMMUNICATION RELATED LEGISLATION:

Column 1	Column 2	Column 3
Legislation	Previous Cabinet Member	New Cabinet Member

Post and Telecommunication-Related Matters Act, 1958 (Act No. 44 of 1958)	Minister of Telecommunications and Postal Services	Minister of Communications
Telegraph Messages Protection Act, 1963 (Act No. 44 of 1963)	Minister of Telecommunications and Postal Services	Minister of Communications
Former States Posts and Telecommunications Act, 1996 (Act No. 5 of 1996)	Minister of Telecommunications and Postal Services	Minister of Communications
Sentech Act, 1996 (Act No. 63 of 1996)	Minister of Telecommunications and Postal Services	Minister of Communications
Former States Broadcasting Reorganisation Act, 1996 (Act No. 91 of 1996)	Minister of Telecommunications and Postal Services	Minister of Communications
Department of Communications Rationalisation Act, 1998 (Act No. 10 of 1998)	Minister of Telecommunications and Postal Services	Minister of Communications
Postal Services Act, 1998 (Act No. 124 of 1998)	Minister of Telecommunications and Postal Services	Minister of Communications
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000)	Minister of Communications and Minister of Telecommunications and Postal Services	Minister of Communications
Media Development and Diversity Agency Act, 2002 (Act No. 14 of 2002)	Minister of Communications	Minister in The Presidency
Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)	Minister of Telecommunications and Postal Services	Minister of Communications
Electronic Communications Act, 2005 (Act No. 36 of 2005)	Minister of Communications and Minister of Telecommunications and Postal Services	Minister of Communications
South African Post Bank Limited Act, 2010 (Act No. 9 of 2010)	Minister of Telecommunications and Postal Services	Minister of Communications
South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011)	Minister of Telecommunications and Postal Services	Minister of Communications

1.3 ECONOMIC DEVELOPMENT RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Industrial Development Corporation Act, 1940 (Act No. 22 of 1940)	Minister of Economic Development	Minister of Trade and Industry
Sugar Act, 1978 (Act No. 9 of 1978)	Minister of Economic Affairs	Minister of Trade and Industry
Competition Act, 1998 (Act No. 89 of 1998)	Minister of Economic Development	Minister of Trade and Industry
International Trade Administration Act, 2002 (Act No. 71 of 2002)	Minister of Economic Development and Minister of Trade and Industry	Minister of Trade and Industry
Infrastructure Development Act, 2014 (Act No. 23 of 2014)	Minister of Economic Development	Minister of Public Works and Infrastructure

1.4 LAND REFORM AND RURAL DEVELOPMENT RELATED LEGISLATION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet Member</i>	<i>New Cabinet Member</i>

Deeds Registries Act, 1937 (Act No. 47 of 1937)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Kimberley Leasehold Conversion to Freehold Act, 1961 (Act No. 40 of 1961)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
State Land Disposal Act, 1961 (Act No. 48 of 1961), insofar as it entrusts its administration and powers and functions to the Minister of Rural Development and Land Reform	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Sectional Titles Act, 1986 (Act No. 95 of 1986)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Abolition of Racially Based Land Measures Act 1991 (Act No. 108 of 1991)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Land Titles Adjustment Act, 1993 (Act No. 111 of 1993)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3KZ of 1994)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Land Administration Act, 1995 (Act No. 2 of 1995)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Communal Property Associations Act, 1996 (Act No. 28 of 1996)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Land Survey Act, 1997 (Act No. 8 of 1997)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Abolition of Certain Title Conditions Act, 1999 (Act No. 43 of 1999)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Planning Profession Act, 2002 (Act No. 36 of 2002)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Spatial Data infrastructure Act, 2003 (Act No. 54 of 2003)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development

Communal Land Rights Act, 2004 (Act No. 11 of 2004)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development
Geomatics Professions Act, 2013 (Act No. 19 of 2013)	Minister of Rural Development and Land Reform	Minister of Agriculture, Land Reform and Rural Development

1.5 STATISTICS RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Statistics Act, 1999 (Act No. 6 of 1999)	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister in The Presidency

1.6 WOMEN, YOUTH AND PERSONS WITH DISABILITIES RELATED LEGISLATION:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Legislation</i>	<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
National Youth Development Agency Act, 2008 (Act No. 54 of 2008)	Minister in The Presidency responsible for Performance Monitoring and Evaluation	Minister in The Presidency: Women, Youth and Persons with Disabilities
Commission on Gender Equality Act, 1996 (Act No. 39 of 1996)	Minister in The Presidency responsible for Women	Minister in The Presidency: Women, Youth and Persons with Disabilities

2. The administration and the powers or functions entrusted by legislation to a Cabinet member mentioned in column 1 of the table below, immediately before the President assumed office on 25 May 2019, are transferred to the Cabinet member mentioned in column 2 of the table.

<i>Column 1</i>	<i>Column 2</i>
<i>Previous Cabinet member</i>	<i>New Cabinet member</i>
Minister of Higher Education	Minister of Higher Education, Science and Technology
Minister of Science and Technology	Minister of Higher Education, Science and Technology
Minister of Human Settlements	Minister of Human Settlements, Water and Sanitation
Minister of Water and Sanitation	Minister of Human Settlements, Water and Sanitation
Minister of Labour	Minister of Employment and Labour
Minister of Public Works	Minister of Public Works and Infrastructure
Minister of Sport and Recreation	Minister of Sports, Arts and Culture
Minister of Arts and Culture	Minister of Sports, Arts and Culture

3. With respect to the departments mentioned below, the powers and functions entrusted by the Public Service Act, 1994 (promulgated under [Proclamation No. 103 of 1994](#)), mentioned in column 1 of the tables in paragraphs 3.1 to 3.4 below, to a Cabinet member as executive authority of that department mentioned in column 2 of the tables, immediately before the President assumed office on 25 May 2019, are transferred to the Cabinet member mentioned in column 3 of the tables.

3.1 GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Powers and functions under the Public Service Act, 1994	Previous Cabinet member	New Cabinet member
All powers and functions of the executive authority of the Department	Minister of Communications	Minister in the Presidency

3.2 PERFORMANCE MONITORING AND EVALUATION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
-----------------	-----------------	-----------------

Powers and functions under the Public Service Act, 1994	Previous Cabinet member	New Cabinet member
All powers and functions of the executive authority of the Department	Minister in The Presidency responsible for Planning, Monitoring and Evaluation	Minister in The Presidency

3.3 STATISTICS SOUTH AFRICA

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Powers and functions under the Public Service Act, 1994	Previous Cabinet member	New Cabinet member
All powers and functions of the executive authority of the Department	Minister in The Presidency responsible for Planning, Monitoring and Evaluation	Minister in the Presidency

Proc R.13 of 10 March 2020: Establishment of the National Security Council (Government Gazette No. 43083)

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

1. Establishment of the National Security Council

- 1.1 Subject to [section 101 \(1\)](#) of the Constitution of the Republic of South Africa, 1996, I hereby, establish the National Security Council (the NSC) as follows:

2. Composition

- 2.1 The NSC shall consist of the following members of the National Executive-

- (a) The President (Chairperson);
- (b) The Deputy President;
- (c) Minister of Defence and Military Veterans;
- (d) Minister of State Security;
- (e) Minister of Police;
- (f) Minister of International Relations and Cooperation;
- (g) Minister of Home Affairs;
- (h) Minister of Finance;
- (i) Minister of Justice and Correctional Services; and
- (j) Minister of Cooperative Governance and Traditional Affairs.

- 2.2 The President may co-opt any other Minister on an ad hoc basis as the need arises.

3. The South African National Security Secretariat

- 3.1 The NSC is supported by the South African National Security Secretariat (SANSS) that has both coordinating and administrative support functions.

- 3.2 The SANSS is comprise of the following members-

- (a) DG: The Presidency (Secretary of the NSC and Head of the SANSS);
- (b) Security Advisor to the President (*ex officio*);
- (c) Coordinator for Intelligence (NICOC);
- (d) DG: SSA (in future, Heads of the Domestic and Foreign Branches);
- (e) DG: DIRCO;
- (f) DG: Home Affairs;
- (g) DG: Justice and Constitutional Development;
- (h) DG: Cooperative Governance;
- (i) DG: National Treasury;
- (j) Chief: SANDF;
- (k) Secretary for Defence.

4. MANDATE

- 4.1 The National Security Council (NSC) is a structure at the level of the National Executive responsible for ensuring the national security of the Republic of South Africa.
- 4.2 The NSC is responsible for the approval of the National Security Strategy, the National Intelligence Estimate and National Intelligence Priorities; the coordination of the work of the security services, law enforcement agencies and relevant organs of state to ensure national security; receiving coordinated, integrated intelligence assessments from the national security structures of the Republic; and for mandating said structures to attend to matters of national security as required.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 27 day of February Two Thousand and Twenty.

(Signed)

PRESIDENT

Proc 19 of 8 May 2020: Placement on parole of selected categories of sentenced offenders (Government Gazette No. 43298)

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Under [section 84 \(2\) \(j\)](#) of the Constitution of the Republic of South Africa, 1996, read together with section 62 (1) (a) of the Correctional Services Act, 1998 (Act [No 111 of 1998](#)) and for the purpose of addressing, managing and combatting the spread of the COVID-19 virus in all Correctional Centres in the Republic, I hereby authorise the placement on parole of qualifying sentenced offenders in terms of the criteria mentioned below, who are or would have been incarcerated on 27 April 2020 subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such sentenced offenders may fall.

1. The following categories of low risk sentenced offenders will qualify for placement on parole subject to the exclusions in paragraph 2:
 - (a) Offenders who have or will reach their minimum detention periods within a period of 60 months from the date hereof.
2. The following categories of sentenced offenders and/or crimes committed for which sentences are being served, are excluded:
 - (a) Lifers; sexual offences; murder and attempted murder; sedition, high treason, sabotage and terrorism; Gender Based Violence; child abuse;
 - (b) Offenders declared as dangerous by the court in terms of Section 286 A of the Criminal Procedure Act, 1997 (Act [No 51 of 1997](#));
 - (c) Offenders certified as mentally ill and detained in accordance with the Mental Health Care Act, 2002 (Act [No 17 of 2002](#));
 - (d) Offenders with further charges where bail was not fixed or fixed but not paid;
 - (e) Escaped or absconded and are still at large on the date of the announcement;
 - (f) Are out on bail pending appeal on the date of the announcement;
 - (g) Violations under the Domestic Violence Act, 1998 (Act [No 116 of 1998](#));
 - (h) Armed robbery/robbery with aggravating circumstances;
 - (i) Any other crime directly linked to any of the above mentioned crimes (i.e. house breaking with the intent to steal and rape);
 - (j) Any attempt, inciting, soliciting or conspiracy to commit any of the above crimes.
3. Sentenced offenders who qualify for special placement on parole must provide a set of fingerprints and DNA samples for comparison with the SAPS database as a prerequisite for placement.
4. The placement of qualifying sentenced offenders shall commence as soon as all Parole Board processes have been finalised and all relevant rehabilitation and pre-release programmes are attended.

Given under my Hand and the Seal of the Republic of South Africa at; Hyde-Park this 24th day of April Two Thousand and Twenty.

President

By Order of the President-in-Cabinet

(Signed)

Minister of the Cabinet

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

(Prior to amendment by the [Constitution Seventeenth Amendment Act, 2012](#))

[Section 166 \(c\)](#)

- (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;

[Section 166 \(e\)](#)

- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.

[Section 167 \(3\)](#)

(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.

[Section 167 \(5\)](#)

(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.

[Section 168 \(3\)](#)

(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](#)

169. High Courts.-A High Court may decide-

- (a) any constitutional matter except a matter that-
 - (i) only the Constitutional Court may decide; or
 - (ii) is assigned by an Act of Parliament to another court of a status similar to a High Court; and
- (b) any other matter not assigned to another court by an Act of Parliament.

[Section 170](#)

170. Magistrates' Courts and other courts.-Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a High Court may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

[Section 172 \(2\) \(a\)](#)

(a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

[Section 173](#)

173. Inherent power.—The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

[Section 175](#)

175. Acting judges.—(1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the Chief Justice.

(2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve.

[Section 178 \(1\) \(k\)](#)

- (k) when considering matters relating to a specific High Court, the Judge President of that Court and the Premier of the province concerned, or an alternate designated by each of them.

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

(Prior to amendment by [Act No. 10 of 2012](#))

[Schedule 6, Annex D, Item 1 \(c\)](#)

- (c) by replacing paragraph (d) of subsection (1) with the following paragraph:

"(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills;" and

(Prior to amendment by the [Constitution Sixteenth Amendment Act of 2009](#))

[Schedule 1A](#)—Reference under the heading of "The Province of Gauteng"

Map No. 4 of [Schedule 1](#) to Notice 1998 of 2005

[Schedule 1A](#)—Reference under the heading of "The Province of North West"

Map No. 5 of [Schedule 1](#) to Notice 1998 of 2005

(Prior to amendment by the [Constitution Thirteenth Amendment Act of 2007](#))

[Schedule 1A](#), Eastern Cape

The Province of the Eastern Cape

Map No. 3 of [Schedule 1](#) to Notice 1998 of 2005

Map No. 6 of [Schedule 2](#) to Notice 1998 of 2005

Map No. 7 of [Schedule 2](#) to Notice 1998 of 2005
Map No. 8 of [Schedule 2](#) to Notice 1998 of 2005
Map No. 9 of [Schedule 2](#) to Notice 1998 of 2005
Map No. 10 of [Schedule 2](#) to Notice 1998 of 2005
Map No. 11 of [Schedule 2](#) to Notice 1998 of 2005

[Schedule 1A](#), KwaZulu-Natal

The Province of KwaZulu-Natal

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

(Prior to amendment by the [Constitution Fifteenth Amendment Act of 2008](#))

[Section 46 \(1\)](#), the words preceding [paragraph \(a\)](#)

(1) Subject to Schedule 6A, 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-

[Section 47 \(3\)](#)

(3) A person loses membership of the National Assembly if that person-

- (a) ceases to be eligible; or
- (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or
- (c) ceases to be a member of the party that nominated that person as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A.

[Section 157 \(1\)](#), the words preceding [paragraph \(a\)](#)

(1) Subject to Schedule 6A, a Municipal Council consists of-

[Schedule 6B](#)

[SCHEDULE 6B](#)

LOSS OR RETENTION OF MEMBERSHIP OF MUNICIPAL COUNCILS, AFTER A CHANGE OF PARTY MEMBERSHIP, MERGERS BETWEEN PARTIES, SUBDIVISION OF PARTIES AND SUBDIVISION AND MERGER OF PARTIES, AND FILLING OF VACANCIES

Loss or retention of Council membership

1. (1) A councillor not representing a ward ceases to be a member of a Municipal Council if that councillor, other than in accordance with item 2, 3 or 7, ceases to be a member of the party which nominated that councillor as a member of that Council.

(2) A councillor representing a ward in a Municipal Council ceases to be a member of that Council if that councillor, other than in accordance with item 2, 3 or 7-

- (a) ceases to be a member of a party which nominated that councillor as a candidate in the ward election; or
- (b) was not nominated by any party as a candidate in the ward election and becomes a member of a party.

Retention of Council membership in event of change of party membership

2. (1) Subject to item 4, a councillor-

- (a) not representing a ward, who is a member of a party represented in that Municipal Council (the original party) and who becomes a member of another party (the new party), whether the new party participated in an election or not, remains a councillor of that Council; or
- (b) who represents a ward in that Council, remains a councillor for that ward, if that councillor-
 - (i) was nominated by a party (the original party) as a candidate in the ward election and-
 - (aa) ceases to be a member of the original party and becomes a member of another party (the new party), whether the new party participated in an election or not; or
 - (bb) ceases to be a member of the original party and does not become a member of another party; or
 - (ii) was not nominated by a party as a candidate in the ward election and becomes a member of a party, whether that party participated in an election or not,

if the councillor referred to in [paragraphs \(a\)](#) and [\(b\) \(i\)](#), whether by himself or herself or together with one or more other councillors who, during a period referred to in item 4 (1) (a) (i) or (ii) ceased to be members of the original party, represent not less than 10 per cent of the total number of seats held by the original party in that Council.

(2) The seat held by a councillor referred to in [subitem \(1\) \(a\)](#) must be regarded as having been allocated to the new party of which that councillor has become a member.

(3) The ward represented by a councillor referred to in [subitem \(1\) \(b\)](#) must be regarded as having been-

- (a) allocated to the party of which that councillor has become a member; or
- (b) acquired by that councillor, if such councillor has not become a member of another party.

Retention of Council membership in event of mergers, subdivision and subdivision and merger of parties

3. (1) Subject to item 4, any political party (the original party) which is represented in a Municipal Council may-

- (a) merge with another party, whether that party participated in an election or not; or
- (b) subdivide into more than one party or subdivide and any one subdivision may merge with another party, whether that party participated in an election or not, if the members of a subdivision leaving the original party represent not less than 10 per cent of the total number of seats held by the original party in respect of that Council.

(2) if a party merges with another party or subdivides into more than one party or subdivides and merges with another party in terms of subitem (1), the councillors concerned remain members of that Municipal Council and the seats held by them must be regarded as having been allocated to the new party which they represent pursuant to any merger, subdivision or subdivision and merger as contemplated in subitem (1).

Period of application of items 2 and 3 and further requirements

4. (1) (a) The provisions of items 2 and 3 only apply-

- (i) for a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of all Municipal Councils; and
- (ii) for a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of all Municipal Councils,

but do not apply during the year ending on 31 December, 2002.

(b) For the purpose of [paragraph \(a\)](#) "year" means a period of 365 days.

(2) During a period referred to in subitem (1) (a) (i) or (ii)-

- (a) a councillor may only once-
 - (i) change membership of a party;
 - (ii) become a member of a party; or
 - (iii) cease to be a member of a party,
 by informing an officer designated by the Electoral Commission thereof in writing, and if that councillor has changed membership of a party or has become a member of a party, by submitting to that officer written confirmation from the party in question that he or she has been accepted as a member of that party; and
- (b) a party may only once-
 - (i) merge with another party;
 - (ii) subdivide into more than one party; or
 - (iii) subdivide and any one subdivision merge with another party,
 by informing an officer designated by the Electoral Commission thereof in writing, and by submitting to that officer written confirmation from the party-
 - (aa) of the names of all councillors involved in such merger or subdivision; and
 - (bb) that it has accepted such merger; and
- (c) no party represented in a Municipal Council may-
 - (i) suspend or terminate the party membership of a councillor representing that party in that Council; or
 - (ii) perform any act whatsoever which may cause such a councillor to be disqualified from holding office as such a councillor in that Council,
 without the written consent of the councillor concerned.

Composition of Council maintained until election or by-election, or reconstitution in terms of Schedule

5. After the expiry of a period referred to in item 4 (1) (a), the composition of a Municipal Council, which has been reconstituted as a result of any conduct in terms of item 2 or 3, is maintained until the next election of all Municipal Councils or until the composition of that Municipal Council is reconstituted in accordance with item 2 or 3 or until a by-election is held in that Municipal Council.

Reconstitution by Municipal Councils

6. (a) A Municipal Council referred to in item 5 which appoints members of another Municipal Council, as contemplated in [section 157 \(1\) \(b\)](#) must within 15 days of the expiry of a period referred to in item 4 (1) (a) (i) or (ii) apply again the procedure provided for in national legislation for appointing such members to represent the appointing Council.

(b) Within 30 days of the expiry of a period referred to in 4 (1) (a) (i) or (ii), all the structures and committees of-

- (i) a Category A and a Category B municipality referred to in item 5 must be reconstituted in accordance with applicable law; and
- (ii) a Category C municipality referred to in item 5 must be reconstituted in accordance with applicable law after all the appointments contemplated in [paragraph \(a\)](#) have been made in respect of that Category C municipality.

Transitional arrangement in respect of retention of membership of Municipal Councils in event of change of party membership, merger between parties, subdivision of parties and subdivision and merger of parties

7. (1) During the first 15 days immediately following the date of the commencement of this Schedule-

- (a) a councillor who was elected from the party list of a party represented in a Municipal Council (the original party) may become a member of another party (the new party), whether the new party participated in an election or not, whilst remaining a councillor of the Municipal Council concerned and the seat held by that councillor must be regarded as having been allocated to the new party of which that councillor has become a member;
- (b) a councillor who was elected to represent a ward in a Municipal Council and who-
 - (i) was nominated by a party as a candidate in the ward election, may cease to be a member of the original party and become a member of the new party, whether the new party participated in an election or not, or cease to be a member of the original party and not become a member of another party; or
 - (ii) was not nominated by a party as a candidate in the ward election, may become a member of a

- party, whether that party participated in an election or not,
and the ward represented by such a councillor must be regarded as having been-
- (aa) allocated to the new party of which that councillor has become a member; or
 - (bb) acquired by that councillor, if such councillor has not become a member of a party; and
- (c) any political party which is represented in a Municipal Council may-
- (i) merge with another party, whether that party participated in an election or not; or
 - (ii) subdivide into more than one party or subdivide and any one subdivision merge with another party, whether that party participated in an election or not,

whilst the councillors concerned remain members of that Council and the seats held by them must be regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in this paragraph.

(2) The provisions of items 4 (2), 5 and 6 are also applicable in respect of subitem (1), and any reference therein to a period referred to in item 4 (1) (a) (i) or (ii) must be construed as a reference to the period referred to in subitem (1).

Filling of vacancies

8. Vacancies in a Municipal Council must be filled in terms of national legislation.

Amendment of Schedule

9.

(Prior to amendment by the [Constitution Fourteenth Amendment Act of 2008](#))

Section 61 (2)

(2) (a) A provincial legislature must, within 30 days after the result of an election of that legislature is declared-

- (i) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
- (ii) appoint the permanent delegates in accordance with the nominations of the parties.

(b) If the composition of a provincial legislature is changed on account of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within that legislature, it must within 30 days after such change-

- (i) determine, in accordance with the national legislation referred to in [paragraph \(a\)](#), how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
- (ii) appoint the permanent delegates in accordance with the nominations of the parties.

Section 62 (3)

(3) Permanent delegates are appointed for a term that expires-

- (a) immediately before the first sitting of the provincial legislature after its next election; or
- (b) on the day before the appointment of permanent delegates in accordance with section 61 (2) (b) (ii) takes effect.

Section 105 (1) , the words preceding [paragraph \(a\)](#)

(1) Subject to Schedule 6A, a provincial legislature consists of women and men elected as members in terms of an electoral system that-

Section 106 (3)

(3) A person loses membership of a provincial legislature if that person-

- (a) ceases to be eligible;

- (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or
- (c) ceases to be a member of the party that nominated that person as a member of the legislature, unless that member has become a member of another party in accordance with Schedule 6A.

Schedule 3, Part B, item 3

3. If the competing surpluses envisaged in [item 2](#) are equal, the undistributed delegates in the delegation must be allocated to the party or parties, including any merged party as contemplated in section 61 (2) (b), with the same surplus in sequence of votes recorded, starting with the party or merged party which recorded the highest number of votes, including combined votes in the case of a merged party, during the last election for the provincial legislature concerned, but if any of the parties with the same surplus-
- (a) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61 (2) (b); and
 - (b) did not participate in the last election for the provincial legislature concerned,

the legislature must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.

Schedule 6A

SCHEDULE 6A

RETENTION OF MEMBERSHIP OF NATIONAL ASSEMBLY OR PROVINCIAL LEGISLATURE, AFTER A CHANGE OF PARTY MEMBERSHIP, MERGERS BETWEEN PARTIES, SUBDIVISION OF PARTIES AND SUBDIVISION AND MERGER OF PARTIES

Definition

1. In this Schedule "**legislature**" means the National Assembly or any provincial legislature.

Retention of membership of legislature in event of change of party membership

2. (1) Subject to item 4, a member of a legislature who becomes a member of a party (the new party) other than the party which nominated that person as a member (the nominating party), whether the new party participated in an election or not, remains a member of that legislature if that member, whether by himself or herself or together with one or more other members who, during a period referred to in item 4 (1) (a) or (b), ceased to be members of the nominating party, represents not less than 10 per cent of the total number of seats held by the nominating party in that legislature.

(2) The seat held by a member referred to in subitem (1) is regarded as having been allocated to the new party which the member represents.

Retention of membership of legislature in event of mergers, subdivision and subdivision and merger of parties

3. (1) Subject to item 4, any party (the original party) which is represented in a legislature may-
- (a) merge with another party, whether that party participated in an election or not; or
 - (b) subdivide into more than one party or subdivide and any subdivision may merge with another party, whether that party participated in an election or not, if the members of a subdivision leaving the original party represent not less than 10 per cent of the total number of seats held by the original party in that legislature.

(2) If a party merges with another party or subdivides into more than one party or subdivides and any subdivision merges with another party in terms of subitem (1), the members concerned remain members of that legislature and the seats held by them are regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in subitem (1).

Period of application of items 2 and 3 and further requirements

4. (1) The provisions of items 2 and 3 only apply-
- (a) for a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of the legislature; and
 - (b) for a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of the legislature.
- (2) For the purpose of subitem (1) "**year**" means a period of 365 days.
- (3) During each period referred to in [subitem \(1\) \(a\)](#) and (b)-

- (a) a member of a legislature may only once change membership of a party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from such other party that he or she has been accepted as a member of that party; and
- (b) a party may only once-
 - (i) merge with another party;
 - (ii) subdivide into more than one party; or
 - (iii) subdivide and any subdivision may merge with another party,
 by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from the other party of the names of all members involved in the merger or subdivision, and that the party has accepted the merger; and
- (c) no party represented in a legislature may-
 - (i) suspend or terminate the party membership of a member representing that party in that legislature; or
 - (ii) perform any act whatsoever which may cause such a member to be disqualified from holding office as such a member,
 without the written consent of the member concerned.

(4) A party which has not been registered in terms of any law applicable to the registration of political parties is regarded as a party for the purposes of this Schedule, but such a party must apply for registration as a party in accordance with applicable law within the period referred to in [subitem \(1\) \(a\)](#) or [\(b\)](#). If the party is not registered within four months after the expiry of that period, it is regarded as having ceased to exist, and the seats in question must be allocated to the remaining parties in accordance with applicable law.

Composition of legislature maintained until election or reconstitution in terms of Schedule

5. (1) After the expiry of a period referred to in item 4 (1) (a) or (b), the composition of a legislature which has been reconstituted as a result of any conduct in terms of item 2 or 3 is maintained until the next election of that legislature or until the composition of the legislature is reconstituted in accordance with item 2 or 3.

(2) Within seven days after the expiry of a period referred to in item 4 (1) (a) or (b), each party represented in a legislature contemplated in subitem (1) must submit a list of its candidates to the Secretary of the legislature.

(3) The Speaker of a legislature contemplated in subitem (1) must, within seven days after the expiry of a period referred to in item 4 (1) (a) or (b), publish a notice in the *Gazette* which must reflect-

- (a) the number of seats allocated to each party represented in that legislature; and
- (b) the name of, and party represented by, each member.

Transitional arrangement in respect of retention of membership of legislature in event of change of party membership, mergers between parties, subdivision of parties and subdivision and merger of parties

6. (1) During the first 15 days immediately following the date of the commencement of this Schedule-

- (a) a member of a legislature may become a member of another party (the new party), whether the new party participated in an election or not, whilst remaining a member of the legislature concerned and the seat held by that member must be regarded as having been allocated to the new party of which that member has become a member; and
- (b) any party which is represented in a legislature may-
 - (i) merge with another party, whether that party participated in an election or not; or
 - (ii) subdivide into more than one party or subdivide and any subdivision may merge with another party, whether that party participated in an election or not,

whilst the members concerned remain members of that legislature and the seats held by them must be regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in this paragraph.

(2) The provisions of item 4 (3) and (4) and item 5 are also applicable in respect of subitem (1), and any reference therein to a period referred to in item 4 (1) (a) or (b) must be construed as a reference to the period referred to in subitem (1).

(Prior to amendment by [Constitution Twelfth Amendment Act of 2005](#))

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) Limpopo
- (h) North West
- (i) Western Cape.

(2) The boundaries of the provinces are those that existed when the Constitution took effect.

Section 155 (6A)

(6A) If the criteria envisaged in [subsection \(3\) \(b\)](#) cannot be fulfilled without a municipal boundary extending across a provincial boundary-

- (a) that municipal boundary may be determined across the provincial boundary, but only-
 - (i) with the concurrence of the provinces concerned; and
 - (ii) after the respective provincial executives have been authorised by national legislation to establish a municipality within that municipal area; and
- (b) national legislation may-
 - (i) subject to [subsection \(5\)](#), provide for the establishment in that municipal area of a municipality of a type agreed to between the provinces concerned;
 - (ii) provide a framework for the exercise of provincial executive authority in that municipal area and with regard to that municipality; and
 - (iii) provide for the re-determination of municipal boundaries where one of the provinces concerned withdraws its support of a municipal boundary determined in terms of paragraph (a).

Section 157 (4) (b)

(b) Where a municipal boundary has been determined in terms of [section 155 \(6A\)](#), a ward delimited within that municipal boundary may not extend across the provincial boundary concerned.

(Prior to amendment by [Act No. 3 of 2003](#))

Section 76 (4) (b)

- (b) envisaged in Chapter 13, and which affects the financial interests of the provincial sphere of government.

Section 100 heading

National supervision of provincial administration.

Section 100 (1), the words preceding paragraph (a)

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-

Section 100 (2)

- (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.

Section 103 (1) (g)

- (g) Northern Province

Section 139

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 meet established minimum standards for the rendering of a service;
 - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) 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 by this section.

(Prior to amendment by [Act No. 2 of 2003](#))

Section 46 (1), the words preceding paragraph (a)

(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-

Section 47 (3)

- (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.

Section 105, the words preceding paragraph (a)

(1) A provincial legislature consists of women and men elected as members in terms of an electoral system that-

Section 106 (3)

(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.

Schedule 6A, item 9

Amendment of Schedule

9. This Schedule may be amended by an Act of Parliament passed in accordance with [section 76 \(1\)](#).

(Prior to amendment by [Act No. 21 of 2002](#))

Section 61 (2)

(2) Within 30 days after the result of an election of a provincial legislature is declared, the legislature 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.

Section 62 (3)

(3) Permanent delegates are appointed for a term that expires immediately before the first sitting of the provincial legislature after its next election.

Schedule 3, Part B, item 3

3. If the competing surpluses envisaged in [item 2](#) are equal, the undistributed delegates in the delegation must be allocated to the party or parties with the same surplus in sequence of votes recorded, starting with the party which recorded the highest number of votes during the last election for the provincial legislature concerned.

(Prior to amendment by [Act No. 18 of 2002](#))

Section 157 (1)

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 other Municipal Councils to represent those other Councils; or
 - (ii) both members elected in accordance with [paragraph \(a\)](#) and members appointed in accordance with subparagraph (i) of this paragraph.

Section 157 (3)

(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.

Section 73 (2) and (3)

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

(3) A Bill referred to in [section 76 \(3\)](#), except a money Bill, may be introduced in the National Council of Provinces.

Section 77

77. Money Bills.-(1) A bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties.

(2) All money Bills must be considered in accordance with the procedure established by [section 75](#). An Act of Parliament must provide for a procedure to amend money Bills before Parliament.

Section 120

120. Money Bills.-(1) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties.

(2) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.

Section 163 (b)

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

Section 216 (2)

(2) The national treasury, with the concurrence of the Cabinet member responsible for national financial matters, may stop the transfer of funds to an organ of state only for serious or persistent material breach of the measures established in terms of [subsection \(1\)](#).

Section 216 (3), the words preceding paragraph (a)

(3) A decision to stop the transfer of funds to a province may be taken only in terms of [subsection \(2\)](#), and-

Section 217 (3)

*** (3)** National legislation must prescribe a framework within which the policy referred to in [subsection \(2\)](#) may be implemented.

Footnotes

* See Sch 6 [item 21 \(4\)](#).

Section 221 (1)

(1) The Commission consists of the following women and men appointed by the President, as head of the national executive:

- (a) A chairperson and a deputy chairperson;
- (b) nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person;
- (c) two persons nominated by organised local government in terms of [section 163](#); and
- (d) nine other persons.

[Section 228 \(1\) \(b\)](#)

- (b) flat-rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax, rates on property or customs duties.

[Section 230](#)

230. Provincial and municipal loans.-(1) A province or a municipality may raise loans for capital or current expenditure in accordance with reasonable conditions determined by national legislation, but loans for current expenditure-

- (a) may be raised only when necessary for bridging purposes during a fiscal year; and
- (b) must be repaid within twelve months.

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

(Date of commencement: 1 January, 1998.)

(Prior to amendment by [Act No. 34 of 2001](#))

[Section 51 \(1\)](#)

(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 Assembly may determine the time and duration of its other sittings and its recess periods.

[Section 52 \(2\)](#)

(2) The President of the Constitutional Court must preside over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.

[Section 54](#)

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 58 \(1\)](#), the words preceding [paragraph \(a\)](#)

- (1) Cabinet members and members of the National Assembly-

[Section 64 \(4\)](#)

(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.

[Section 86 \(2\) and \(3\)](#)

- (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 Part A of [Schedule 3](#) applies to the election of the President.

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

Section 93

***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.

Footnotes

* Until 30 April 1999, [s. 93](#) is deemed to read as set out in Annex B to Sch 6. See Sch 6 [item 9 \(2\)](#).

Section 110 (1)

(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.

Section 111 (2)

(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.

Section 128 (2) and (3)

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

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

Section 167 (1)

(1) The Constitutional Court consists of a President, a Deputy President and nine other judges.

Section 168 (1) and (2)

(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.

Section 174 (3) and (4)

(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court and, after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.

(4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure:

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

Section 175 (1)

(1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the President of the Constitutional Court and the Chief Justice.

Section 176 (1)

(1) A Constitutional Court judge is appointed for a non-renewable term of 12 years, but must retire at the age of 70.

Section 178 (1) (b) and (k)

- (b) the President of the Constitutional Court;
- (k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier of the province concerned, or an alternate designated by each of them.

Section 178 (7)

(7) If the Chief Justice or the President of the Constitutional Court is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the Constitutional Court, as the case may be, acts as his or her alternate on the Commission.

Schedule 2

OATHS AND SOLEMN AFFIRMATIONS

Oath or solemn affirmation of President and Acting President

1. The President or Acting President, before the President of the Constitutional Court, or another judge designated by the President of the Constitutional Court, must swear/affirm as follows:

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

- . promote all that will advance the Republic, and oppose all that may harm it;
- . protect and promote the rights of all South Africans;
- . discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;
- . do justice to all; and
- . devote myself to the well-being of the Republic and all of its people.

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

Oath or solemn affirmation of Deputy President

2. The Deputy President, before the President of the Constitutional Court, must swear/affirm as follows:

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

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

- dictates of my conscience;
- . do justice to all; and
- . devote myself to the well-being of the Republic and all of its people.

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

Oath or solemn affirmation of Ministers and Deputy Ministers

3. Each Minister and Deputy Minister, before the President of the Constitutional Court or another judge designated by the President of the Constitutional Court, must swear/affirm as follows:

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

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

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

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

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

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

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

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

5. The Premier or Acting Premier of a province, and each member of the Executive Council of a province, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear/affirm as follows:

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

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

Oath or solemn affirmation of Judicial Officers

6. (1) Each judge or acting judge, before the Chief Justice of the Supreme Court of Appeal or another judge designated by the Chief Justice, must swear or affirm as follows:

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

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

(2) A person appointed to the office of Chief Justice of the Supreme Court of Appeal who is not already a judge at the time of that appointment must swear or affirm before the President of the Constitutional Court.

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

Schedule 3, Part A, item 9

Rules

9. (1) The President of the Constitutional Court must make rules prescribing-

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

Schedule 6, item 16, subitem 2 (b)

(b) Anyone holding office as the President, the Deputy President or a judge of the Constitutional Court when the new Constitution takes effect, becomes the President, the Deputy President or a judge of the Constitutional Court under the new Constitution, and continues in office for the unexpired portion of their term as fixed by [section 176 \(1\)](#) of the new Constitution.

Schedule 6, item 16, subitem 3 (b)

(b) Anyone holding office as the Chief Justice, the Deputy Chief Justice or a judge of the Appellate Division when the new Constitution takes effect, becomes the Chief Justice, the Deputy Chief Justice or a judge of the Supreme Court of Appeal under the new Constitution.

(Prior to amendment by [Act No. 3 of 1999](#))

Section 108 (2)

(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.

(Prior to amendment by [Act No. 2 of 1999](#))

Section 49 (2)

(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.

Section 221 (1) (a)

- (a) A chairperson and a deputy chairperson who are full-time members;

(Prior to amendment by [Act No. 87 of 1998](#))

Section 157 (4)

(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.

(Prior to amendment by [Act No. 65 of 1998](#))

Section 159

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

Section 178 (1) (k)

- (k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier, of the province concerned.

Schedule 6, item 26 (1) (a) and (b)

- (a) the provisions of the Local Government Transition Act, 1993 ([Act 209 of 1993](#)), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force until 30 April 1999 or until repealed, whichever is sooner; and
- (b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in [section 182](#) of the previous Constitution, is *ex officio* entitled to be a member of that council until 30 April 1999 or until an Act of Parliament provides otherwise.

Schedule 6, item 26 (2)

(2) Section 245 (4) of the previous Constitution continues in force until the application of that section lapses. Section 16 (5) and (6) of the Local Government Transition Act, 1993, may not be repealed before 30 April 1999.

(Prior to amendment by [Act No. 35 of 1997](#))

Schedule 2

1. The President or Acting President, before the President of the Constitutional Court, must swear/affirm as follows:

Schedule 6

National unity and reconciliation

22. Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 ([Act 34 of 1995](#)), as amended, including for the purposes of its validity.