

REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION BILL

(As submitted by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 30-95]

REPUBLIEK VAN SUID-AFRIKA WETSONTWERP OP DIE BEVORDERING VAN NASIONALE
EENHEID EN VERSOENING

(Soos voorgele deur die Portefeuljekomitee oor Justisie (Nasionale
Vergadering))

(MINISTER VAN JUSTISIE)

[W 30-95] ISBN 0 621 16455 0 No. of copies printed 3 000

BILL

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission,

a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization;

AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1

Interpretation and application

Definitions

1. (1) In this Act, unless the context otherwise indicates-

(i) "act associated with a political objective" has the meaning ascribed thereto in section 21(2) and (3); (ii)

(ii) "article" includes any evidence, book, document, file, object, writing, recording or transcribed computer printout produced by any mechanical or electronic device or any device by means of which information is recorded or stored; (xix)

(iii) "Commission" means the Truth and Reconciliation Commission established by section 2; (ix)

(iv) "commissioner" means a member of the Commission appointed in terms of section 8(2) (a); (viii)

(v) "committee" means the Committee on Human Rights Violations, the Committee on Amnesty or the Committee on Reparation and Rehabilitation, as the case may be; (vii)

(vi) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (iv)

(vii) "cut-off date" means the latest date allowed as the cut-off date by the provisions of the Constitution set out under the heading "National Unity and Reconciliation"; (i)

(viii) "former state" means any state or territory which was established by an Act of Parliament or by proclamation in terms of such an Act prior to the commencement of the Constitution and the territory of which now forms part of the Republic; (xvii)

(ix) "gross violation of human rights" means the violation of human rights through-

(a) the killing, abduction, torture or severe ill-treatment of any person; or

(b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive; (v)

(x) "joint committee" means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering matters referred to it in terms of this Act; (iii)

(xi) "Minister" means the Minister of Justice; (x)

(xii) "prescribe" means prescribe by regulation made in terms of section 41; (xviii)

(xiii) "President" means the President of the Republic; (xi)

(xiv) "reparation" includes any form of compensation, ex gratia payment, restitution or recognition; (vi)

(xv) "Republic" means the Republic of South Africa referred to in section 1(2) of the Constitution; (xii)

(xvi) "security forces" includes-

(a) any full-time or part-time member or agent of the South African Defence Force, the South African Police, the National Intelligence Service, the Bureau of State Security, the Department of Correctional Services, or any of their organs;

(b) a member or agent of a defence force, police force, intelligence agency

or prison service of any former state, or any of their organs; (xvi)

(xvii) "State" means the State of the Republic; (xiv)

(xviii) "subcommittee" means any subcommittee established by the Commission in terms of section 5(d); (xv)

(xix) "victims" includes-

(a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights-

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted; and

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and

(c) such relatives or dependants of victims as may be prescribed. (xiii)

(2) For the purposes of sections 11(1), (2), (3), and (4) and 12 and Chapters 6 and 7 "Commission" shall be construed as including a reference to "committee" or "subcommittee", as the case may be, and "Chairperson", "Vice-Chairperson" or "commissioner" shall be construed as including a reference to the chairperson or the vice-chairperson of a committee or subcommittee.

CHAPTER 2

Truth and Reconciliation Commission

Establishment and seat of Truth and Reconciliation Commission

2. (1) There is hereby established a juristic person to be known as the Truth and Reconciliation Commission.

(2) The seat of the Commission shall be determined by the President.

Objectives of Commission

3. (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the motives and perspectives of the victims and of the persons responsible for the commission of the violations, by instituting investigations and holding hearings;

(b) facilitating the granting of amnesty to persons who make full disclosure of acts associated with a political objective and comply with the requirements of this Act;

(c) establishing and making known the fate or whereabouts of the victims of gross violations of human rights and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.

(2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.

(3) In order to achieve the objectives of the Commission-

(a) the Committee on Human Rights Violations, shall deal inter alia with matters pertaining to investigations of gross violations of human rights as contemplated in Chapter 3;

(b) the Committee on Amnesty shall deal with matters relating to amnesty, as contemplated in Chapter 4;

(c) the Committee on Reparation and Rehabilitation shall deal with matters referred to it relating to reparations, as contemplated in Chapter 5;

(d) the investigating unit, referred to in section 5(k), shall perform the investigations contemplated in section 29(4); and

(e) the subcommittees shall exercise, perform or carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

Functions of Commission

4. The functions of the Commission shall be to endeavour to achieve its objectives with all the means at its disposal, and for the purpose of achieving those objectives the Commission shall-

(a) facilitate, and where necessary initiate or coordinate, inquiries into-

(i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;

(ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors and context which led to such violations;

(iii) the identity of all persons, authorities and organisations involved in such violations;

(iv) the question whether such violations were the result of deliberate

planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and

(v) accountability, political or otherwise, for any such violation;

(b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;

(c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the Gazette;

(d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

(e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;

(f) make recommendations to the President with regard to-

(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

(ii) measures which should be taken to grant urgent interim reparation to victims;

(g) make recommendations to the President with regard to the creation of

institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Powers of Commission

5. For the purpose of achieving its objectives and performing its functions the Commission shall, subject to the provisions of this Act, and in addition to any other powers conferred upon it by this Act, have the power-

(a) to enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorized to make use of any facility, equipment or staff belonging to or under the control or in the employment of such person or department;

(b) to have the work incidental to the exercise of its powers, the performance of its functions and the carrying out of its duties performed by-

(i) persons employed by it;

(ii) persons appointed by it for the performance of specified tasks;

(iii) officials and employees of any department of State seconded to the service of the Commission in terms of the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

(c) to establish such offices as it may deem necessary for the purposes of its functions;

(d) to establish subcommittees to exercise, carry out or perform any of the powers, duties and functions of the Commission assigned to it by the Commission;

(e) to give guidance and instructions to, or to review the decisions of, any committee or subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions, the carrying out of its duties and the working procedures which should be followed, and the divisions which should be set up by a committee in order to deal

effectively with the work of the committee: Provided that no guidance or instruction may be given and no decision may be reviewed with regard to the procedure or decision to be followed or given by the Committee on Amnesty with regard to any application for amnesty;

(f) on its own initiative, or at the request of any committee or subcommittee, to direct that any committee or subcommittee make information which it has in its possession available to another committee or subcommittee;

(g) to refer specific or general matters to any of the committees or to direct the Committee on Human Rights Violations to conduct specific investigations into gross violations of human rights;

(h) to receive reports or to direct that interim reports be submitted to it by any subcommittee, committee or the investigating unit;

(i) to determine the seat of each committee;

(j) to recommend to the President that steps be taken to obtain an order declaring a person to be dead;

(k) to establish the investigating unit contemplated in section 29;

(l) through diplomatic channels, to negotiate with the government of, or any authority or persons in, a foreign country in order to gather information and receive evidence in that foreign country or to request and receive information.

Additional powers of Commission and committees

6. Subject and in addition to the provisions referred to in section 5, the Commission and any committee shall have the power-

(a) with regard to any matter to carry out such investigations as it may deem necessary to achieve its objectives;

(b) to convene meetings at any place within or outside the Republic for the

purpose of hearing evidence with regard to any matter relating to its functions;

(c) on its own initiative or at the request of any interested person, to inquire into any matter with a view to promoting or achieving its objectives.

Consultation by Commission in exercising certain powers

7. (1) Subject to the provisions of section 46, the Commission shall exercise its powers in terms of sections 5(c) and 10(1) in consultation with the Minister.

(2) Subject to the provisions of section 46, the Commission shall exercise its powers in terms of sections 6(b), 11(1) and 30(a), in terms of which it may convene meetings or carry out investigations or inspections outside the Republic, in consultation with the Minister.

Constitution of Commission

8. (1) The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.

(2) (a) The President shall appoint the commissioners in consultation with the Cabinet.

(b) The commissioners shall be South African citizens who are impartial and respected and who do not have a high political profile.

(3) The President shall make the appointment of the commissioners known by proclamation in the Gazette.

(4) The President shall designate one of the commissioners as the Chairperson, and another as the Vice-Chairperson, of the Commission.

(5) A commissioner appointed in terms of subsection (2) (a) shall, subject to the provisions of subsections (6) and (7), hold office for the duration of the Commission.

(6) A commissioner may at any time resign as commissioner by tendering his or her resignation in writing to the President.

(7) The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate.

(8) If any commissioner tenders his or her resignation under subsection (6), or is removed from office under subsection (7), or dies, the President in consultation with the Cabinet, may fill the vacancy by appointing a person for the unexpired portion of the term of office of his or her predecessor or may allow the seat vacated as a result of a resignation, removal from office or death to remain vacant.

Acting Chairperson of Commission

9. If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties, the other commissioners shall from among their number nominate an Acting Chairperson for the duration of such absence or incapacity.

Conditions of service, remuneration, allowances and other benefits of staff of Commission

10. (1) The persons appointed by the Commission in terms of section 5(b), who are not officials of the State, shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Commission may determine.

(2) (a) A document setting out the remuneration, allowances and other conditions of employment determined by the Commission in terms of subsection (1), shall be tabled in Parliament within 14 days after each such determination.

(b) If Parliament disapproves of any determination, such determination shall cease to be of force to the extent to which it is so disapproved.

(c) If a determination ceases to be of force as contemplated in paragraph

(b) -

(i) anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been validly done; and

(ii) any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.

(3) The Commission may, at its request and after consultation with the Public Service Commission, be assisted in the performance of the functions contemplated in section 4 by officers and employees in the Public Service seconded to the service of the Commission in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Meetings, procedure at and quorum for meetings of Commission and recording of proceedings

11. (1) The Commission may meet at any place within or outside the Republic for the purpose of the exercise, carrying out or performance of any of the powers, duties or functions of the Commission.

(2) A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence of such Chairperson, by the Vice-Chairperson of the Commission.

(3) The Commission shall, except in so far as the President has by regulation under section 41 determined otherwise, with due regard to the purpose of this Act and the objectives and functions of the Commission, determine the procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Commission, and the manner in which the Commission shall conduct its affairs: Provided that any subcommittee or committee may, in the absence of such regulation or determination, itself determine such procedure and manner.

(4) The Commission shall cause a record to be kept of its proceedings.

(5) The quorum for the first meeting of the Commission shall be two less than the total number of the Commission.

Principles to govern actions of Commission when dealing with victims

12. When dealing with victims the actions of the Commission shall be guided by the following:

(a) Victims shall be treated with compassion and respect for their dignity;

(b) victims shall be treated equally and without distinction of any kind such as race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic, or social origin or disability;

(c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;

(d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of-

(i) the role of the Commission and the scope of its activities;

(ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry;

(e) appropriate measures shall be taken in order to minimize inconvenience to victims, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;

(f) appropriate measures shall be taken to allow victims to communicate in the language of their choice;

(g) informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice and indigenous practices shall be applied, where appropriate, to facilitate reconciliation and redress for

victims.

CHAPTER 3

Investigation of Human Rights Violations

Committee on Human Rights Violations

13. There is hereby established a committee to be known as the Committee on Human Rights Violations, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

14. (1) The Committee shall consist of-

(a) a Chairperson;

(b) two Vice-Chairpersons;

(c) not more than 10 other members; and

(d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed by the Commission.

(2) Commissioners designated by the Commission shall be the Chairperson and Vice-Chairpersons of the Committee.

(3) The Commission shall, for the purpose of subsection (1)(c), appoint as members of the Committee, South African citizens who are fit and proper persons and broadly representative of the South African community and shall, when making such appointments, give preference to persons possessing knowledge of the content and application of human rights or of investigative or fact-finding procedures.

Powers, duties and functions of Committee

15. (1) In addition to the powers, duties and functions conferred on, imposed upon and assigned to it in this Act, and for the purpose of

achieving the objectives of the Commission, referred to in section 3(1) (a), (c) and (d)-

(a) the Committee shall-

(i) institute the inquiries referred to in section 4(a);

(ii) gather the information and receive the evidence referred to in section 4(b);

(iii) determine the facts contemplated in section 4(d);

(iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period;

(v) record allegations and complaints of gross violations of human rights;

(b) the Committee may-

(i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;

(ii) make recommendations to the Commission with regard to the matters referred to in section 4(f) or (g);

(iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;

(iv) may submit to the Commission interim reports indicating the progress made by the Committee with its activities;

(v) exercise the powers referred to in section 6 and Chapters 6 and 7.

(2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of

its duties in terms of this Act.

Referrals to Committee on Reparation and Rehabilitation

16. (1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 27.

(2) After a referral to the Committee on Reparation and Rehabilitation has been made by the Committee in terms of subsection (1), it shall, at the request of the Committee on Reparation and Rehabilitation, furnish that Committee with all the evidence and other information relating to the victim concerned or conduct such further investigation or hearing as the said Committee may require.

CHAPTER 4

Amnesty mechanisms and procedures

Committee on Amnesty

17. There is hereby established a committee to be known as the Committee on Amnesty, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

18. (1) The Committee shall consist of a Chairperson, a Vice-Chairperson and three other members who are fit and proper persons, suitably qualified, South African citizens and broadly representative of the South African community and vacancies in the Committee shall be filled in accordance with this section.

(2) The President shall appoint the Chairperson, the Vice-Chairperson, one other person and, after consultation with the Commission, two commissioners as members of the Committee.

(3) The Chairperson of the Committee shall be-

(a) a judge as defined in section 1(1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or

(b) a judge who has been discharged from active service in terms of section 3 of the said Act.

Applications for granting of amnesty

19. (1) Any person who wishes to apply for the granting of amnesty to him or her in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 8(3), or such extended period as may be prescribed, submit to the Commission for transmission to the Committee an application in the prescribed form, which shall be accompanied by the prescribed particulars.

(2) Notwithstanding the provisions of subsection (1), a number of persons may be allowed to submit their applications jointly in respect of any particular act, omission or offence in which each one of them was involved.

(3) The Committee shall endeavour to give priority to applications of persons in custody and prescribe measures in respect of such applications after consultation with the Minister and the Minister of Correctional Services.

Committee shall consider applications for amnesty

20. (1) Upon receipt of any application for amnesty the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or request the applicant to provide such further particulars as it may deem necessary.

(2) The Committee shall investigate the application and may make such enquiries as it may deem necessary: Provided that the provisions of section 31(2) shall mutatis mutandis apply in respect of such investigation.

(3) After such investigation, the Committee may-

(a) if it is satisfied that the application does not disclose an act associated with a political objective, after the Committee has informed the applicant of its views and has afforded him or her the opportunity to make a further submission within a specified time and has considered such further submission (if any), refuse the application in the absence of the applicant without a hearing and deal with the application in terms of section 22; or

(b) grant amnesty in the absence of the applicant without a hearing, if it is satisfied that-

(i) the application complies with the requirements of section 21(1);

(ii) there is no need for such hearing; and

(iii) the act associated with a political objective does not constitute a gross violation of human rights.

(4) If an application has not been dealt with in terms of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 34-

(a) notify the applicant and any victim or person implicated, or having an interest in the application, in the prescribed manner of the place where and the time when the application will be heard and considered;

(b) inform the applicant, a victim and the said other person in the said manner of his or her right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration;

(c) deal with the application in terms of section 21 or 22 by granting or refusing amnesty.

(5) The Committee shall, for the purpose of considering and deciding upon an application referred to in subsection (1), have the same powers as those conferred upon the Commission in section 6 and Chapters 6 and 7.

(6) If the act or omission which is the subject of an application under

section 19 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further submissions in this regard, suspend those proceedings pending the consideration and disposal of the application.

(7) If the person who submitted an application under section 19 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the Committee may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application for amnesty.

(8) (a) Subject to the provisions of section 34, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 34, shall be confidential.

(b) Subject to the provisions of section 34, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or when the hearing commences.

Granting of amnesty and effect thereof

21. (1) If the Committee, in considering an application for amnesty, is satisfied that-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts,

it shall grant amnesty in respect of that act, omission or offence. (2) In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date, by-

(a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, bona fide in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another publicly known political organisation or liberation movement;

(b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;

(c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed-

(i) in the case of the State, against any former state; or

(ii) in the case of a former state, against the State or any other former state, whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;

(d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the

State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed bona fide in furtherance of the said struggle;

(e) any person in the performance of a coup d'etat to take over the government of any former state, or in any attempt thereto;

(f) any person referred to in paragraphs (b), (c) and (d), who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority;

(g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs (a), (b), (c), (d), (e) and (f).

(3) Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria:

(a) The motive of the person who committed the act, omission or offence;

(b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;

(c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;

(d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;

(e) whether the act, omission or offence was committed in the execution of

an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and

(f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued,

but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted-

(i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or

(ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed.

(4) In applying the criteria contemplated in subsection (3), the Committee shall take into account the criteria applied in the Acts repealed by section 49.

(5) The Commission shall inform the person concerned and, if possible, any victim, of the decision of the Committee to grant amnesty to such person in respect of a specified act, omission or offence and the Committee shall submit to the Commission a record of the proceedings, which may, subject to the provisions of this Act, be used by the Commission.

(6) The Committee shall by proclamation in the Gazette make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act or omission in respect of which amnesty has been granted.

(7) (a) No person who has been granted amnesty in respect of an act, omission or offence shall be criminally or civilly liable in respect of such act, omission or offence and no body or organisation or the State

shall be liable, and no person shall be vicariously liable, for any such act, omission or offence.

(b) Where amnesty is granted to any person in respect of any act, omission or offence, such amnesty shall have no influence upon the criminal liability of any other person contingent upon the liability of the first-mentioned person.

(8) If any person-

(a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or

(b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted,

the criminal proceedings shall forthwith upon publication of the proclamation referred to in subsection (6) become void or the sentence so imposed shall upon such publication lapse and the person so in custody shall forthwith be released.

(9) If any person has been granted amnesty in respect of any act or omission which formed the ground of a civil judgment which was delivered at any time before the granting of the amnesty, the publication of the proclamation in terms of subsection (6) shall not affect the operation of the judgment in so far as it applies to that person.

(10) Where any person has been convicted of any offence constituted by an act or omission associated with a political objective in respect of which amnesty has been granted in terms of this Act, any entry or record of the conviction shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes, including the application of any Act of Parliament or any other law, be deemed not to have taken place: Provided that the Committee may recommend to the authority concerned the taking of such measures as it may deem necessary

for the protection of the safety of the public.

Refusal of amnesty and effect thereof

22. (1) If the Committee has refused any application for amnesty, it shall as soon as practicable notify-

(a) the person who applied for amnesty;

(b) any person who is in relation to the act, omission or offence concerned, a victim; and

(c) the Commission,

in writing of its decision and the reasons for its refusal.

(2) (a) If any criminal or civil proceedings were suspended pending a decision on an application for amnesty, and such application is refused, the court concerned shall be notified accordingly.

(b) No adverse inference shall be drawn by the court concerned from the fact that the proceedings which were suspended pending a decision on an application for amnesty, are subsequently resumed.

Referrals to Committee on Reparation and Rehabilitation

23. (1) Where amnesty is granted to any person in respect of any act, omission or offence and the Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 27.

(2) Where amnesty is refused by the Committee and if it is of the opinion that-

(a) the act, omission or offence concerned constitutes a gross violation of human rights; and

(b) a person is a victim in the matter,

it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 27.

CHAPTER 5

Reparation and rehabilitation of victims

Committee on Reparation and Rehabilitation

24. There is hereby established a committee to be known as the Committee on Reparation and Rehabilitation, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

25. (1) The Committee shall consist of-

(a) a Chairperson;

(b) a Vice-Chairperson;

(c) not more than five other members; and

(d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed to the Committee by the Commission.

(2) Commissioners designated by the Commission shall be the Chairperson and Vice-Chairperson of the Committee.

(3) The Commission shall for the purpose of subsection (1) (c) appoint as members of the Committee fit and proper persons who are suitably qualified, South African citizens and broadly representative of the South African community.

Powers, duties and functions of Committee

26. (1) In addition to the powers, duties and functions in this Act and for the purpose of achieving the Commission's objectives referred to in section

3(1) (c) and (d)-

(a) the Committee shall-

(i) consider matters referred to it by-

(aa) the Commission in terms of section 5(g);

(bb) the Committee on Human Rights Violations in terms of section 16(1);

and

(cc) the Committee on Amnesty in terms of section 23(1);

(ii) gather the evidence referred to in section 4(b);

(b) the Committee may-

(i) make recommendations which may include urgent interim measures as contemplated in section 4(f), as to appropriate measures of reparation to victims;

(ii) make recommendations referred to in section 4(g);

(iii) prepare and submit to the Commission interim reports in connection with its activities;

(iv) may exercise the powers referred to in section 6 and Chapters 6 and 7.

(2) The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

Applications for reparation

27. (1) Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form, which shall be accompanied by the prescribed particulars.

(2) (a) The Committee shall consider an application contemplated in

subsection (1) and may exercise any of the powers conferred upon it by section 26.

(b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of section 15.

(3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in section 26(1)(b)(i) in an endeavour to restore the human and civil dignity of such victim.

Parliament to consider recommendations with regard to reparation of victims

28. (1) The recommendations referred to in section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations.

(2) The recommendations referred to in subsection (1) shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations.

(3) The regulations referred to in subsection (2)-

(a) shall-

(i) determine the basis upon which and the conditions subject to which reparation shall be granted;

(ii) determine the authority responsible for the application of the regulations; and

(b) may-

(i) provide for the revision and, in appropriate cases, the discontinuance or reduction of any reparation;

(ii) prohibit the cession, assignment or attachment of any reparation in terms of the regulations, or the right to any such reparation;

(iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestrated; and

(iv) provide for any other matter which the President may deem fit to prescribe in order to ensure an efficient application of the regulations.

(4) The joint committee may also advise the President in respect of measures that should be taken to grant urgent interim reparation to victims.

CHAPTER 6

Investigations and hearings by Commission

Constitution of investigating unit

29. (1) The investigating unit referred to in section 5(k) shall consist of such persons as the Commission may appoint for the period determined by it.

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall appoint a commissioner to head the investigating unit and may designate one or more commissioners to serve on the investigating unit.

(4) (a) The investigating unit shall, subject to the directions of the Commission, investigate such matters as the Commission may assign to it and follow such procedure during the performance of its functions as the Commission may direct: Provided that the purpose of the investigating unit shall be to establish and gather the facts and evidence in a manner similar

to that of an investigating officer in a criminal case.

(b) The investigating unit shall at the request of a committee investigate a matter under the jurisdiction of such a committee and such investigation shall be conducted under the direction of the committee concerned.

Powers of Commission with regard to investigations and hearings

30. For the purpose of conducting an investigation or a hearing in terms of this Act the Commission shall, subject to the provisions of this Act and in addition to any other powers conferred upon it by this Act, have the power-

(a) to carry out local inspections within, or outside, the Republic with regard to any matter relating to the functions of the Commission;

(b) to require any person by notice in writing under the hand of a commissioner and delivered by a member of the staff of the Commission or a sheriff, in relation to an investigation, to appear before the Commission at a time and place specified in such notice and to produce to it all articles in the possession or custody or under the control of any such person and which may provide proof to the Commission of gross violations of human rights, or which relates to any matter relating to the functions and powers of the Commission: Provided that any such notice shall contain the reason why the presence of any such person, or the production of any such article, is required;

(c) to require by notice in writing under the hand of a commissioner, addressed and delivered by a member of the staff of the Commission or a sheriff, the production of any article in the custody or under the control of the State, any department of State, the Auditor-General, any Attorney-General or any person in the service or acting on behalf of the State, which, in the opinion of the Commission, relates to any matter pertaining to its functions and powers: Provided that if the Commission is of the opinion that the production of such an article may adversely affect existing, instituted or pending judicial procedures or investigations which may lead to the institution of judicial procedures, such an article shall be dealt with by the Commission in such a manner that such procedures or investigations are not adversely affected;

(d)

to require any person who gives evidence before the Commission, to take the oath or to make an affirmation;

(e) to administer the oath to or accept an affirmation from any such person through the Chairperson, a commissioner or any member of the staff so authorized;

(f) subject to the provisions of section 33, to cause to be seized any article referred to in paragraphs (b) and (c);

(g) after having afforded the person who brought the matter to its attention an opportunity to state his or her case and to submit representations, to refuse to inquire into any matter brought to its notice under this Act if in the opinion of the Commission the matter is of a vexatious, trivial or frivolous nature or on any other reasonable grounds, and shall, if it is of such opinion, inform the person concerned accordingly;

(h) having due regard to the principles of openness and transparency and the purpose of this Act, to declare any information or article to be confidential.

Procedures to be followed by Commission at investigations and hearings

31. (1) The Commission shall, except in so far as the President has prescribed otherwise, with due regard to the purpose of this Act and the objectives and functions of the Commission, determine fair procedures to be followed during the investigations and hearings of the Commission: Provided that any subcommittee or committee may, in the absence of such regulation or determination, itself determine such procedure.

(2) If during an investigation or hearing before the Commission-

(a) any person is implicated in a manner which may be to his or her detriment;

(b) the Commission contemplates to make a decision that may be to the detriment of a person who has been so implicated; or

(c) it appears that any person may be a victim,

the Commission shall, if such a person is available and willing to do so, afford such a person the opportunity to submit representations regarding the matter under consideration within a specified time or to give evidence before a hearing of the Commission.

(3) (a) Subject to the provisions of section 34, the documentation, further information and evidence obtained by the investigating unit and the deliberations in this regard shall be confidential.

(b) Subject to the provisions of section 34, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or at the commencement of a hearing.

Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

32. (1) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act, or who has been subpoenaed to give evidence or to produce any article at a hearing of the Commission shall, subject to the provisions of subsections (2), (3) and (5), be compelled to produce any article or to answer any question put to him or her with regard to the subject-matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate him or her.

(2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission-

(a) has consulted with the attorney-general who has jurisdiction;

(b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and

(c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.

(3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 40(d)(ii) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1).

(5) Any person appearing before the Commission by virtue of the provisions of subsection (1) shall be entitled to peruse any article referred to in that subsection, which was produced by him or her, as may be reasonably necessary to refresh his or her memory.

Entering upon and search of premises with or without warrant and seizure and removal of articles

33. (1) Any commissioner or any member of the staff of the Commission or a police officer, authorized thereto by a commissioner may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is suspected to be.

(2) The entering upon and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to-

(a) a person's right to, respect for, and protection of, his or her dignity;

(b) the right to freedom and security of the person; and

(c) the right to his or her personal privacy.

(3) Any commissioner, member or police officer referred to in subsection

(1) may, subject to the provisions of this section-

(a) inspect and search the premises referred to in that subsection, and there make such enquiries as he or she may deem necessary;

(b) examine any article found on or in the premises;

(c) request from the owner or person in control of the premises or from any person in whose possession or control that article is, information regarding that article;

(d) make copies of or take extracts from any article found on or in the premises;

(e) request from any person whom he or she suspects of having the necessary information, an explanation regarding that article;

(f) seize anything on or in the premises which in his or her opinion has a bearing on the investigation concerned;

(g) if he or she wishes to retain anything on or in the premises contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the premises: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

(4) (a) Subject to the provisions of subsection (5), the premises referred to in subsection (1) shall only be entered by virtue of an entry warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article referred to in subsection (3) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(b) Subject to the provisions of subsection (5), the functions referred to in subsection (3) shall only be performed by virtue of a search warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article referred to in subsection (3) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(c) A warrant issued in terms of this subsection shall authorize any commissioner or any member of the staff of the Commission or a police officer to perform the functions referred to in subsection (3) and shall to that end authorize such person to enter and search any premises identified in the warrant.

(d) A warrant issued in terms of this subsection shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night at times which are reasonable in the circumstances.

(e) A warrant issued in terms of this subsection may be issued on any day and shall be of force until-

(i) it is executed; or

(ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(iii) the expiry of one month from the day of its issue; or

(iv) the purpose for the issuing of the warrant has lapsed,

whichever may occur first.

(f) A person executing a warrant under this section shall, at the commencement of the search, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that if such person is not present, the person executing the warrant shall affix a copy of the warrant to the premises at a prominent and visible place.

(g) A person executing a warrant under this subsection or an entry or search under subsection (5) shall, at the commencement of such execution, identify himself or herself and if that person requires authorization to execute a warrant under this section, the particulars of such authorization shall also be furnished.

(5) Subject to the provisions of subsections (2), (3)(g), (6), (7) and (8), any commissioner or any member of the staff of the Commission or a police officer upon the request of a commissioner may, without an entry and search warrant, enter and search any premises, other than a private dwelling, for the purpose of attaching and removing, if necessary, any article-

(a) if the person or persons who are competent to consent to the entering and search for and seizure and removal of an article consent to such entering, search, seizure and removal of the article concerned; or

(b) if he or she, on reasonable grounds believes-

(i) that a warrant will be issued to him or her under subsection (4) if he or she were to apply for such warrant; and

(ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(6) An entry and search in terms of subsection (5) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(7) (a) A person who may lawfully under this section enter and search any premises may use such force as may be reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

(8) If during the execution of a warrant or search in terms of this section, a person claims that an article found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or search shall, if he or she is of the opinion that the article contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

Hearings of Commission to be open to public

34. (1) (a) Subject to the provisions of this section, the hearings of the Commission shall be open to the public.

(b) If the Commission, in any proceedings before it, is satisfied that-

(i) it would be in the interest of justice; or

(ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof: Provided that the Commission shall permit any victim who has an interest in the proceedings concerned, to be present.

(c) An application for proceedings to be held behind closed doors may be brought by a person referred to in paragraph (b) and such application shall be heard behind closed doors.

(d) The Commission may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors.

(2) Where the Commission under subsection (1) (b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the Commission may,

subject to the provisions of section 21(6)-

(a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner;

(b) direct that no person may, in any manner, make public any information which may reveal the identity of any witness in the proceedings;

(c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness:

Provided that the Commission may authorize the publication of so much information as it considers would be just and equitable.

Legal representation

35. (1) Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative.

(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of witnesses or any address to the Commission.

(3) The Commission may appoint a legal representative to appear pro Deo on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative.

(4) A person referred to in subsection (1) shall be informed timeously of his or her right to be represented by a legal representative.

Protection of witnesses

36. (1) When the Commission is satisfied that any person who testifies or who has been requested to testify on any matter dealt with by it, has reason to believe that his or her safety or the safety of any member of his

or her family or household is being threatened by any person or by any group or category of persons, whether known to him or her or not, who have-

(a) caused or wish to cause him or her harm as a result of the evidence which he or she has given;

(b) attempted to prevent or wish to prevent him or her from giving evidence; or

(c) attempted to persuade or wish to persuade him or her to give evidence to a particular effect,

as the case may be, the Commission may, on the written application of any such person, and in the prescribed manner, request a person in charge of any police station or prison as defined in section 1 of the Correctional Services Act, 1959 (Act No. 8 of 1959), to detain such applicant, such member or any dependant of such applicant or such member in, or to place such applicant, such member or such dependant under, protective custody.

(2) If a witness or prospective witness referred to in subsection (1), a member of his or her family or household or a dependant of his or hers or of such member or, where such witness, member or dependant is a minor, his or her parent or guardian has completed and signed an authorization, on the form prescribed by regulation under this section-

(a) to be detained in protective custody, such witness, member or dependant shall forthwith be taken to a place of safety similarly prescribed for that purposes and detained there in accordance with regulations under this section; or

(b) to be placed under protective custody, such witness, member or dependant shall forthwith be placed under protective custody in such manner as may be prescribed by the said regulations:

Provided that any person in respect of whom an authorization has been completed and signed-

(i) to be detained in protective custody and who is so being detained under paragraph (a), may at any time be placed under protective custody in terms

of paragraph (b); and

(ii) to be placed under protective custody and who has been so placed in terms of paragraph (b), may at any time be detained in protective custody under paragraph (a).

(3) Any person who is detained in or has been placed under protective custody under this section shall so remain in or under custody until the Commission submits a discharge from detention or he or she or, where he or she is a minor, his or her parent or guardian submits a waiver of protection, on the form prescribed by regulation under this section, to the person in charge of the place where he or she is being detained or to the person who is responsible for his or her custody in terms of any regulation under this section, as the case may be.

(4) (a) The President may make regulations as to-

(i) the detention in or the placing under protective custody of persons;

(ii) the protection of the identity of such persons;

(iii) any matter required or permitted to be prescribed under this section by regulation; and

(iv) in general, any matter which the President may consider necessary or expedient to prescribe or regulate in order that the objects of this section may be achieved.

(b) Different regulations may be made under paragraph (a) in respect of different categories of persons, witnesses or prospective witnesses.

(c) Regulations made under paragraph (a) may prescribe for any contravention thereof or failure to comply therewith penalties of a fine or imprisonment for a period not exceeding five years.

(d) A magistrate's court shall have jurisdiction to impose any penalty provided for by regulations made under paragraph (a).

(5) The State, or any person in the service of the State, shall not be

liable in respect of anything done in good faith under the provisions of this section or any regulation made thereunder.

(6) Any person who in, or in connection with, a request to be detained in or placed under protective custody wilfully furnishes information or makes a statement which is false or misleading shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(7) For the purpose of subsections (1) and (2) "the person in charge of a police station or prison" means the senior person in charge of the police station or prison at the relevant time.

CHAPTER 7

General provisions

Independence of Commission

37. (1) The Commission, its commissioners and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity.

(2) To the extent that any of the personnel of the entities referred to in subsection (1) may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission.

(3) (a) If at any stage during the course of proceedings at any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions as such a commissioner, such a commissioner shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as to enable the remaining commissioners to decide whether the commissioner should be precluded from participating in the meeting by reason of that interest.

(b) Such a disclosure and the decision taken by the remaining commissioners

shall be entered on the record of the proceedings.

(4) If a commissioner fails to disclose any conflict of interest as required by subsection (3) and is present at a meeting of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be reviewed and be varied or set aside by the Commission without the participation of the commissioner concerned.

(5) Every commissioner and member of a committee shall-

(a) notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice;

(b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of another office: Provided that the Commission may exempt a commissioner from the provisions of this paragraph.

(6) No commissioner or member of a committee shall-

(a) by his or her membership of the Commission, association, statement, conduct or in any other manner jeopardize his or her independence or in any other manner harm the credibility, impartiality or integrity of the Commission;

(b) make private use of or profit from any confidential information gained as a result of his or her membership of the Commission or a committee; or

(c) divulge any such information to any other person except in the course of the performance of his or her functions as such a commissioner or member of a committee.

Commission to decide on disclosure of identity of applicants and witnesses

38. Subject to the provisions of sections 21(6), 34 and 36 the Commission shall, with due regard to the purposes of this Act and the objectives and functions of the Commission, decide to what extent, if at all, the identity

of any person who made an application under this Act or gave evidence at the hearing of such application or at any other inquiry or investigation under this Act may be disclosed in any report of the Commission.

Confidentiality of matters and information

39. (1) Every commissioner and every member of the staff of the Commission shall, with regard to any matter dealt with by him or her, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties as such a commissioner or member, preserve and assist in the preservation of those matters which are confidential in terms of the provisions of this Act or which have been declared confidential by the Commission.

(2) (a) Every commissioner and every member of the staff of the Commission shall, upon taking office, take an oath or make an affirmation in the form specified in subsection (6).

(b) A commissioner shall take the oath or make the affirmation referred to in paragraph (a) before the Chairperson of the Commission or, in the case of the Chairperson, before the Vice-Chairperson.

(c) A member of the staff of the Commission shall take the oath or make the affirmation referred to in paragraph (a) before a commissioner.

(3) No commissioner shall, except for the purpose of the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties or when required by a court of law to do so, or under any law, disclose to any person any information acquired by him or her as such a commissioner or while attending any meeting of the Commission.

(4) Subject to the provisions of subsection (3) and sections 21(6) and 34, no person shall disclose or make known any information which is confidential by virtue of any provision of this Act.

(5) No person who is not authorized thereto by the Commission shall have access to any information which is confidential by virtue of any provision of this Act.

(6) For the purposes of this section the oath or affirmation shall be in the following form:

"I, A B, hereby declare under oath/solemnly affirm that I shall honour the obligation of confidentiality imposed upon me by any provision of the Promotion of National Unity and Reconciliation Act, 1995, and shall not act in contravention thereof."

Offences and penalties

40. Any person who-

(a) anticipates any finding of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;

(b) does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation;

(c) does anything in relation to the Commission which, if done in relation to a court of law, would constitute contempt of court;

(d) (i) hinders the Commission, any commissioner or member of the staff of the Commission in the exercise, performance or carrying out of its, his or her powers, functions or duties under this Act;

(ii) wilfully furnishes the Commission, any such commissioner or member with any information which is false or misleading;

(e) (i) having been subpoenaed in terms of this Act, without sufficient cause fails to attend at the time and place specified in the subpoena, or fails to remain in attendance until the conclusion of the meeting in question or until excused from further attendance by the person presiding at that meeting, or fails to produce any article in his or her possession or custody or under his or her control;

(ii) having been subpoenaed in terms of this Act, without sufficient cause refuses to be sworn or to make affirmation as a witness or fails or refuses to answer fully and satisfactorily to the best of his or her knowledge and

belief any question lawfully put to him or her;

(f) fails to perform any act as required in terms of sections 37(6) and 39;

(g) discloses any confidential information in contravention of any provision of this Act;

(h) destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Regulations

41. (1) The President may make regulations-

(a) prescribing anything required to be prescribed for the proper application of this Act;

(b) prescribing the remuneration and allowances and other benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa;

(c) determining the persons who shall for the purposes of this Act be regarded as the dependants or relatives of victims;

(d) providing, in the case of interim measures for urgent reparation payable over a period of time, for the revision, and, in appropriate cases, for the discontinuance or reduction of any reparation so paid;

(e) prohibiting the cession, attachment or assignment of any such reparation so granted;

(f) determining that any such reparation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated;

(g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act;

(h) with regard to any matter relating to the affairs of the Fund, established in terms of section 43;

(i) with regard to any matter which the President deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Any regulation made in terms of subsection (1) which may result in the expenditure of State money shall be made in consultation with the Minister and the Minister of Finance.

Liability of Commission, commissioners and members of staff

42. (1) Subject to the provisions of subsection (2), the State Liability Act, 1957 (Act No. 20 of 1957), shall apply mutatis mutandis in respect of the Commission, a member of its staff and a commissioner, and in such application a reference in that Act to "the State" shall be construed as a reference to "the Commission", and a reference to "the Minister of the department concerned" shall be construed as a reference to the Chairperson of the Commission.

(2) No-

(a) commissioner;

(b) member of the staff of the Commission; or

(c) person who performs any task on behalf of the Commission,

shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted or made known in terms of this Act.

President's Fund

43. (1) The President may, in such manner as he or she may deem fit, in consultation with the Minister and the Minister of Finance, establish a Fund into which shall be paid-

(a) all money appropriated by Parliament for the purposes of the Fund; and

(b) all money donated or contributed to the Fund or accruing to the Fund from any source.

(2) There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President.

(3) Any money of the Fund which is not required for immediate use may be invested with a financial institution approved by the Minister of Finance and may be withdrawn when required.

(4) Any unexpended balance of the money of the Fund at the end of a financial year, shall be carried forward as a credit to the Fund for the next financial year.

(5) The administrative work, including the receipt of money appropriated by Parliament for, or donated for the purposes of, the Fund or accruing to the Fund from any source, and the making of payments from the Fund in compliance with a recommendation in terms of this Act, shall be performed by officers in the Public Service designated by the Minister.

(6) The Minister shall appoint an officer designated under subsection (5) as accounting officer in respect of the Fund.

(7) The Auditor-General shall audit the Fund and all financial statements relating thereto, and the provisions of section 6 of the Auditor-General Act, 1989 (Act No. 52 of 1989), shall apply in respect of any such audit.

Completion of report by Commission and dissolution of Commission

44. (1) Subject to the provisions of subsection (2), the Commission shall within a period of 18 months from its constitution or the further period, not exceeding six months, as the President may determine, complete its work.

(2) The Commission shall within three months, from the date contemplated in subsection (1), complete its final report.

(3) The Commission shall be dissolved on a date determined by the President by proclamation in the Gazette.

Publication of final report of Commission

45. The President shall, in such manner as he or she may deem fit, bring the final report of the Commission to the notice of the Nation, inter alia, by laying such report, within two months after having received it, upon the Table in Parliament.

Approach to and review by joint committee of, and reports to, Parliament

46. (1) (a) The Commission may, at any time, approach the joint committee with regard to any matter pertaining to the functions and powers of the Commission.

(b) The Minister may at any time approach the joint committee with regard to any matter pertaining to functions and powers which may be performed or exercised by him or her in terms of this Act.

(c) The joint committee may at any time review any regulation made under section 41 and request the President to amend certain regulations or to make further regulations in terms of that section.

(2) The Commission shall submit to Parliament half-yearly financial reports: Provided that the Commission may, at any time, submit a financial report to Parliament on specific or general matters if-

(a) it deems it necessary;

(b) it deems it in the public interest;

(c) it requires the urgent attention of, or an intervention by, Parliament;

(d) it is requested to do so by the Speaker of the National Assembly or the

President of the Senate.

Chief executive officer, secretaries, expenditure and estimates of
Commission

47. (1) The Commission shall appoint in its service a person as the chief executive officer of the Commission and four other persons as secretaries to the Commission, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation, respectively.

(2) The chief executive officer-

(a) shall for the purposes of section 15 of the Exchequer Act, 1975 (Act No. 66 of 1975), be the accounting officer in respect of all State moneys received in respect of and paid out of the account of the Commission referred to in subsection (4), and shall keep proper accounting records of all financial transactions of the Commission;

(b) shall carry out such duties and perform such functions as the Commission may from time to time impose upon or assign to him or her in order to achieve the objectives of the Commission.

(3) The expenses in connection with the exercise of the powers, the performance of the functions and the carrying out of the duties of the Commission shall be defrayed out of money appropriated by Parliament for that purpose.

(4) The Commission shall, in consultation with the Minister of Finance, open an account with a banking institution, into which shall be deposited all moneys appropriated as mentioned in subsection (3) and from which all money required to pay for the expenses so mentioned shall be paid.

(5) (a) The Commission shall within three months from the date referred to in section 8(3), for the first financial year, in a format determined by the Audit Commission established by section 2 of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), prepare the necessary estimate of revenue and expenditure of the Commission, which shall, after consultation with the said Audit Commission, be tabled in Parliament for its consideration in

terms of subsection (3): Provided that the initial estimate of revenue and expenditure of the Commission shall, in order to establish the bodies contemplated in this Act and to enable the Commission to begin exercising its powers and performing its functions in terms of this Act, be prepared by the Minister and tabled in Parliament for its consideration in terms of subsection (3).

(b) After the first financial year referred to in paragraph (a), the Commission shall in the same manner as provided for in paragraph (a) for each ensuing financial year, if necessary, prepare an estimate of revenue and expenditure of the Commission.

(6) As from the date on which the Commission is dissolved in terms of section 44(3) and after all the expenses referred to in subsection (3) have been paid, the account opened in terms of subsection (4) shall be closed and the balance of the moneys deposited into that account, if any, shall be transferred to the fiscus.

Consequences of dissolution

48. (1) As from the date on which the Commission is dissolved in terms of section 44(3), all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund-raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund.

(2) After the date referred to in subsection (1), all the funds and property which would have accrued to the President's Fund, if the Commission had not been dissolved, shall vest in the Disaster Relief Fund.

(3) Any funds or property which, by trust, donation or bequest were vested in, or would have accrued to, the President's Fund, and which vest in the Disaster Relief Fund in terms of subsection (1), shall be dealt with by the board of the Disaster Relief Fund in accordance with the conditions of such trust, donation or bequest. (4) As from the date referred to in subsection (1) the liabilities incurred by the Commission or the President's Fund in terms of this Act, shall pass to the Disaster Relief Fund: Provided that such a liability shall be defrayed only from funds or property which vest in the Disaster Relief Fund in terms of this section.

(5) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any funds or property in terms of this section.

Acts repealed

49. (1) The Indemnity Act, 1990 (Act No. 35 of 1990), the Indemnity Amendment Act, 1992 (Act No. 124 of 1992), and the Further Indemnity Act, 1992 (Act No. 151 of 1992), are hereby repealed.

(2) Any indemnity granted under the provisions of the Indemnity Act, 1990, the Indemnity Amendment Act, 1992, or the Further Indemnity Act, 1992, shall remain in force notwithstanding the repeal of those Acts.

(3) Any temporary immunity or indemnity granted under an Act repealed in terms of subsection (1) shall remain in force for a period of 12 months after the constitution of the Commission notwithstanding the repeal of that Act.

Short title and commencement

50. This Act shall be called the Promotion of National Unity and Reconciliation Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL UNITY AND RECONCILIATION BILL, 1995

The provisions of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), set out under the heading "National Unity and Reconciliation", hereinafter referred to as the "Unity and Reconciliation Clause", provide that in order to advance national unity and the reconstruction of the society "amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past". Parliament is to that end enjoined to adopt "a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993, and providing for mechanisms, criteria and procedures, including tribunals, if necessary,

through which such amnesty shall be dealt with at any time after such law has been passed". In terms of section 232(4) of the Constitution the provisions of the "Unity and Reconciliation Clause" have the same legal status as that of any other provision of the Constitution. According to the said clause the divisions and strife of the past have generated the commission of gross violations of human rights, and the legal institution of amnesty is in terms of the said clause to be invoked as a method of reuniting the South African people who were deeply divided as a result of the commission of such violations. As will appear from the provisions of the laws of twenty or more countries the legal institution of amnesty has in recent years been invoked by the countries concerned for differing reasons. The objective of this Bill is the promotion of national unity and reconciliation and the granting of amnesty to be provided for in terms of this Bill, is directed at the achievement of this objective. The granting of amnesty per se cannot, however, have a reconciliatory effect and could in fact lead to a perpetuation of existing divisions, unless it is granted with due regard to certain requirements and principles.

International experience has shown that in order to achieve a lasting unity and a morally acceptable reconciliation it is necessary that the following requirements be complied with: First, that the truth about gross violations of human rights (hereinafter referred to as "gross violations") be established by official investigations which are conducted with due observance of fair procedures, secondly, that the truth about gross violations be fully and unreservedly acknowledged by those responsible for the commission thereof and, thirdly, that the truth about such violations, and the identity of the planners or perpetrators and the victims of such violations be made publicly known. International human rights norms accordingly today demand of any newly established Government to deal with gross violations of the past by adopting measures that will ensure that the requirements of investigation, acknowledgement (of guilt or participation) and publication is fully complied with. (See "State Crimes: Punishment or Pardon, Papers and Report of the Conference, November 4-6, 1988", p. 30 et seq.). The Bill provides for the establishment of bodies and the introduction of procedures aimed at a full and complete compliance with the said requirements.

Clause 2 of the Bill provides for the establishment of a commission to be

known as the Truth and Reconciliation Commission. In clause 3 the objectives of the Commission are stated in that section to be as follows: To promote national unity and reconciliation in a spirit of understanding which transcends the divisions of the past by-

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date;

(b) the granting of amnesty to persons who make a full disclosure of facts associated with a political objective and who comply with the other requirements of this Act;

establishing and making known the fate or whereabouts of the victims of gross violations and by restoring the human and civil dignity of such victims, by granting them an opportunity to relate the violations of which they are the victims and by recommending reparation measures in respect of them and

(d) by compiling a report providing as comprehensive a report as possible of the activities of the Commission to the said matters, and which contains recommendations of measures aimed at the prevention of the future commission of human rights violations.

In order to achieve the said objectives various powers, functions and duties are conferred upon, assigned to or imposed upon the Commission (clauses 4, 5, 6 and 7 of the bill).

The Commission will consist of between 11 and 17 members, as may be determined by the President of the Republic in consultation with the Cabinet, and such members will be required to be impartial and respected South African citizens. Persons who have a high political profile will, however, be disqualified from being members of the Commission. By this requirement an attempt is being made to ensure that persons who are appointed as members of the Commission will be persons who from a position of political neutrality will be well placed to take objective decisions with regard to acts claimed to have been inspired by political objectives or motives.

The Commission will be assisted in the performance of its functions by three Committees, to each of which will be allotted a specified portion of the field of activities of the Commission, referred to above. The committees are the working arms of the Commission. The Commission will also be granted the power to establish subcommittees which will be entitled and obliged to exercise, perform or carry out such of the Commission's powers, functions and duties as are assigned to them. Provision is also made for an investigation unit to assist the committees. The Commission will in this way be enabled to carry on its activities in different localities simultaneously and it is expected that the Commission will thereby be enabled to complete its task expeditiously and within the time-limit envisaged by clause 44 of the Bill.

Clause 13 of the Bill establishes a committee to be known as the Committee on Human Rights Violations. This Committee will be charged with the duty of establishing the identity of the victims of gross violations and of recording all allegations of gross violations committed in or outside the Republic during the period from 1 March 1960 to the cut-off date, and made by "victims" (as defined in the Bill) or by other persons professing to have personal knowledge or reliable information of such violations. The Committee will be charged and authorised to perform in relation to gross violations such functions and powers as will enable it to carry out its duties. The Committee will be obliged to submit to the Commission, at the conclusion of the Committee's investigations, a report containing particulars of all gross violations investigated by it, the names and other particulars establishing the identity of the victims of such violations, as well as their fate or their present whereabouts. This report will, eventually, in terms of clause 45 of the Bill, as part of the report of the President, be brought to the notice and knowledge of the entire South African nation.

Chapter 4 of the Bill sets out the "amnesty mechanisms and procedures". The provisions of this Chapter constitute an attempt to comply with the requirements of the Unity and Reconciliation clause, which, as will have been observed from its provisions quoted above, envisages and compels the granting of amnesty "through mechanisms, criteria and procedures". A committee to be known as the "Committee on Amnesty" is established by clause 17 of the Bill. The chairperson of the Committee shall be a Judge or a former Judge of the Supreme Court of South Africa (clause 18(3)). In

terms of clause 19 of the Bill provision is being made for the submission of an application for the granting of amnesty in respect of any act, omission or offence on the ground that it is an "act associated with a political objective", as defined in clause 1 of the Bill. In terms of the said clause any such application will be required to be submitted within a period of twelve months from the date on which the appointment of the commissioners is made known by the President by proclamation in the Gazette. It is considered necessary that the entire process of making application for and of granting amnesty should be completed as soon as possible so as to finally close this chapter of South Africa's history.

In terms of clause 21 the Committee shall grant amnesty to an applicant if it is satisfied that the act to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past, as defined in the Bill, and that the applicant has made a full disclosure of all the relevant facts. The hearing of applications for amnesty will in terms of clause 20 of the Bill be conducted along formal lines. The applicant is to be informed of the place where and the time when his or her application is to be heard and of his or her right to be present and to be represented thereat. In terms of clause 20(5) it is proposed to confer upon the Committee, for the purpose of considering and deciding upon applications, the same powers as those conferred upon the Commission by clause 6 and Chapters 6 and 7, i.e. the power to carry out investigations, to convene meetings at any place within or outside the Republic for the purpose of hearing evidence with regard to applications, to carry out local inspections ("inspections in loco"), within or outside the Republic, to subpoena persons, i.e. private individuals as well as persons in the employment of the State, the Auditor-General or any Attorney-General, to give evidence before the Committee or to produce to it any book, document, file, writing, etc., and to cause to be seized any book, etc. relating to the subject-matter of the application. The act, omission or offence in respect of which amnesty may be granted is required to have been performed during the period from 1 March 1960 to the cut-off date. No act, omission or offence performed or committed after the cut-off date (or prior to 1 March 1960) can in terms of the Bill, as envisaged and required by the Constitution, therefore be the subject of an application for amnesty. The provisions of the Constitution in this regard are clear and are of a peremptory nature and cannot, therefore, be deviated from. The said provisions, which entrust the power

to grant amnesty to a decision-making body, properly constituted, acting without any bias and independently from any party or government (see the provisions of clause 37(1)) and which is to decide with due observance of specified principles (clause 21(3)), should be seen as an attempt to satisfy the mandatory legal principles applying in the case a constitutional state ("regstaat") such as the Republic. The arbitrary granting of amnesty to persons, generally, or to categories of persons ("amnesty per category"), and without the proper consideration of all the relevant facts of each case, would be in direct conflict with the said principles: See: "Anmerkungen zum Begnadigungsrecht, MDR2/1991 p. 102: "The former view that a person gifted with a charismatic personality (God-given qualities) may in his discretion extend an act of mercy (such as amnesty) is in conflict with the Constitution . . . which provides for the separation of powers". As far as the Republic of South Africa is concerned, see the relevant provisions of the Constitution, and compare "constitutional principle VI", contained in Schedule 4 to the Constitution.

Clause 21 requires, as already mentioned, a full disclosure by the applicant of all the relevant facts of the act in question. Such a disclosure is not only required in terms of the relevant provisions of the International Law, but is a necessity brought about by the relevant provisions of the Constitution itself which demand an enquiry into a subjective or personal element viz. the state of mind of the person who performed or committed the act in question. Such person's state of mind can be explained and told only by the person himself. The Committee on Amnesty will be able to pass a judgment on the existence, at the critical stage when the act was committed, of political objectives only if the person concerned makes a full disclosure of all the facts surrounding the commission of the act. Clause 21 consequently makes a full disclosure of such facts by such person a condition precedent to the granting of amnesty. Subclause (7)(a) of clause 21 states the legal effect of the granting of amnesty as follows:

"No person who has been granted amnesty in respect of an act or omission shall be criminally or civilly liable in respect of such act or omission and no body or organisation or the State shall be liable, and no person shall be vicariously liable for any such act or omission."

Chapter 5 of the Bill deals with the granting of reparation in respect of

the harm suffered by, the rehabilitation of, and the restoration of the human and civil dignity of the victims of gross violations. Clause 24 to that end establishes a committee to be known as the Committee on Reparation and Rehabilitation. The members of the Committee are to be appointed by the Commission. A member of the Commission is required to be the Chairperson of the Committee. The Committee is required to receive, consider and make recommendations with regard to applications for reparation submitted to it by victims (as defined in the Bill). The Committee will for the purpose of investigating and deciding upon any such application have the same powers as those conferred upon the Commission in respect of its functions, i.e. the power to carry out investigations, to appoint researchers and experts to assist it, to hold meetings at any place within or outside the Republic, to carry out local inspections, etc. In terms of clause 12 of the Bill the Committee will be obliged to observe certain principles designed, inter alia, to protect the dignity and personal values, beliefs and convictions of the victims, and the Committee will furthermore be obliged to apply procedures which are fair, inexpensive and accessible. Clause 27 extends the right to any person who as the result of the commission of any gross violation of human rights, or of an act associated with a political objective has suffered loss, to submit to the Committee an application for the granting of reparation, and the Committee will be empowered, if it is of the opinion that the applicant has indeed suffered any such loss, to make a recommendation to the Commission for the taking of such steps as are necessary to grant restitution or make reparation to the applicant. Clause 28(1) provides that the President shall consider the recommendations of the Commission with respect to reparation and rehabilitation with a view to prescribing recommendations to Parliament and the making of regulations.

The International Law relating to the payment of compensation in respect of losses suffered as a result of the commission of gross violations is in a state of development and uncertainty and it was therefore considered advisable to enable a joint Committee of Parliament to consider the matter. Clause 43 makes provision for the establishment of a Fund to be known as the President's Fund, which will largely be funded by means of appropriations by Parliament for the said purpose, and out of which funds necessary for the implementation of such recommendations will be made available. Private contributions to this Fund may also be accepted.

Chapter 6 of the Bill contains provisions relating to general and diverse

matters such as the appointment of a chief executive officer and other staff of the Commission and the committees. In terms of section 47(4) the Commission will be required to open an account with a banking institution, in consultation with the Minister of Finance. Clause 36 makes provision for the protection of persons who gave evidence before the Commission, any subcommittee or committee. In terms of that clause the Commission is to decide to what extent, if at all, the identity of such persons may be disclosed in any report of the Commission, any subcommittee or committee. Provision is made for the preservation of secrecy, and the compellability of persons to give evidence before the Commission, a subcommittee or a committee.

Clause 40 prohibits, on pains of substantial penalties, the performance of any act which may prejudicially affect the proper functioning of the Commission, any subcommittee or committee.

In clause 45 the President is charged with the duty of bringing the final report of the Commission, which is required to contain certain details of all gross violations during the period in question committed in the Republic or elsewhere, and of the victims and perpetrators of such violations, to the knowledge of the South African Nation. In this way it is intended to satisfy a principle which has been internationally recognised and accepted, viz. that the truth about such violations, victims and perpetrators be publicly revealed (see "State Crimes," op. cit., p 5, and compare "Normative Frame Work for a Policy on Past Human Rights Violations", p 31).

The intended effect of the Bill could be described as an attempt to make a contribution towards the recognition of human rights and the establishment and development of a human rights culture which may be the best possible safeguard against the future commission of gross violations of human rights. To this end the Portfolio Committee on Justice has afforded a broad spectrum of individuals, experts, organisations, bodies institutions, and government institutions the opportunity to make written submissions or bring oral evidence for the improvement of the Bill. All submissions received were, and all the evidence heard was, taken into account in the deliberations of the Committee.

REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

(As introduced)

(MINISTER OF JUSTICE)

[B 37--97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W 37--97] ISBN 0 621 27186 1

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the composition of the Committee on Amnesty; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:--

Amendment of section 17 of Act 34 of 1995

1. Section 17 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended--

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and [three] not more than eleven other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community.

(2) The President shall appoint the Chairperson, the Vice-Chairperson [one other person] and, after consultation with the Commission, [two commissioners as members of the Committee] the other members of the Committee: Provided that at least three of such other members of the Committee shall be commissioners.";and

(b) by the insertion after subsection (2) of the following subsection:

"(2A) (a) The Chairperson of the Committee may from among the members of the Committee establish subcommittees of which one member shall be a judge as referred to in subsection (3), and shall from among the members of each subcommittee designate a chairperson.

(b) Any subcommittee established in terms of paragraph (a) shall have the same powers, functions and duties as the Committee in relation to any application for amnesty submitted in terms of section 18, and to the person who submitted such application."

Short title

2. This Act shall be called the Promotion of National Unity and Reconciliation Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL, 1997

1. The President, on 13 December 1996, announced that he will approach Parliament to change the cut-off date for offences which may qualify for amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) (the Act), from 5 December 1993 to 10 May 1994.

2. In view of the envisaged change of the cut-off date as well as the due date for applications in respect of amnesty, which will result in an increase in the number of applications to be considered, the Truth and Reconciliation Commission (the Commission) recommended that-

(a) the number of members of the Committee on Amnesty (the Committee), apart from the Chairperson and Vice-Chairperson, be increased to a maximum of eleven; and

(b) at least three of such other members shall be commissioners of the Commission.

The Commission indicated that the Committee will be unable to fulfil its mandate without an immediate increase in its number of members.

3.1 Clause 1 (a) of the Bill seeks to give effect to the Commission's recommendations by providing for an increase in the number of members of the Committee and in the number of commissioners who must be members of the Committee. Clause 1 (a) further proposes that the President has to appoint the Chairperson, Vice-Chairperson and, after consultation with the Commission, the other eleven members of the Committee. The proposed procedure of appointing differs from the present procedure in terms of which the President has to consult the Commission only in respect of the appointment of the two commissioners as members of the Committee. The input of the Commission is regarded as important to ensure that the appointees have such skills and experience that they can be integrated into the work of the Committee without delay.

3.2 Clause 1(b) provides that the Chairperson of the Committee may establish subcommittees which will have the same powers, functions and duties as the Committee in relation to applications for amnesty and the persons submitting such applications. By making provision for the establishment of subcommittees, it will be possible to increase the disposal of amnesty applications three-fold as it will be possible for three decision-making entities (the subcommittees) to operate simultaneously.

3.3 In the opinion of the Department and the State Law Adviser the Bill should be dealt with in terms of section 75 of the Constitution.

4. OTHER DEPARTMENTS/INSTITUTIONS/BODIES CONSULTED

The Truth and Reconciliation Commission has been consulted.

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENT TO

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

[B 37--97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 37A--97]

REPUBLIEK VAN SUID-AFRIKA

PORTEFEULJEKOMITEE-AMENDEMENT OP

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

[W 37--97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 37A--97] ISBN 0 621 27190 X

AMENDMENT AGREED TO

PROMOTION OF NATIONAL UNITY AND RECONCILIATION

AMENDMENT BILL

[B 37--97]

CLAUSE 1

1. On page 2, from line 18, to omit paragraph (a) and to substitute:

(a) The Chairperson of the Committee may from among the members of the Committee establish a subcommittee, the chairperson of which shall be a judge as referred to in subsection (3), designated by the Chairperson of the Committee.

REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 37B - 97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

(MINISTER VAN JUSTISIE)

[W 37B - 97] ISBN 0 621 27191 8

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the composition of the Committee on Amnesty; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:--

Amendment of section 17 of Act 34 of 1995

1. Section 17 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended--

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and [three] not more than eleven other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community.

(2) The President shall appoint the Chairperson, the Vice-Chairperson [one other person] and, after consultation with the Commission, [two commissioners as members of the Committee] the other members of the Committee: Provided that at least three of such other members of the Committee shall be commissioners. "; and

(b) by the insertion after subsection (2) of the following subsection:

"(2A) (a) The Chairperson of the Committee may from among the members of the Committee establish a subcommittee, the chairperson of which shall be a judge as referred to in subsection (3), designated by the Chairperson of the Committee.

(b) Any subcommittee established in terms of paragraph (a) shall have the same powers, functions and duties as the Committee in relation to any application ^or amnesty submitted in terms of section 18, and to the person who submitted such application."

Short title

2. This Act shall be called the Promotion of National Unity and Reconciliation Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL, 1997

1. The President, on 13 December 1996, announced that he will approach Parliament to change the cut-off date for offences which may qualify for amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) (the Act), from 5 December 1993 to 10 May 1994.

2. In view of the envisaged change of the cut-off date as well as the due date for applications in respect of amnesty, which will result in an increase in the number of applications to be considered, the Truth and Reconciliation Commission (the Commission) recommended that-

(a) the number of members of the Committee on Amnesty (the Committee), apart from the Chairperson and Vice-Chairperson, be increased to a maximum of eleven; and

(b) at least three of such other members shall be commissioners of the Commission.

The Commission indicated that the Committee will be unable to fulfil its mandate without an immediate increase in its number of members.

3.1 Clause 1 (a) of the Bill seeks to give effect to the Commission's recommendations by providing for an increase in the number of members of the Committee and in the number of commissioners who must be members of the Committee. Clause 1 (a) further proposes that the President has to appoint the Chairperson, Vice-Chairperson and, after consultation with the Commission, the other eleven members of the Committee. The proposed procedure of appointing differs from the present procedure in terms of which the President has to consult the Commission only in respect of the appointment of the two commissioners as members of the Committee. The input of the Commission is regarded as important to ensure that the appointees have such skills and experience that they can be integrated

into the work of the Committee without delay.

3.2 Clause 1(b) provides that the Chairperson of the Committee may establish subcommittees which will have the same powers, functions and duties as the Committee in relation to applications for amnesty and the persons submitting such applications. By making provision for the establishment of subcommittees, it will be possible to increase the disposal of amnesty applications three-fold as it will be possible for three decision-making entities (the subcommittees) to operate simultaneously.

3.3 In the opinion of the Department and the State Law Adviser the Bill should be dealt with in terms of section 75 of the Constitution.

4. OTHER DEPARTMENTS/INSTITUTIONS/BODIES CONSULTED

The Truth and Reconciliation Commission has been consulted.

REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)

[B 48--98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN JUSTISIE)

[W 48--98] ISBN 0 621 27658 8

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the constitution of the Committee on Amnesty; to provide for the suspension of the activities of the Truth and Reconciliation Commission pending the completion of its work by the Committee on Amnesty; to extend the period within which the Committee on Amnesty shall complete its work; to further regulate the consequences of the dissolution of the Commission; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:--

Amendment of section 17 of Act 34 of 1995, as amended by section 1 of Act 18 of 1997

1. Section 17 of the Promotion of National Unity and Reconciliation Act, 1995 (hereinafter referred to as the principal Act), is amended by the substitution for subsection (1) of the following

subsection-

"(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and [not more than 17] such other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community, as the President deems necessary."

Substitution of section 43 of Act 34 of 1995, as amended by section 2 of Act 84 of 1997

2. The following section is substituted for section 43 of the principal Act:

"Completion of work and dissolution of Commission

43. (1) (a) Subject to subsection (2), the Commission shall complete its work on 31 July 1998.

(b) The Commission shall, within three months after 31 July 1998, submit a report to the President, whereafter its activities shall be suspended until it is reconvened by the President in terms of subsection (3).

(c) The Commissioners whose activities are suspended shall not receive any remuneration whilst their activities are so suspended.

(2) Notwithstanding the provisions of subsection (1)-

(a) the Committee on Amnesty referred to in section 16 shall continue with its functions in terms of this Act until a date determined by the President by proclamation in the Gazette; and

(b) for the duration of the period referred to in paragraph (a)--

(i) the Chairperson or the Deputy Chairperson of the Commission shall continue to represent the Commission for the purposes of any legal proceedings instituted by or against the Commission;

(ii) the Committee on Amnesty shall also exercise the powers and perform the duties and functions of the Committee on Human Rights Violations established by section 12, and of the Committee on Reparation and Rehabilitation established by section 23;

(iii) the Minister may appoint such persons as he or she may determine to assist the Committee on Amnesty in the performance of its functions; and

(iv) the Chairperson of the Committee on Amnesty shall submit quarterly reports to the President in respect of its activities.

(3) The President shall, by proclamation in the Gazette--

(a) reconvene the Commission for the purpose of completing its final report after the Committee on Amnesty has completed its work;

(b) determine a date for the dissolution of the Commission.

(4) The provisions of section 44 shall also be applicable in respect of the report referred to in subsection (1) (b).".

Amendment of section 46 of Act 34 of 1995

3. Section 46 of the principal Act is amended by the addition of the following subsection:

"(7) (a) Upon the dissolution of the Commission, subject to subsection (6), all assets, including intellectual property rights, monies and liabilities of the Commission, shall revert to the Department of Justice to be dealt with according to the law.

(b) The Minister shall-

(i) have the authority to wind up the affairs of the Commission; and

(ii) for the purposes of any legal relationships, including legal proceedings involving the Commission, be the legal successor of the Commission. ".

Amendment of section 47 of Act 34 of 1995

4. Section 47 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) [As from the date on which the Commission is dissolved] Notwithstanding the dissolution of the Commission in terms of section 43 (3), the President's Fund shall continue to exist until a date fixed by the President by proclamation in the Gazette, whereupon all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund Raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund. ".

Repeal of section 3 of Act 84 of 1997

5. Section 3 of the Promotion of National Unity and Reconciliation Second Amendment Act, 1997, is repealed.

Short title and commencement

6. This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 1998, and shall be deemed to have come into operation on 30 April 1998.

1. During 1997 the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), was amended, amongst others, so as to extend the period within which the Committee on Amnesty shall finish its work, to 30 June 1998 (see the Promotion of National Unity and Reconciliation Second Amendment Act, 1997 (Act No. 34 of 1997)). This amendment also entailed that the Truth and Reconciliation Commission would have to submit its final report on or before 31 July 1998.

2. However, it has become clear that the Committee on Amnesty will not be able to finalise its functions by 30 June 1998. According to information supplied by the Committee, more than one thousand amnesty applications still need to be dealt with by way of formal hearings, in addition to many more which could be dealt with in chambers. The Truth and Reconciliation Commission, consequently, requested that the said Act be amended so as to allow the Committee on Amnesty to complete its work, and to allow for the suspension of the activities of the Commission.

3. The Bill, consequently, purports to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to make provision for the following:

(a) The Commission must complete its work on 31 July 1998 and submit a report to the President within three months thereafter. Thereupon the activities of the Commission will be suspended until the Committee on Amnesty has completed its work, whereupon the Commission must be reconvened by the President for the purpose of completing and submitting its final report.

(b) Notwithstanding the suspension of the activities of the Commission, the Committee on Amnesty will continue with its functions until a date to be determined by the President, and, for the duration of such period, the Committee will also exercise the powers and perform the duties and functions of the Committees on Human Rights Violations and on Reparation and Rehabilitation.

(c) Upon the dissolution of the Commission, all assets will revert to the Department of Justice to be dealt with according to law, and the Minister of Justice will be the legal successor of the Commission.

(d) The President's Fund will continue to exist until a date fixed by the President by proclamation in the Gazette.

4. The Truth and Reconciliation Commission was consulted regarding the contents of the Bill.

5. In the opinion of the Department and the State Law Advisers, the Bill should be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996.

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

[B 48--98]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 48A--98]

REPUBLIEK VAN SUID-AFRIKA

PORTEFEULJEEKOMITEE-AMENDEMENTE OP

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

[W 48--98]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 48A--98] ISBN 0 621 27673 1

AMENDMENTS AGREED TO

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL [B 48--98]

CLAUSE 2

1. On page 4, in line 14, after "23" to insert:

, in respect of--

(aa) responses to matters commenced before 14 December 1997 by the said Committees, but not yet finalised by 31 July 1998, excluding any inquiries or hearings in terms of section 29; and
(bb) matters emanating from the consideration of applications for amnesty by the Committee on Amnesty

2. On page 4, from line 15, to omit subparagraph (iii) and to substitute:

(iii) the President may, subject to section 17(2) and from the ranks of the existing commissioners, appoint not more than two further commissioners to the Committee on Amnesty to assist in the exercising of the powers and the performance of the duties and functions referred to in subparagraph (ii); and

LONG TITLE

1. On page 2, in the fourth line, after "extend" to insert "the powers of the Committee on Amnesty and".

REPUBLIC OF SOUTH AFRICA PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 48B--98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEVORDERING VAN NASIONALE EENHEID EN VERSOENING

(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

(MINISTER VAN JUSTISIE)

[W 48B--98] ISBN 0 621 27674 X

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the constitution of the Committee on Amnesty; to provide for the suspension of the activities of the Truth and Reconciliation Commission pending the completion of its work by the Committee on Amnesty; to extend the powers of the Committee on Amnesty and the period within which the Committee on Amnesty shall complete its work; to further regulate the consequences of the dissolution of the Commission; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:--

Amendment of section 17 of Act 34 of 1995, as amended by section 1 of Act 18 of 1997

1. Section 17 of the Promotion of National Unity and Reconciliation Act, 1995 (hereinafter referred

to as the principal Act), is amended by the substitution for subsection (1) of the following subsection-

"(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and [not more than 17] such other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community, as the President deems necessary."

Substitution of section 43 of Act 34 of 1995, as amended by section 2 of Act 84 of 1997

2. The following section is substituted for section 43 of the principal Act:

"Completion of work and dissolution of Commission

43. (1) (a) Subject to subsection (2), the Commission shall complete its work on 31 July 1998.

(b) The Commission shall, within three months after 31 July 1998, submit a report to the President, whereafter its activities shall be suspended until it is reconvened by the President in terms of subsection (3).

(c) The Commissioners whose activities are suspended shall not receive any remuneration whilst their activities are so suspended.

(2) Notwithstanding the provisions of subsection (1)-

(a) the Committee on Amnesty referred to in section 16 shall continue with its functions in terms of this Act until a date determined by the President by proclamation in the Gazette; and

(b) for the duration of the period referred to in paragraph (a)---

(i) the Chairperson or the Deputy Chairperson of the Commission shall continue to represent the Commission for the purposes of any legal proceedings instituted by or against the Commission;

(ii) the Committee on Amnesty shall also exercise the powers and perform the duties and functions of the Committee on Human Rights Violations established by section 12, and of the Committee on Reparation and Rehabilitation established by section 23, in respect of--

(aa) responses to matters commenced before 14 December 1997 by the said Committees, but not yet finalised by 31 July 1998, excluding any inquiries or hearings in terms of section 29; and

(bb) matters emanating from the consideration of applications for amnesty by the Committee on Amnesty

(iii) the President may, subject to section 17(2) and from the ranks of the existing commissioners, appoint not more than two further commissioners to the Committee on Amnesty to assist in the exercising of the powers and the performance of the duties and functions referred to in subparagraph (ii); and

(iv) the Chairperson of the Committee on Amnesty shall submit quarterly reports to the President in respect of its activities.

(3) The President shall, by proclamation in the Gazette-

(a) reconvene the Commission for the purpose of completing its final report after the Committee on Amnesty has completed its work;

(b) determine a date for the dissolution of the Commission.

(4) The provisions of section 44 shall also be applicable in respect of the report referred to in subsection (1) (b).".

Amendment of section 46 of Act 34 of 1995 35

3. Section 46 of the principal Act is amended by the addition of the following subsection:

"(7) (a) Upon the dissolution of the Commission, subject to subsection (6), all assets, including intellectual property rights, monies and liabilities of the Commission, shall revert to the Department of Justice to be dealt with according to law.

(b) The Minister shall-

(i) have the authority to wind up the affairs of the Commission; and

(ii) for the purposes of any legal relationships, including legal proceedings involving the Commission, be the legal successor of the Commission. ".

Amendment of section 47 of Act 34 of 1995

4. Section 47 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) [As from the date on which the Commission is dissolved] Notwithstanding the dissolution of the Commission in terms of section 43 (3), the President's Fund shall continue to exist until a date fixed by the President by proclamation in the Gazette, whereupon all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund Raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund. ".

Repeal of section 3 of Act 84 of 1997

5. Section 3 of the Promotion of National Unity and Reconciliation Second Amendment Act, 1997, is repealed.

Short title and commencement

6. This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 1998, and shall be deemed to have come into operation on 30 April 1998.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF
NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

1. During 1997 the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), was amended, amongst others, so as to extend the period within which the Committee on Amnesty shall finish its work, to 30 June 1998 (see the Promotion of National Unity and Reconciliation Second Amendment Act, 1997 (Act No. 34 of 1997)). This amendment also entailed that the Truth and Reconciliation Commission would have to submit its final report on or before 31 July 1998.

2. However, it has become clear that the Committee on Amnesty will not be able to finalise its functions by 30 June 1998. According to information supplied by the Committee, more than one thousand amnesty applications still need to be dealt with by way of formal hearings, in addition to many more which could be dealt with in chambers. The Truth and Reconciliation Commission, consequently, requested that the said Act be amended so as to allow the Committee on Amnesty to complete its work, and to allow for the suspension of the activities of the Commission.

3. The Bill, consequently, purports to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to make provision for the following:

(a) The Commission must complete its work on 31 July 1998 and submit a report to the President within three months thereafter. Thereupon the activities of the Commission will be suspended until the Committee on Amnesty has completed its work, whereupon the Commission must be reconvened by the President for the purpose of completing and submitting its final report.

(b) Notwithstanding the suspension of the activities of the Commission, the Committee on Amnesty will continue with its functions until a date to be determined by the President, and, for the duration of such period, the Committee will also exercise the powers and perform the duties and functions of the Committees on Human Rights Violations and on Reparation and Rehabilitation.

(c) Upon the dissolution of the Commission, all assets will revert to the Department of Justice to be dealt with according to law, and the Minister of Justice will be the legal successor of the Commission.

(d) The President's Fund will continue to exist until a date fixed by the President by proclamation in the Gazette.

4. The Truth and Reconciliation Commission was consulted regarding the contents of the Bill.

5. In the opinion of the Department and the State Law Advisers, the Bill should be dealt with in accordance with the procedure prescribed in section 75 of the Constitution of the Republic of South Africa, 1996.

National Unity and Reconciliation

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

Nkosi sikelel' iAfrika. God seen Suid-Afrika

Morena boloka sechaba sa heso. May God bless our country

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993

[ASSENTED TO 25 JANUARY 1994][DATE OF COMMENCEMENT: 27 APRIL 1994]

(Unless otherwise indicated: see s. 251 (2))

(Afrikaans text signed by the State President)

ACT

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

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Preamble

In humble submission to Almighty God,

We, the people of South Africa declare that-

WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

AND WHEREAS it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

NOW THEREFORE the following provisions are adopted as the Constitution of the Republic of South Africa:

CHAPTER 1

CONSTITUENT AND FORMAL PROVISIONS (ss. 1-4)

1 Republic of South Africa

(1) The Republic of South Africa shall be one, sovereign state.

(2) The national territory of the Republic shall comprise the areas defined in Part 1 of Schedule 1.

2 National symbols

(1) The national flag of the Republic shall be the flag the design of which is determined by the President by proclamation in the Gazette.

(2) The national anthem of the Republic shall be as determined by the President by proclamation in the Gazette.

(3) The coat of arms of the Republic and the seal of the Republic under the previous Constitution shall be the national coat of arms of the Republic and the seal of the Republic under this Constitution.

3 Languages

(1) Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

(2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).

(3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the national level of government in any official South African language of his or her choice.

(4) Regional differentiation in relation to language policy and practice shall be permissible.

(5) A provincial legislature may, by a resolution adopted by a majority of at least two-thirds of all its members, declare any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitu

tion, shall be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in subsection (5).

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice, in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:

(a) The creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;

(b) the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;

(c) the prevention of the use of any language for the purposes of exploitation, domination or division;

(d) the promotion of multilingualism and the provision of translation facilities;

(e) the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and

(f) the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10) (a) Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.

(b) The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.

(c) The Pan South African Language Board shall be responsible for promoting respect for and the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.

4 Supremacy of the Constitution

(1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.

(2) This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.

CHAPTER 2

CITIZENSHIP AND FRANCHISE (ss. 5-6)

5 Citizenship

(1) There shall be a South African citizenship.

(2) South African citizenship and the acquisition, loss and restoration of South African citizenship shall, subject to section 20 read with section 33 (1), be regulated by an Act of Parliament.

(3) Every person who is a South African citizen shall, subject to this Constitution, be entitled to enjoy all rights, privileges and benefits of South African citizenship, and shall be subject to all duties, obligations and responsibilities of South African citizenship as are accorded or imposed upon him or her in terms of this Constitution or an Act of Parliament.

6 The franchise

Every person who is-

(a) (i) a South African citizen; or

(ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;

(b) of or over the age of 18 years; and

(c) not subject to any disqualifications as may be prescribed by law,

shall be entitled to vote in elections of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.

CHAPTER 3

FUNDAMENTAL RIGHTS (ss. 7-35)

7 Application

(1) This Chapter shall bind all legislative and executive organs of state at all levels of government.

(2) This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution.

(3) Juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of the rights permits.

(4) (a) When an infringement of or threat to any right entrenched in this Chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights.

(b) The relief referred to in paragraph (a) may be sought by-

(i) a person acting in his or her own interest;

(ii) an association acting in the interest of its members;

(iii) a person acting on behalf of another person who is not in a position to seek such relief in his or her own name;

(iv) a person acting as a member of or in the interest of a group or class of persons; or

(v) a person acting in the public interest.

8 Equality

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

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

(3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.

(b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.

(4) Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.

9 Life

Every person shall have the right to life.

10 Human dignity

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

11 Freedom and security of the person

(1) Every person shall have the right to freedom and security of the person, which shall include the right not to be detained

without trial.

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

12 Servitude and forced labour

No person shall be subject to servitude or forced labour.

13 Privacy

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

14 Religion, belief and opinion

(1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.

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

(3) Nothing in this Chapter shall preclude legislation recognising-

(a) a system of personal and family law adhered to by persons professing a particular religion; and

(b) the validity of marriages concluded under a system of religious law subject to specified procedures.

15 Freedom of expression

(1) Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research.

(2) All media financed by or under the control of the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion.

16 Assembly, demonstration and petition

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

17 Freedom of association

Every person shall have the right to freedom of association.

18 Freedom of movement

Every person shall have the right to freedom of movement anywhere within the national territory.

19 Residence

Every person shall have the right freely to choose his or her place of residence anywhere in the national territory.

20 Citizens' rights

Every citizen shall have the right to enter, remain in and leave the Republic, and no citizen shall without justification be deprived of his or her citizenship.

21 Political rights

(1) Every citizen shall have the right-

(a) to form, to participate in the activities of and to recruit members for a political party;

(b) to campaign for a political party or cause; and

(c) freely to make political choices.

(2) Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.

22 Access to court

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

23 Access to information

Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.

24 Administrative justice

Every person shall have the right to-

(a) lawful administrative action where any of his or her rights or interests is affected or threatened;

(b) procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;

(c) be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and

(d) administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.

25 Detained, arrested and accused persons

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

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

(b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;

(c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state;

(d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice; and

(e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.

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

(a) promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;

(b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or, if the said period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an ordinary court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released;

(c) not to be compelled to make a confession or admission which could be used in evidence against him or her; and

(d) to be released from detention with or without bail, unless the interests of justice require otherwise.

(3) Every accused person shall have the right to a fair trial, which shall include the right-

(a) to a public trial before an ordinary court of law within a reasonable time after having been charged;

(b) to be informed with sufficient particularity of the charge;

(c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;

(d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

(e) to be represented by a legal practitioner of his or her choice or, where substantial injustice would otherwise result, to be provided with legal representation at state expense, and to be informed of these rights;

(f) not to be convicted of an offence in respect of any act or omission which was not an offence at the time it was committed, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;

(g) not to be tried again for any offence of which he or she has previously been convicted or acquitted;

(h) to have recourse by way of appeal or review to a higher court than the court of first instance;

(i) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her; and

(j) to be sentenced within a reasonable time after conviction.

26 Economic activity

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

(2) Subsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

27 Labour relations

(1) Every person shall have the right to fair labour practices.

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

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

(4) Workers shall have the right to strike for the purpose of

collective bargaining.

(5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired, subject to section 33 (1).

28 Property

(1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.

(2) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.

(3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2), such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

29 Environment

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

30 Children

(1) Every child shall have the right-

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

(b) to parental care;

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

(d) not to be subject to neglect or abuse; and

(e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.

(2) Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.

(3) For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interest shall be paramount.

31 Language and culture

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

32 Education

Every person shall have the right-

(a) to basic education and to equal access to educational institutions;

(b) to instruction in the language of his or her choice where this is reasonably practicable; and

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

33 Limitation

(1) The rights entrenched in this Chapter may be limited by law of general application, provided that such limitation-

(a) shall be permissible only to the extent that it is-

(i) reasonable; and

(ii) justifiable in an open and democratic society based on freedom and equality; and

(b) shall not negate the essential content of the right in question,

and provided further that any limitation to-

(aa) a right entrenched in section 10, 11, 12, 14

(1), 21, 25 or 30 (1) (d) or (e) or (2); or

(bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,

shall, in addition to being reasonable as required in paragraph (a) (i), also be necessary.

(2) Save as provided for in subsection (1) or any other provision of this Constitution, no law, whether a rule of the common law, customary law or legislation, shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights in terms of this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.

(4) This Chapter shall not preclude measures designed to prohibit unfair discrimination by bodies and persons other than those bound in terms of section 7 (1).

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

(b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 2A of the Labour Relations Act, 1956 (Act 28 of 1956), or any other similar body which may replace the Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the said Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto.

34 State of emergency and suspension

(1) A state of emergency shall be proclaimed prospectively under an Act of Parliament, and shall be declared only where the security of the Republic is threatened by war, invasion, general insurrection or disorder or at a time of national disaster, and if the declaration of a state of emergency is necessary to restore peace or order.

(2) The declaration of a state of emergency and any action taken, including any regulation enacted, in consequence thereof, shall be of force for a period of not more than 21 days, unless it is extended for a period of not longer than three months, or consecutive periods of not longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members.

(3) Any superior court shall be competent to enquire into the

validity of a declaration of a state of emergency, any extension thereof, and any action taken, including any regulation enacted, under such declaration.

(4) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency, and only to the extent necessary to restore peace or order.

(5) Neither any law which provides for the declaration of a state of emergency, nor any action taken, including any regulation enacted, in consequence thereof, shall permit or authorise-

(a) the creation of retrospective crimes;

(b) the indemnification of the state or of persons acting under its authority for unlawful actions during the state of emergency; or

(c) the suspension of this section, and sections 7, 8 (2), 9, 10, 11 (2), 12, 14, 27 (1) and (2), 30 (1) (d) and (e) and (2) and 33 (1) and (2).

(6) Where a person is detained under a state of emergency the detention shall be subject to the following conditions:

(a) An adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;

(b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Gazette within five days of their detention;

(c) when rights entrenched in section 11 or 25 have been suspended-

(i) the detention of a detainee shall, as soon as it is reasonably possible but not later than 10 days after his or her detention, be reviewed by a court of law, and the court shall

order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;

(ii) a detainee shall at any stage after the expiry of a period of 10 days after a review in terms of subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;

(d) the detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;

(e) the detainee shall be entitled at all reasonable times to have access to a legal representative of his or her choice;

(f) the detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and

(g) the state shall for the purpose of a review referred to in paragraph (c) (i) or (ii) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.

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

35 Interpretation

(1) In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the

protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.

(2) No law which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used prima facie exceeds the limits imposed in this Chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation.

(3) In the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport and objects of this Chapter.

CHAPTER 4

PARLIAMENT (ss. 36-67)

36 Constitution of Parliament

Parliament shall consist of the National Assembly and the Senate.

37 Legislative authority of Republic

The legislative authority of the Republic shall, subject to this Constitution, vest in Parliament, which shall have the power to make laws for the Republic in accordance with this Constitution.

38 Duration of Parliament

(1) Parliament as constituted in terms of the first election under this Constitution shall, subject to subsection (2), continue for five years as from the date of the first sitting of the National Assembly under this Constitution.

(2) If during the period referred to in subsection (1) Parliament is dissolved under section 73 (9) or 93 (1) or (3) (c),

the Houses of Parliament as constituted then, shall continue for the period up to the day immediately preceding the commencement of polling for the election of the National Assembly held in pursuance of such dissolution.

(3) Notwithstanding any dissolution of Parliament-

(a) every person who at the date of the dissolution is a member of the National Assembly or the Senate shall remain a member thereof;

(b) the National Assembly and the Senate shall remain competent to perform their functions; and

(c) the President shall be competent to summon Parliament by proclamation in the Gazette to an extraordinary sitting for the despatch of urgent business,

during the period for which the Houses of Parliament continue in terms of subsection (2) after the dissolution.

(4) If Parliament is dissolved and a new Parliament is constituted as contemplated in section 39, this section shall apply mutatis mutandis in respect of such new Parliament save that the new Parliament shall continue for the unexpired part of the period referred to in subsection (1).

39 Elections

(1) Upon a dissolution of Parliament in terms of section 73 (9) or 93 (1) or (3) (c), the President shall by proclamation in the Gazette-

(a) call an election of the National Assembly, which election shall take place within 90 days after the dissolution of Parliament on a date or dates specified in the proclamation; and

(b) request parties represented in the provincial legislatures to nominate persons as senators for the respective

provinces in accordance with section 48 (1) (b).

(2) An election referred to in subsection (1) (a) shall be held in accordance with the Electoral Act, 1993.

The National Assembly (ss. 40-47)

40 Composition of National Assembly

(1) The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters as provided for in Schedule 2 and the Electoral Act, 1993.

(2) A person nominated as a candidate for election to the National Assembly on a regional list contemplated in Schedule 2, shall, subject to subsection (3), at the time of the nomination be ordinarily resident in the province in respect of which that regional list applies.

(3) Notwithstanding subsection (2), a regional list may contain the names of candidates who are not ordinarily resident in the province in respect of which that list applies, provided that no such list shall contain the names of more than one such candidate or more than 10 per cent of the total number of candidates the party concerned is entitled to nominate on that list, whichever is the greater number.

(4) For the purposes of this section, a person shall be deemed to be ordinarily resident at the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence, including the place where he or she was previously so ordinarily resident and to which he or she returns regularly after any period of absence.

(5) If a regional list contemplated in subsection (2) contains more names of candidates not ordinarily resident in the province in respect of which that list applies than are permissible under that subsection, the surplus of such names so contained shall be deleted

mutatis mutandis in accordance with section 22 (8) of the Electoral Act, 1993.

41 Speaker and Deputy Speaker of National Assembly

(1) At its first sitting after it has been convened under section 46 (2), and after the election of the President, the National Assembly, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker.

(2) The provisions of Schedule 5 shall apply mutatis mutandis to the election of the Speaker and the Deputy Speaker.

(3) The Speaker shall be vested with all powers and functions assigned to him or her by this Constitution, an Act of Parliament and the rules and orders.

(4) If the Speaker is absent or for any reason unable to exercise or perform the powers or functions vested in the office of Speaker, or when the office of Speaker is vacant, the Deputy Speaker shall act as Speaker during the Speaker's absence or inability or until a Speaker is elected.

(5) If any of the circumstances described in subsection (4) applies with reference to both the Speaker and the Deputy Speaker, a member of the National Assembly designated in terms of the rules and orders shall act as Speaker while the said circumstances prevail.

(6) The Deputy Speaker or the member designated under subsection (5), while acting as Speaker, may exercise the powers and shall perform the functions vested in the office of Speaker.

(7) The Speaker, the Deputy Speaker or any other member of the National Assembly designated for that purpose in terms of the rules and orders, shall preside over sittings of the National Assembly.

(8) While presiding at a sitting of the National Assembly, the Speaker, Deputy Speaker or other member presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

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

(10) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly, under the chairpersonship of the Chief Justice or a judge as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the Speaker shall in such event preside at the election of the Deputy Speaker.

42 Qualification for membership of National Assembly

(1) No person shall become or remain a member of the National Assembly unless he or she is a South African citizen and is and remains qualified in terms of section 6 to vote in an election of the National Assembly, or if he or she-

(a) at the time of the first election of the National Assembly held under this Constitution is serving a sentence of imprisonment of more than 12 months without the option of a fine;

(b) at any time after the promulgation of this Constitution is convicted of an offence in the Republic, or outside the Republic if the conduct constituting such offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon;

(c) is an unrehabilitated insolvent;

(d) is of unsound mind and has been so declared by a competent court; or

(e) holds any office of profit under the Republic:

Provided that the following persons shall be deemed not to hold an office of profit under the Republic for the purpose of this paragraph, namely-

(i) an Executive Deputy President, a Minister or a Deputy Minister;

(ii) a person in receipt of a pension paid from public funds or from a pension fund aided by public funds;

(iii) a justice of the peace or appraiser; or

(iv) a member of any council, board, committee, commission or similar body established by or under law or a committee of the National Assembly who receives remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.

(2) For the purposes of subsection (1) (b) no person shall be deemed as having been convicted of an offence until any appeal against the conviction or sentence has been determined, or, if no appeal against the conviction or sentence has been noted, the time for noting such an appeal has expired.

43 Vacation of seats

A member of the National Assembly shall vacate his or her seat if he or she-

(a) ceases to be eligible to be a member of the National Assembly in terms of section 42;

(b) ceases to be a member of the party which nominated him or her as a member of the National Assembly;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary to Parliament;

(d) without having obtained leave in accordance with the rules and orders, absents himself or herself voluntarily from sittings of the National Assembly or any other parliamentary forum of which he or she is a member, for 15 consecutive days on which the National Assembly or any such forum sat; or

(e) becomes a member of the Senate, a provincial legislature or a local government.

44 Filling of vacancies

(1) If a member of the National Assembly vacates his or her seat, the vacancy shall be filled by a person nominated in terms of subsection (2) by the party which nominated the vacating member.

(2) The party entitled in terms of subsection (1) to fill a vacancy shall nominate a person-

(a) whose name appears on that list of candidates of that party, compiled in terms of Schedule 2, from which the vacating member was nominated to the National Assembly; and

(b) who according to the order of preference of the candidates on such list is the next qualified and available person entitled in terms of Schedule 2 to represent that party in the National Assembly.

(3) A nomination in terms of this section shall be submitted in writing to the Speaker.

45 Oath or affirmation by members of National Assembly

Every member of the National Assembly, before taking his or her seat, shall make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a member nominated under section 44, before the Speaker.

46 Sittings of National Assembly

(1) The National Assembly shall sit at the Houses of Parliament in Cape Town, unless the Speaker, in accordance with the rules and orders and in consultation with the President of the Senate, directs otherwise on the grounds of public interest, security or convenience.

(2) The Chief Justice shall convene the National Assembly within 10 days after an election of the National Assembly.

(3) The National Assembly shall sit during such periods and on such days and during such hours as it may determine: Provided that the President may at any time by proclamation in the Gazette summon the National Assembly to an extraordinary sitting for the despatch of urgent business.

47 Quorum

The presence of at least one third or, when a vote is taken on a Bill, of at least one half of all the members of the National Assembly, other than the Speaker or other presiding member, shall be necessary to constitute a meeting of the National Assembly.

The Senate (ss. 48-54)

48 Composition of Senate

(1) The Senate shall be composed of 10 senators for each province, nominated by the parties represented in a provincial legislature within 10 days of-

(a) the first sitting of such legislature after an election of the legislature; or

(b) an election of the National Assembly held in pursuance of a dissolution of Parliament.

(2) Each party represented in a provincial legislature shall be entitled to nominate a senator or senators for the relevant province in accordance with the principle of proportional representation as determined by the following formula:

(a) The number of senators each party shall be entitled to nominate, shall subject to paragraph (b) be determined by multiplying the number of seats such party holds in the provincial legislature by 10 and dividing the result by the total number of seats in the legislature plus one.

(b) If the application of paragraph (a) yields a surplus not absorbed by the number of senators allocated to that party, such surplus shall compete with similar surpluses accruing to any other party or parties, and any undistributed senatorial seat or seats shall be allocated to the party or parties concerned in sequence of the highest surplus.

(3) A member of a provincial legislature or local government nominated as a senator in terms of this section, shall vacate his or her seat in the provincial legislature or local government upon his or her acceptance of such nomination.

49 President and Deputy President of Senate

(1) At its first sitting after it has been convened under section 53 (2), and before proceeding to dispatch any other business, the Senate, with the Chief Justice or a judge of the Supreme Court designated by him or her acting as the chairperson, shall elect one of its members to be the President of the Senate, and shall thereafter elect another of its members to be the Deputy President of the Senate.

(2) The provisions of Schedule 5 shall apply mutatis mutandis to the election of the President and the Deputy President of the Senate.

(3) The President of the Senate shall be vested with all the powers and functions assigned to him or her by this Constitution,

an Act of Parliament and the rules and orders.

(4) If the President of the Senate is absent or for any reason unable to exercise and perform the powers and functions vested in the office of President of the Senate, or when the office of President of the Senate is vacant, the Deputy President of the Senate shall act as President of the Senate during the absence or inability of the President of the Senate or until a President of the Senate is elected.

(5) If any of the circumstances described in subsection (4) applies with reference to both the President and the Deputy President of the Senate, a senator designated in terms of the rules and orders shall act as President of the Senate while the said circumstances prevail.

(6) The Deputy President of the Senate or the senator designated under subsection (5), while acting as President of the Senate, may exercise the powers and shall perform the functions vested in the office of President of the Senate.

(7) The President or Deputy President of the Senate or any other senator designated for that purpose in terms of the rules and orders shall preside over sittings of the Senate.

(8) While presiding at a sitting of the Senate, the President or Deputy President of the Senate or other senator presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

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

(10) If the office of President or Deputy President of the Senate becomes vacant, the Senate, under the chairpersonship of the

Chief Justice or a judge as provided in subsection (1), shall elect a member to fill the vacancy: Provided that the President of the Senate shall in such event preside at the election of the Deputy President of the Senate.

50 Qualification for membership of Senate

No person shall be qualified to become or remain a senator unless he or she is or remains qualified to become a member of the National Assembly.

51 Vacation of seats by senators and filling of vacancies

(1) A senator shall vacate his or her seat if he or she-

(a) ceases to qualify to be a senator in terms of section 50;

(b) ceases to be a member of the party which nominated him or her as a senator in terms of section 48;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary to Parliament;

(d) without having obtained leave in accordance with the rules and orders, absents himself or herself voluntarily from sittings of the Senate or any other parliamentary forum of which he or she is a member, for 15 consecutive days on which the Senate or any such forum sat; or

(e) becomes a member of the National Assembly, a provincial legislature or a local government.

(2) (a) If a senator vacates his or her seat, the vacancy shall be filled by a person nominated by the party which nominated the vacating senator and who is qualified and available to fill the vacancy.

(b) A nomination in terms of this subsection shall be

submitted in writing to the President of the Senate.

(3) If a provincial legislature is dissolved, the senators from the province in question shall vacate their seats in the Senate with effect from the date of the first sitting of such legislature after the election of such legislature held in pursuance of such dissolution, whereupon the vacancies shall be filled in terms of section 48 (1) (a).

52 Oath or affirmation by senators

Every senator, before taking his or her seat, shall make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a senator nominated under section 51 (2), before the President of the Senate.

53 Sittings of Senate

(1) The Senate shall sit at the Houses of Parliament in Cape Town, unless the President of the Senate, in accordance with the rules and orders and in consultation with the Speaker, directs otherwise on the grounds of public interest, security or convenience.

(2) The Chief Justice shall after an election of the National Assembly convene the Senate as soon as is practically possible, but not later than 30 days after such election.

(3) The Senate shall sit during such periods and on such days and during such hours as it may determine: Provided that the President may at any time by proclamation in the Gazette summon the Senate to an extraordinary sitting for the dispatch of urgent business.

54 Quorum

The presence of at least one third or, when a vote is taken on

a Bill, of at least one half of all the senators, other than the President of the Senate or other presiding senator, shall be necessary to constitute a meeting of the Senate.

The National Assembly and the Senate (ss. 55-67)

55 Powers, privileges and immunities of Parliament and benefits of members

(1) Parliament shall have full power to control, regulate and dispose of its internal affairs, and shall have all such other powers, privileges and immunities as may, subject to this Constitution, be prescribed by an Act of Parliament.

(2) Subject to the rules and orders there shall be freedom of speech and debate in or before Parliament and any committee thereof, and such freedom shall not be impeached or questioned in any court.

(3) A member of Parliament shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to Parliament or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to Parliament or any committee thereof.

(4) There shall be paid out of and as a charge on the National Revenue Fund to a member of the National Assembly or the Senate such salary and allowances, and upon his or her retirement, or to his or her widow or widower upon his or her death, such pension and pension benefits as may be prescribed by an Act of Parliament.

56 Penalty for sitting or voting when disqualified by law

Any person who in terms of this Constitution is disqualified to sit as a member of a House and who, while so disqualified and knowing that he or she is so disqualified, sits or votes as a member of a House in question, shall be liable to a penalty

determined by the rules and orders for each day on which he or she so sits or votes, which may be recovered for credit of the National Revenue Fund by action in a court of law.

57 Joint sittings of Houses

(1) Whenever necessary the National Assembly and the Senate shall convene in a joint sitting, which shall be presided over by the Speaker, the President of the Senate or any other member of the National Assembly or the Senate as may be determined by the rules and orders.

(2) While presiding at a joint sitting the Speaker, the President of the Senate or the other member presiding, shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

(3) Without derogating from the power of Parliament to regulate its business and proceedings, the President of the Republic may, whenever he or she deems it desirable, request by message to the Speaker and the President of the Senate that a joint sitting of the National Assembly and the Senate be convened.

58 Rules and orders

(1) The National Assembly or the Senate may make rules and orders in connection with the conduct of its business and proceedings, and the National Assembly and the Senate may make joint rules and orders in connection with the conduct of their joint business and proceedings, including rules and orders regulating-

(a) the establishment, constitution, powers and functions, procedures and duration of committees of Parliament;

(b) restrictions on access to such committees;

(c) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the

Houses of Parliament; and

(d) the designation of members of the National Assembly and the Senate as presiding officers to preside over sittings of the National Assembly or the Senate or joint sittings of the National Assembly and the Senate, as the case may be, as and when the Speaker or the President of the Senate so requires.

(2) For the purposes of exercising its powers and performing its functions, any committee established under subsection (1) (a) shall have the power to summon persons to appear before it to give evidence on oath or affirmation and to produce any documents required by it, and to receive representations from interested persons.

59 Ordinary Bills

(1) An ordinary Bill may be introduced in either the National Assembly or the Senate and shall for its passing by Parliament, subject to subsection (2), be required to be adopted by each House.

(2) An ordinary Bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of both Houses and of all the parties represented in Parliament and willing to participate in the joint committee, to consider and report on any proposed amendments to the Bill, whereafter the Bill shall be referred to a joint sitting of both Houses, at which it may be passed with or without amendment by a majority of the total number of members of both Houses.

(3) All Bills, except the new constitutional text and those referred to in sections 60 (1), 61 and 62, shall for the purposes of this Constitution be considered to be ordinary Bills.

60 Money Bills

(1) Bills appropriating revenue or moneys or imposing taxation shall be introduced in the National Assembly only.

(2) Bills appropriating revenue or moneys for services provided by the national government shall deal with such appropriation only.

(3) The National Assembly shall not consider any Bill appropriating revenue or moneys unless such Bill was initiated by the Minister responsible for national financial matters, or by any other Minister acting with the concurrence of the said Minister.

(4) The National Assembly shall not pass a Bill referred to in subsection (1) unless it has been considered and reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

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

(6) The Senate may not amend any Bill in so far as it appropriates revenue or moneys or imposes taxation.

(7) If the National Assembly passes a Bill imposing taxation or dealing with the appropriation of revenue or moneys and the Senate rejects it or proposes amendments to it or fails to pass it within 30 days after it has been passed by the National Assembly, the Bill shall be referred back to the National Assembly for reconsideration.

(8) The National Assembly may pass a Bill referred to in subsection (7), with or without amendment, and if passed by the National Assembly such Bill shall be deemed to have been passed by Parliament.

61 Bills affecting certain provincial matters

Bills affecting the boundaries or the exercise or performance of the powers and functions of the provinces shall be deemed not to

be passed by Parliament unless passed separately by both Houses and, in the case of a Bill, other than a Bill referred to in section 62, affecting the boundaries or the exercise or performance of the powers or functions of a particular province or provinces only, unless also approved by a majority of the senators of the province or provinces in question in the Senate.

62 Bills amending Constitution

(1) Subject to subsection (2) and section 74, a Bill amending this Constitution shall, for its passing by Parliament, be required to be adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses.

(2) No amendment of sections 126 and 144 shall be of any force and effect unless passed separately by both Houses by a majority of at least two-thirds of all the members in each House: Provided that the boundaries and legislative and executive competences of a province shall not be amended without the consent of a relevant provincial legislature.

63 Requisite majorities

Save where otherwise required in this Constitution, all questions before the National Assembly or the Senate or before the National Assembly and the Senate in a joint sitting, shall be determined by a majority of votes cast.

64 Assent to Bills

(1) A Bill duly passed by Parliament in accordance with this Constitution shall be assented to by the President subject to section 82 (1) (b).

(2) A Bill referred to in subsection (1) to which the President has assented and a copy of which he or she has signed, shall upon its promulgation be an Act of Parliament.

65 Signature and enrolment of Acts

(1) An Act of Parliament referred to in section 64 (2) shall be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and copies of the Act so enrolled shall be conclusive evidence of the provisions of the Act.

(2) In the case of a conflict between copies of an Act enrolled in terms of subsection (1), the copy signed by the President shall prevail.

(3) The public shall have the right of access to copies of an Act so enrolled, subject to such laws as may be passed by Parliament to protect the safety and durability of the said copies and with due regard to the convenience of the Registrar's staff.

66 Rights and duties of President, Executive Deputy Presidents, Ministers and Deputy Ministers in Houses

The President, an Executive Deputy President, a Minister and a Deputy Minister shall be entitled to sit and to speak in any House and at a joint sitting of the Houses, but may not vote in the House of which he or she is not a member.

67 Public access to Parliament

Sittings of the National Assembly or the Senate and joint sittings of the National Assembly and the Senate shall be held in public, and the public, including the media, shall have access to such sittings: Provided that reasonable measures may be taken to regulate such access and to provide for the search and, where appropriate, the refusal of entry or the removal of any person.

CHAPTER 5

THE ADOPTION OF THE NEW CONSTITUTION (ss. 68-74)

68 Constitution-making Body

(1) The National Assembly and the Senate, sitting jointly for the purposes of this Chapter, shall be the Constitutional Assembly.

(2) The Constitutional Assembly shall draft and adopt a new constitutional text in accordance with this Chapter.

(3) (a) The first sitting of the Constitutional Assembly shall be convened by the President of the Senate not later than seven days as from the first sitting of the Senate under this Constitution.

(b) Any subsequent sittings of the Constitutional Assembly shall be convened by the Chairperson of the Constitutional Assembly after consultation with the Speaker and the President of the Senate.

(4) Subject to the rules and orders contemplated in section 70 and save where clearly inappropriate, sections 55 and 56 and the provisions of this Constitution with regard to joint sittings of the National Assembly and the Senate shall apply mutatis mutandis in respect of the Constitutional Assembly.

69 Chairperson and Deputy Chairperson

(1) At its first sitting and before proceeding to dispatch any other business, the Constitutional Assembly, with the President of the Senate presiding, shall elect one of the members of the Constitutional Assembly to be the Chairperson and another of its members to be the Deputy Chairperson of the Constitutional Assembly.

(2) The provisions of Schedule 5 shall apply mutatis mutandis in respect of the election of the Chairperson and the Deputy Chairperson of the Constitutional Assembly.

(3) The Chairperson shall be vested with all powers and

functions assigned to him or her under this Constitution, an Act of Parliament and the rules and orders.

(4) Section 49 (4) to (10) shall apply mutatis mutandis in respect of the Chairperson and Deputy Chairperson of the Constitutional Assembly, and in any such application references in the said sections to the Senate and a senator shall be construed as references to the Constitutional Assembly and a member of the Constitutional Assembly, respectively.

70 Rules and orders

(1) The Constitutional Assembly may make rules and orders in connection with the conduct of its business and proceedings.

(2) The provisions of section 58 shall apply mutatis mutandis in respect of the Constitutional Assembly.

71 Constitutional Principles and certification

(1) A new constitutional text shall-

(a) comply with the Constitutional Principles contained in Schedule 4; and

(b) be passed by the Constitutional Assembly in accordance with this Chapter.

(2) The new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles referred to in subsection (1) (a).

(3) A decision of the Constitutional Court in terms of subsection (2) certifying that the provisions of the new constitutional text comply with the Constitutional Principles, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such

text or any provision thereof.

(4) During the course of the proceedings of the Constitutional Assembly any proposed draft of the constitutional text before the Constitutional Assembly, or any part or provision of such text, shall be referred to the Constitutional Court by the Chairperson if petitioned to do so by at least one fifth of all the members of the Constitutional Assembly, in order to obtain an opinion from the Court as to whether such proposed text, or part or provision thereof, would, if passed by the Constitutional Assembly, comply with the Constitutional Principles.

72 Appointment of commissions, committees and bodies

(1) The Constitutional Assembly shall, in addition to appointing committees of its members, be competent to appoint any commissions, technical committees and other advisory bodies to assist it in the performance of its functions.

(2) The Constitutional Assembly shall, subject to subsection (3), appoint an independent panel of five South African citizens being recognised constitutional experts, not being members of Parliament or any other legislature and not holding office in any political party, to advise it, or the Chairperson, on matters pertaining to its functions, and to perform such other tasks as are provided for in this Constitution.

(3) A majority of at least two-thirds of all the members of the Constitutional Assembly shall be required for the appointment of the panel of constitutional experts, and, in the event of such majority not being achieved, a panel of constitutional experts complying with the requirements mentioned in subsection (2) and consisting of a nominee of each party which holds at least 40 seats in the Constitutional Assembly and wishes to make such a nomination, shall be appointed.

73 Adoption of new constitutional text

(1) The Constitutional Assembly shall pass the new constitu

tional text within two years as from the date of the first sitting of the National Assembly under this Constitution.

(2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.

(3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with subsection (2), but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the panel of constitutional experts referred to in section 72 (2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2).

(4) An amended draft text unanimously recommended by the panel of constitutional experts and submitted to the Constitutional Assembly within the said period of 30 days, shall be considered by the Constitutional Assembly, and if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa.

(5) Should the panel of constitutional experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the panel, or should such an amended draft text not be passed by the Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6).

(6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71

(2), be referred by the President for a decision by the electorate by way of a national referendum.

(7) The question put before the electorate in the referendum shall be the acceptance or rejection of the text approved under subsection (5).

(8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.

(9) If the relevant text is not approved in the referendum in accordance with subsection (8), or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1), the President shall dissolve Parliament by proclamation in the Gazette within 14 days after the referendum or the expiry of the said period, whereupon an election contemplated in section 39 (1) (a) shall be held.

(10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election.

(11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 per cent of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 per cent of all the members of the Senate.

(12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply mutatis mutandis in respect of the Constitutional Assembly referred to in subsection (10) of this section.

(13) A new constitutional text adopted in terms of this

Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa.

74 Amendments relating to this Chapter and Schedule 4

(1) No amendment or repeal of-

(a) this section or the Constitutional Principles set out in Schedule 4; or

(b) any other provision of this Chapter in so far as it relates to-

(i) the Constitutional Principles; or

(ii) the requirement that the new constitutional text shall comply with the Constitutional Principles, or that such text shall be certified by the Constitutional Court as being in compliance therewith,

shall be permissible.

(2) The other provisions of this Chapter may be amended by the Constitutional Assembly by resolution of a majority of at least two-thirds of all its members.

CHAPTER 6

THE NATIONAL EXECUTIVE (ss. 75-95)

75 Executive authority of the Republic

The executive authority of the Republic with regard to all matters falling within the legislative competence of Parliament shall vest in the President, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution.

76 Head of State

The President shall be the Head of State.

77 Election of President

(1) (a) The National Assembly shall at its first sitting after it has been convened in terms of section 46 (2) elect one of its members as the President.

(b) The National Assembly and the Senate shall thereafter, as often as it again becomes necessary to elect a President, elect at a joint sitting one of the members of the National Assembly as the President.

(2) (a) The Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over any sitting at which an election referred to in subsection (1) takes place.

(b) An election referred to in subsection (1) shall be conducted in accordance with Schedule 5.

(3) The election of a President in terms of subsection (1) (b) shall take place at a time and on a date fixed by the Chief Justice: Provided that-

(a) if such an election of a President is occasioned by reason of a dissolution of Parliament, it shall take place within 10 days after the Senate was convened after the election of the National Assembly held in pursuance of such dissolution; or

(b) if such an election of a President is occasioned by reason of a vacancy in the office of President, it shall take place within 30 days after the vacancy arose.

(4) On being elected, the President shall vacate his or her seat in the National Assembly.

(5) During the period in which the President continues in office in terms of section 80 (1) (b), he or she shall for the purposes of section 42 (1) (e) be deemed not to hold an office of profit under the Republic.

78 Oath or affirmation

The President-elect shall, before formally assuming office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose.

79 Remuneration of President

There shall be paid to the President out of and as a charge on the National Revenue Fund and apart from any privilege which he or she may enjoy, such remuneration and allowances, and upon his or her retirement, or to his or her widow or widower on his or her death, such pension and pension benefits, as may be determined from time to time by resolution of Parliament.

80 Tenure of office of President

(1) The President elected in terms of section 77 (1) (a) shall, subject to sections 87 and 93 (2), hold office-

(a) for the period terminating on a date five years as from the date of the first sitting of the National Assembly under this Constitution; or

(b) if Parliament is dissolved during such period, for the period until a President has been elected in terms of section 77 (1) (b) after such dissolution and has assumed office.

(2) A President elected in terms of section 77 (1) (b) shall, subject to subsection (1) (b) of this section and sections 87 and 93 (2), hold office for the unexpired part of the period referred to in subsection (1) (a) of this section.

81 Responsibilities of President

(1) The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall as head of state defend and uphold the Constitution as the supreme law of the land.

(2) The President shall with dignity provide executive leadership in the interest of national unity in accordance with this Constitution and the law of the Republic.

(3) The President shall not hold any other public office and shall not perform remunerative work outside the duties of his or her office.

82 Powers and functions of President

(1) The President shall be competent to exercise and perform the following powers and functions, namely-

(a) to assent to, sign and promulgate Bills duly passed by Parliament;

(b) in the event of a procedural shortcoming in the legislative process, to refer a Bill passed by Parliament back for further consideration by Parliament;

(c) to convene meetings of the Cabinet;

(d) to refer disputes of a constitutional nature between parties represented in Parliament or between organs of state at any level of government to the Constitutional Court or other appropriate institution, commission or body for resolution;

(e) to confer honours;

(f) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(g) to appoint commissions of enquiry;

(h) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any other law;

(i) to negotiate and sign international agreements;

(j) to proclaim referenda and plebiscites in terms of this Constitution or an Act of Parliament; and

(k) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit, and to remit any fines, penalties or forfeitures.

(2) The President shall 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 and allocation of functions contemplated in section 84 (5) to an Executive Deputy President;

(d) regarding appointments under subsection (1) (f); and

(e) before exercising any of the competences referred to in subsection (1) (g) to (k).

(3) The President shall exercise and perform all powers and functions assigned to him or her by this Constitution or any other law, except those specified in subsections (1) and (2) or where otherwise expressly or by implication provided in this Constitution, in consultation with the Cabinet: Provided that the Cabinet may delegate its consultation function in terms of this subsection,

with reference to any particular power or function of the President, to any Minister or Ministers.

(4) (a) The President shall be the Commander-in-Chief of the National Defence Force.

(b) The President may-

(i) with the approval of Parliament, declare a state of national defence;

(ii) employ the National Defence Force in accordance with and subject to sections 227 and 228; and

(iii) confer upon members of the National Defence Force permanent commissions and cancel such commissions.

83 Confirmation of executive acts of President

(1) Decisions of the President taken in terms of section 82 shall be expressed in writing under his or her signature.

(2) Any instrument signed by the President in the exercise or performance of a power or function referred to in section 82 (3) shall be countersigned by a Minister.

(3) The signature of the President on any instrument shall be confirmed by the seal of the Republic.

84 Executive Deputy Presidents

(1) Every party holding at least 80 seats in the National Assembly shall be entitled to designate an Executive Deputy President from among the members of the National Assembly.

(2) Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest number of seats and the party holding the second largest number of seats shall each be entitled to designate one Executive Deputy President

from among the members of the National Assembly.

(3) On being designated as such, an Executive Deputy President may elect to vacate or not to vacate his or her seat in the National Assembly.

(4) Section 81 shall apply mutatis mutandis to an Executive Deputy President.

(5) An Executive Deputy President may exercise the powers and shall perform the functions vested in the office of Executive Deputy President by this Constitution or assigned to him or her by the President.

(6) An Executive Deputy President shall, before formally assuming office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose.

85 Tenure of office of Executive Deputy Presidents and filling of vacancies

(1) An Executive Deputy President shall, subject to section 87, hold office-

(a) for the period terminating on a date five years as from the date of the first sitting of the National Assembly under this Constitution, unless he or she is before the expiry of such period replaced as Executive Deputy President by the party which designated him or her; or

(b) if Parliament is dissolved during such period, for the period until a President has been elected in terms of section 77 (1) (b) after such dissolution and has assumed office.

(2) If an Executive Deputy President vacates his or her office, section 84 (1) or (2) shall apply mutatis mutandis in respect of the filling of the vacancy.

(3) An Executive Deputy President designated to fill a vacancy shall, subject to subsection (1) (b) of this section and section 87, hold office for the unexpired part of the period referred to in subsection (1) (a) of this section.

86 Acting President

(1) The President shall appoint one of the Executive Deputy Presidents, or if no Executive Deputy President is available, a Minister, to act as President during his or her absence or temporary incapacity.

(2) In designating an Acting President under subsection (1), the President shall take into consideration the exigencies of government and the spirit underlying the concept of a government of national unity.

(3) Should it be necessary that an Acting President be appointed and the President is absent or unable to make such an appointment, or if the office of President is vacant, the other members of the Cabinet shall make such appointment, taking into consideration the exigencies of government and the spirit underlying the concept of a government of national unity.

(4) An Acting President shall while acting as President have all the powers and functions vested in the office of President.

87 Removal from office of President or Executive Deputy President

The President or an Executive Deputy President shall cease to hold office on a resolution adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of the Houses and impeaching the President or such Executive Deputy President on the ground of a serious violation of this Constitution or the other laws of the Republic, or of misconduct or inability rendering him or her unfit to exercise and perform his or her powers and

functions in accordance with section 81 or 84 (4), as the case may be.

88 Cabinet

(1) The Cabinet shall consist of the President, the Executive Deputy Presidents and not more than 27 Ministers appointed by the President in accordance with this section.

(2) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, shall be entitled to be allocated one or more of the Cabinet portfolios 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.

(3) Cabinet portfolios shall for the purposes of subsection (2) be allocated to the respective participating parties in accordance with the following formula:

(a) A quota of seats per portfolio shall be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios plus one.

(b) The result, disregarding third and subsequent decimals, if any, shall be the quota of seats per portfolio.

(c) The number of portfolios to be allocated to a participating party shall be determined by dividing the total number of seats held by such party in the National Assembly by the quota referred to in paragraph (b).

(d) The result shall, subject to paragraph (e), indicate the number of portfolios to be allocated to such party.

(e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, such surplus shall compete with other similar surpluses

accruing to another party or parties, and any portfolio or portfolios which remain unallocated shall be allocated to the party or parties concerned in sequence of the highest surplus.

(4) The President shall after consultation with the Executive Deputy Presidents and the leaders of the participating parties-

(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 Parliament 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 this 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 he or she 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 this Constitution or in the interest of good government; or

(e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.

(5) Subsection (4) shall be implemented in the spirit underlying the concept of a government of national unity, and the President and the other functionaries concerned shall in the implementation of that subsection endeavour 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 shall prevail;

(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 such person is a member shall prevail; 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 shall prevail.

(6) If any determination of portfolio allocations is varied under subsection (4) (c), the affected Ministers shall vacate their portfolios but shall be eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.

(7) A Minister shall, before formally assuming office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose.

(8) No member of the Cabinet may take up any other paid employment, engage in activities inconsistent with his or her membership of the Cabinet, or expose himself or herself to any situation which carries with it the risk of a conflict between his or her responsibilities as a member of the Cabinet and his or her private interests.

(9) No member of the Cabinet shall use his or her position as such, or directly or indirectly use information entrusted confidentially to him or her in such capacity, to enrich himself or herself or any other person.

(10) There shall be paid out of and as a charge on the National Revenue Fund to an Executive Deputy President or a Minister such remuneration and allowances, and upon his or her retirement, or to his or her widow or widower upon his or her

death, such pension and pension benefits, as may be prescribed by an Act of Parliament.

89 Cabinet procedure

(1) Meetings of the Cabinet shall be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents shall preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit underlying the concept of a government of national unity otherwise dictate.

(2) The Cabinet shall function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

(3) Where an Executive Deputy President presides over a meeting of the Cabinet otherwise than in the capacity of Acting President, a decision in the Cabinet on any matter shall be submitted to the President before its implementation and shall upon its ratification by the President be deemed to be a decision taken in consultation with the Cabinet in accordance with section 82 (3).

90 Temporary assignment of Minister's powers and functions to another Minister

Whenever a Minister is absent or for any reason unable to exercise and perform any of the powers and functions assigned to him or her, or whenever a Minister has vacated his or her office and a successor has not yet been appointed, the President may appoint any other Minister to act in the said Minister's stead, either generally or in the exercise or performance of any specific power or function.

91 Transfer of Minister's powers and functions to another Minister

(1) The President may assign the administration of a law which

is entrusted to any particular Minister or which entrusts to any particular Minister any power or function, to any other Minister.

(2) Any reference in such a law to a particular Minister as the Minister to whom the administration of such law is entrusted, shall upon the assignment under subsection (1) of its administration to another Minister, be construed as a reference to the latter.

92 Accountability of Ministers and Cabinet

(1) A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio entrusted to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the national government and for its policies.

(2) A Minister shall administer his or her portfolio in accordance with the policy determined by the Cabinet.

(3) If a Minister fails to administer his or her 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 such policy.

(4) If the Minister concerned fails to comply with a requirement of the President under subsection (3), the President may, 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 such Minister's party, remove the Minister from office.

93 Votes of no confidence

(1) If Parliament passes a vote of no confidence in the Cabinet, including the President, the President shall, unless he or she resigns, dissolve Parliament and call an election in accordance with section 39.

(2) If Parliament passes a vote of no confidence in the President, but not in the other members of the Cabinet, the President shall resign.

(3) If Parliament passes a vote of no confidence in the Cabinet, excluding the President, the President may-

(a) resign;

(b) reconstitute the Cabinet in accordance with section 88 (4); or

(c) dissolve Parliament and call an election in accordance with section 39.

(4) The President shall where required, or where he or she elects, to do so in terms of this section, dissolve Parliament by proclamation in the Gazette within 14 days of the relevant vote of no confidence.

94 Appointment of Deputy Ministers

(1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties serving in the Cabinet, establish deputy ministerial posts.

(2) A party shall be entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula as that in which the portfolios in the Cabinet are allocated to it.

(3) The provisions of section 88 (4) to (10) shall apply mutatis mutandis in respect of Deputy Ministers, and in such application a reference to-

(a) a Minister or portfolio shall be construed as a reference to a Deputy Minister and a deputy ministerial post, respectively; and

(b) subsection (3) of section 88 shall be construed as a reference to subsection (2) of this section.

(4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister-

(a) such Deputy Minister shall exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to such Minister in terms of any law or otherwise which may, subject to the directions of the President, be assigned to him or her by such Minister; and

(b) any reference in any law to such a Minister shall be construed as including a reference to the Deputy Minister acting in pursuance of an assignment under paragraph (a) by the Minister for whom he or she acts.

(5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of his or her 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.

95 Composition and functioning of Cabinet in event of non-participation by parties

(1) If every party entitled to designate an Executive Deputy President, other than the President's party, fails to do so, the Executive Deputy President of the President's party shall exercise and perform the powers and functions of the Executive Deputy Presidents.

(2) If any party entitled to Cabinet portfolios declines to serve in the Cabinet, such party shall be disregarded in the determination of portfolio allocations in terms of section 88.

(3) If all parties entitled to Cabinet portfolios, other than the President's party, decline to serve in the Cabinet, appointments to the Cabinet shall be made at the discretion of the President.

CHAPTER 7

THE JUDICIAL AUTHORITY AND THE ADMINISTRATION OF JUSTICE (ss. 96-109)

96 Judicial authority

(1) The judicial authority of the Republic shall vest in the courts established by this Constitution and any other law.

(2) The judiciary shall be independent, impartial and subject only to this Constitution and the law.

(3) No person and no organ of state shall interfere with judicial officers in the performance of their functions.

97 Appointment of Chief Justice and President of Constitutional Court

(1) There shall be a Chief Justice of the Supreme Court of South Africa, who shall, subject to section 104, be appointed by the President in consultation with the Cabinet and after consultation with the Judicial Service Commission.

(2) (a) There shall be a President of the Constitutional Court, who shall, subject to section 99, be appointed by the President in consultation with the Cabinet and after consultation with the Chief Justice.

(b) Unless the new constitutional text provides otherwise, the President of the Constitutional Court shall hold office for a non-renewable period of seven years.

98 Constitutional Court and its jurisdiction

(1) There shall be a Constitutional Court consisting of a President and 10 other judges appointed in terms of section 99.

(2) The Constitutional Court shall have jurisdiction in the Republic as the court of final instance over all matters relating to the interpretation, protection and enforcement of the provisions of this Constitution, including-

(a) any alleged violation or threatened violation of any fundamental right entrenched in Chapter 3;

(b) any dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state;

(c) any inquiry into the constitutionality of any law, including an Act of Parliament, irrespective of whether such law was passed or made before or after the commencement of this Constitution;

(d) any dispute over the constitutionality of any Bill before Parliament or a provincial legislature, subject to subsection (9);

(e) any dispute of a constitutional nature between organs of state at any level of government;

(f) the determination of questions whether any matter falls within its jurisdiction; and

(g) the determination of any other matters as may be entrusted to it by this Constitution or any other law.

(3) The Constitutional Court shall be the only court having jurisdiction over a matter referred to in subsection (2), save where otherwise provided in section 101 (3) and (6).

(4) A decision of the Constitutional Court shall bind all

persons and all legislative, executive and judicial organs of state.

(5) In the event of the Constitutional Court finding that any law or any provision thereof is inconsistent with this Constitution, it shall declare such law or provision invalid to the extent of its inconsistency: Provided that the Constitutional Court may, in the interests of justice and good government, require Parliament or any other competent authority, within a period specified by the Court, to correct the defect in the law or provision, which shall then remain in force pending correction or the expiry of the period so specified.

(6) Unless the Constitutional Court in the interests of justice and good government orders otherwise, and save to the extent that it so orders, the declaration of invalidity of a law or a provision thereof-

(a) existing at the commencement of this Constitution, shall not invalidate anything done or permitted in terms thereof before the coming into effect of such declaration of invalidity; or

(b) passed after such commencement, shall invalidate everything done or permitted in terms thereof.

(7) In the event of the Constitutional Court declaring an executive or administrative act or conduct or threatened executive or administrative act or conduct of an organ of state to be unconstitutional, it may order the relevant organ of state to refrain from such act or conduct, or, subject to such conditions and within such time as may be specified by it, to correct such act or conduct in accordance with this Constitution.

(8) The Constitutional Court may in respect of the proceedings before it make such order as to costs as it may deem just and equitable in the circumstances.

(9) The Constitutional Court shall exercise jurisdiction in any dispute referred to in subsection (2) (d) only at the request

of the Speaker of the National Assembly, the President of the Senate or the Speaker of a provincial legislature, who shall make such a request to the Court upon receipt of a petition by at least one-third of all the members of the National Assembly, the Senate or such provincial legislature, as the case may be, requiring him or her to do so.

99 Composition of Constitutional Court and appointment of judges of Constitutional Court

(1) Unless the new constitutional text provides otherwise, the judges of the Constitutional Court shall be appointed by the President for a non-renewable period of seven years.

(2) No person shall be qualified to be appointed President or a judge of the Constitutional Court unless he or she-

(a) is a South African citizen; and

(b) is a fit and proper person to be a judge of the Constitutional Court; and

(c) (i) is a judge of the Supreme Court or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having so qualified, practised as an advocate or an attorney or lectured in law at a university; or

(ii) is a person who, by reason of his or her training and experience, has expertise in the field of constitutional law relevant to the application of this Constitution and the law of the Republic.

(3) Four judges of the Constitutional Court shall be appointed from among the judges of the Supreme Court by the President in consultation with the Cabinet and with the Chief Justice.

(4) Subject to subsection (5), six judges of the Constitutional Court shall be appointed by the President in consultation with the Cabinet and after consultation with the President of the

Constitutional Court: Provided that not more than two persons may be appointed from the category of persons referred to in subsection (2) (c) (ii).

(5) (a) Subject to subsection (6), an appointment or appointments under section 97 (2) or subsection (4) or (7) of this section shall only be made from the recommendations of the Judicial Service Commission, and with due regard to its reasons for such recommendations, of not more than three nominees in excess of the number of persons required to be appointed: Provided that in respect of the first appointment after the commencement of this Constitution of the six judges referred to in subsection (4), the Judicial Service Commission shall submit a list of ten nominees.

(b) If the appointing authorities decide not to accept any or some of such recommendations, the Judicial Service Commission shall be informed thereof and be furnished with the reasons therefor.

(c) After having been informed in terms of paragraph (b), the Judicial Service Commission shall, in accordance with paragraph (a), submit further recommendations, whereafter the appointing authorities shall make the appointment or appointments from the recommendations as supplemented in terms of this paragraph.

(d) In submitting its recommendations to the appointing authorities in terms of paragraphs (a) and (c) the Judicial Service Commission shall have regard to the need to constitute a court which is independent and competent and representative in respect of race and gender.

(6) Subsection (5) shall not apply to the first appointment after the commencement of this Constitution of the President of the Constitutional Court under section 97 (2).

(7) Vacancies in the Constitutional Court shall be filled-

(a) in the case of a vacancy in the office of a judge appointed under subsection (3), in accordance with that subsection; and

(b) in the case of a vacancy in the office of a judge appointed under subsection (4), in accordance with that subsection.

100 Engaging the Constitutional Court

(1) The conditions upon which the Constitutional Court may be seized of any matter within its jurisdiction, and all matters relating to the proceedings of and before the Court, shall be regulated by rules prescribed by the President of the Constitutional Court in consultation with the Chief Justice, which rules shall be published in the Gazette.

(2) The rules of the Constitutional Court may make provision for direct access to the Court where it is in the interest of justice to do so in respect of any matter over which it has jurisdiction.

101 Supreme Court

(1) There shall be a Supreme Court of South Africa, which shall consist of an Appellate Division and such provincial and local divisions, and with such areas of jurisdiction, as may be prescribed by law.

(2) Subject to this Constitution, the Supreme Court shall have the jurisdiction, including the inherent jurisdiction, vested in the Supreme Court immediately before the commencement of this Constitution, and any further jurisdiction conferred upon it by this Constitution or by any law.

(3) Subject to this Constitution, a provincial or local division of the Supreme Court shall, within its area of jurisdiction, have jurisdiction in respect of the following additional matters, namely-

(a) any alleged violation or threatened violation of any fundamental right entrenched in Chapter 3;

(b) any dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state;

(c) any inquiry into the constitutionality of any law applicable within its area of jurisdiction, other than an Act of Parliament, irrespective of whether such law was passed or made before or after the commencement of this Constitution;

(d) any dispute of a constitutional nature between local governments or between a local and a provincial government;

(e) any dispute over the constitutionality of a Bill before a provincial legislature, subject to section 98 (9);

(f) the determination of questions whether any matter falls within its jurisdiction; and

(g) the determination of any other matters as may be entrusted to it by an Act of Parliament.

(4) For the purposes of exercising its jurisdiction under subsection (3), a provincial or local division of the Supreme Court shall have the powers of the Constitutional Court in terms of section 98 (5), (6), (7), (8) and (9) relating to the interpretation, protection and enforcement of this Constitution.

(5) The Appellate Division shall have no jurisdiction to adjudicate any matter within the jurisdiction of the Constitutional Court.

(6) If the parties to a matter falling outside the additional jurisdiction of a provincial or local division of the Supreme Court in terms of subsection (3), agree thereto, a provincial or local division shall, notwithstanding any provision to the contrary, have jurisdiction to determine such matter: Provided that a provincial or local division shall not acquire jurisdiction in terms of this subsection with regard to any matter referred to in section 102

(12).

102 Procedural matters

(1) If, in any matter before a provincial or local division of the Supreme Court, there is an issue which may be decisive for the case, and which falls within the exclusive jurisdiction of the Constitutional Court in terms of section 98 (2) and (3), the provincial or local division concerned shall, if it considers it to be in the interest of justice to do so, refer such matter to the Constitutional Court for its decision: Provided that, if it is necessary for evidence to be heard for the purposes of deciding such issue, the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring the matter to the Constitutional Court.

(2) If, in any matter before a local or provincial division, there is any issue other than an issue referred to the Constitutional Court in terms of subsection (1), the provincial or local division shall, if it refers the relevant issue to the Constitutional Court, suspend the proceedings before it, pending the decision of the Constitutional Court.

(3) If, in any matter before a provincial or local division, there are both constitutional and other issues, the provincial or local division concerned shall, if it does not refer an issue to the Constitutional Court, hear the matter, make findings of fact which may be relevant to a constitutional issue within the exclusive jurisdiction of the Constitutional Court, and give a decision on such issues as are within its jurisdiction.

(4) An appeal shall lie to the Appellate Division against a decision of a provincial or local division in terms of subsection (3).

(5) If the Appellate Division is able to dispose of an appeal brought in terms of subsection (4), without dealing with any constitutional issue that has been raised, it shall do so.

(6) If it is necessary for the purposes of disposing of the said appeal for the constitutional issue to be decided, the Appellate Division shall refer such issue to the Constitutional Court for its decision.

(7) The Chief Justice and the President of the Constitutional Court shall jointly make rules to facilitate the procedure for dealing with appeals in which there are both constitutional and other issues, which may provide for the constitutional issues to be referred to the Constitutional Court before or after any such appeal has been heard by the Appellate Division.

(8) If any division of the Supreme Court disposes of a matter in which a constitutional issue has been raised and such court is of the opinion that the constitutional issue is of such public importance that a ruling should be given thereon, it may, notwithstanding the fact that the matter has been disposed of, refer such issue to the Constitutional Court for a decision.

(9) When a constitutional issue has been referred to the Constitutional Court by a division of the Supreme Court in terms of subsection (8), the Minister responsible for the administration of justice shall, at the request of the President of the Constitutional Court, appoint counsel to argue such constitutional issue.

(10) If the validity of a law is in dispute in any matter, and a relevant government is not a party to the proceedings, it shall be entitled to intervene as a party before the court in question, or shall be entitled to submit written argument to the said court.

(11) Appeals to the Appellate Division and the Constitutional Court shall be regulated by law, including the rules of such courts, which may provide that leave of the court from which the appeal is brought, or to which the appeal is noted, shall be required as a condition for such appeal.

(12) Appeals arising from matters referred to in section 101 (3) and which relate to issues of constitutionality shall lie to the Constitutional Court.

(13) If a dispute arises between organs of state (other than a dispute referred to in section 101 (3) (d)) regarding the question whether or not any executive or administrative act or conduct or any threatened executive or administrative act or conduct of one of those organs is consistent with this Constitution, the organ disputing the validity of the act or conduct may apply to a provincial or local division to refer the question of the validity of such act or conduct to the Constitutional Court for its decision.

(14) If the provincial or local division concerned is of the opinion that the act or conduct or threatened act or conduct referred to in subsection (13) may be unconstitutional, it shall refer the matter to the Constitutional Court.

(15) If evidence is necessary for the purpose of deciding a matter referred to in subsections (13) and (14), the provincial or local division concerned shall hear such evidence and make a finding thereon, before referring such matter to the Constitutional Court.

(16) A decision not to refer a matter to the Constitutional Court in terms of subsection (14), shall be appealable to the Constitutional Court.

(17) If, in any matter before a provincial or local division, the only issue raised is a constitutional issue within the exclusive jurisdiction of the Constitutional Court in terms of section 98 (2) and (3), a refusal to refer such issue to the Constitutional Court shall be appealable to the Constitutional Court.

103 Other courts

(1) The establishment, jurisdiction, composition and functioning of all other courts shall be as prescribed by or under a law.

(2) If in any proceedings before a court referred to in subsection (1), it is alleged that any law or provision of such law is invalid on the ground of its inconsistency with a provision of this Constitution, the court shall, subject to the other provisions of this section, decide the matter on the assumption that the law or provision is valid.

(3) If in any proceedings before a court referred to in subsection (1), the presiding officer is of the opinion that it is in the interest of justice to do so, he or she may postpone the proceedings to enable the party who has alleged that a relevant law or provision is invalid, to apply to a provincial or local division of the Supreme Court for relief in terms of subsection (4).

(4) If the provincial or local division hearing an application referred to in subsection (3), is of the opinion that a decision regarding the validity of the law or provision is material to the adjudication of the matter before the court referred to in subsection (1), and that there is a reasonable prospect that the relevant law or provision will be held to be invalid, and that it is in the interest of justice to do so, the provincial or local division shall-

(a) if the issue raised is within its jurisdiction, deal with such issue itself, and if it is in the exclusive jurisdiction of the Constitutional Court, refer it to the Constitutional Court for its decision after making a finding on any evidence which may be relevant to such issue; and

(b) suspend the proceedings before the court referred to in subsection (1) pending the decision of the provincial or local division or the Constitutional Court, as the case may be.

104 Appointment, removal from office and remuneration of judges

(1) Judges of the Supreme Court shall be fit and proper persons appointed by the President acting on the advice of the Judicial Service Commission.

(2) Judges of the Constitutional Court and the Supreme Court shall receive such remuneration as may be prescribed by or under law, and their remuneration shall not be reduced during their continuation in office.

(3) Any judge shall, before commencing to perform the functions of his or her office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before any other judge.

(4) A judge may only be removed from office by the President on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Service Commission and upon receipt of an address from both the National Assembly and the Senate praying for such removal.

(5) A judge who is the subject of an investigation by the Judicial Service Commission in terms of subsection (4) may be suspended by the President pending such investigation.

105 Judicial Service Commission

(1) There shall be a Judicial Service Commission, which shall, subject to subsection (3), consist of-

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

(b) the President of the Constitutional Court;

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

(d) the Minister responsible for the administration of justice or his or her nominee;

(e) two practising advocates designated by the advocates' profession;

(f) two practising attorneys designated by the attorneys' profession;

(g) one professor of law designated by the deans of all the law faculties at South African universities;

(h) four senators designated en bloc by the Senate by resolution adopted by a majority of at least two-thirds of all its members;

(i) four persons, two of whom shall be practising attorneys or advocates, who shall be designated by the President in consultation with the Cabinet;

(j) on the occasion of the consideration of matters specifically relating to a provincial division of the Supreme Court, the Judge President of the relevant division and the Premier of the relevant province.

(2) The functions of the Judicial Service Commission shall be-

(a) to make recommendations regarding the appointment, removal from office, term of office and tenure of judges of the Supreme Court in terms of section 104;

(b) to make recommendations regarding the removal from office of judges of the Constitutional Court in terms of section 104 (4); and

(c) to advise the national and provincial governments on all matters relating to the judiciary and the administration of justice.

(3) When the Commission performs its functions in terms of subsection (2) (c), it shall sit without the four senators referred to in subsection (1) (h).

(4) The Commission shall determine its own procedure, provided

that the support of at least an ordinary majority of all its members shall be required for its decisions.

(5) The Commission may appoint committees from among its number and assign any of its powers and functions to such committee.

106 Seats of Constitutional Court and Appellate Division

(1) The seat of the Constitutional Court shall be Johannesburg.

(2) The seat of the Appellate Division of the Supreme Court shall be Bloemfontein.

107 Languages

(1) A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.

(2) The record of the proceedings of a court shall, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished.

108 Attorneys-General

(1) The authority to institute criminal prosecutions on behalf of the state shall vest in the attorneys-general of the Republic.

(2) The area of jurisdiction, powers and functions of an attorney-general shall be as prescribed by or under law.

(3) No person shall be appointed as an attorney-general unless

he or she is appropriately qualified in terms of a law regulating the appointment of attorneys-general in the Republic.

109 Magistrates Commission

There shall be a Magistrates Commission established by law to ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against magistrates, take place without favour or prejudice, and that the applicable laws and administrative directives in this regard are applied uniformly and properly, and to ensure that no victimization or improper influencing of magistrates occurs.

CHAPTER 8

THE PUBLIC PROTECTOR, HUMAN RIGHTS COMMISSION, COMMISSION ON GENDER ISSUES AND RESTITUTION OF LAND RIGHTS

The Public Protector (ss. 110-114)

110 Establishment and appointment

(1) There shall be a Public Protector for the Republic.

(2) The President shall, whenever it becomes necessary, appoint as the Public Protector a person-

(a) nominated by a joint committee of the Houses of Parliament composed of one member of each party represented in Parliament and willing to serve on the committee; and

(b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph (b), the joint committee shall nominate another person.

(3) The first appointment of a person as the Public Protector

after the commencement of this Constitution shall be made within 60 days of the first sitting of the Senate under this Constitution.

(4) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who-

(a) is a Judge of the Supreme Court of South Africa; or

(b) is qualified to be admitted as an advocate and has, for a cumulative period of at least 10 years after having so qualified-

(i) practised as an advocate or an attorney; or

(ii) lectured in law at a university; or

(c) has specialised knowledge of or experience for a period of at least 10 years in the administration of justice, public administration or public finance.

(5) Unless the new constitutional text provides otherwise, the Public Protector shall hold office for a period of seven years.

(6) The remuneration and other terms and conditions of employment of the Public Protector shall be as prescribed by or under an Act of Parliament, and such remuneration shall not be reduced, nor shall such terms and conditions be adversely altered, during his or her term of office.

(7) The Public Protector shall not perform remunerative work outside his or her official duties.

(8) The Public Protector may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence, determined by a joint committee of the Houses of Parliament, composed as provided in subsection (2) (a), and upon receipt of an address from both the National Assembly and the Senate requesting such removal.

(9) A Public Protector who is the subject of an investigation by a joint committee in terms of subsection (8), may be suspended by the President pending a decision in such investigation.

111 Independence and impartiality

(1) The Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.

(2) The Public Protector and the persons appointed in terms of section 113 (1) shall have such immunities and privileges as may be assigned to them by or under an Act of Parliament for the purpose of ensuring the independent and impartial exercise and performance of their powers and functions.

(3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with the Public Protector or a person appointed under section 113 in the exercise and performance of his or her powers and functions.

(4) All organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Public Protector in the exercise and performance of his or her powers and functions.

112 Powers and functions

(1) The Public Protector shall, in addition to any powers and functions assigned to him or her by any law, be competent-

(a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged-

(i) maladministration in connection with the affairs of government at any level;

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue

delay by a person performing a public function;

(iii) improper or dishonest act, or omission or corruption, with respect to public money;

(iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;

(b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by-

(i) mediation, conciliation or negotiation;

(ii) advising, where necessary, any complainant regarding appropriate remedies; or

(iii) any other means that may be expedient in the circumstances; or

(c) at any time prior to, during or after an investigation-

(i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or

(ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting

therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.

(2) Nothing in subsection (1) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.

(3) The Public Protector shall conduct an investigation under subsection (1) with due regard to the circumstances of each case, and shall for the purposes of such investigation, in addition to such powers as may be prescribed by law, but subject to the provisions of this Constitution and the law of privilege, be competent to-

(a) direct any person to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which, in the opinion of the Public Protector, has a bearing on the matter being inquired into, and may examine such person for that purpose; and

(b) enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as he or she may deem necessary, and seize anything on those premises which in his or her opinion has a bearing on the purpose of the investigation.

(4) The Public Protector or any member of his or her staff shall be competent, but not compellable, to answer questions in any proceedings in or before a court of law or any body or institution established by or under any law, in connection with any information which in the course of his or her investigation has come to his or her knowledge.

(5) Recourse to, or the exercise and performance of any powers and functions of, the Public Protector shall not oust the jurisdiction of a court of law to hear any matter or cause whatsoever.

(6) The Public Protector shall report in writing on his or her

activities to Parliament at least once every year.

113 Staff and expenditure

(1) The Public Protector may appoint, on such terms and conditions of service as may be determined by or under a law, such persons as may be necessary for the discharge of the work of the office of the Public Protector.

(2) The Public Protector may delegate any of his or her powers or functions to persons referred to in subsection (1) subject to such conditions as may be determined by or under a law.

(3) Expenditure incidental to the exercise and performance of the powers and functions of the Public Protector in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament.

114 Provincial public protectors

(1) A provincial legislature may, subject to subsections (2) and (3), by law provide for the establishment, appointment, powers and functions of a provincial public protector and for matters in connection therewith.

(2) A provincial law referred to in subsection (1) shall not in any way derogate from the powers and functions of the Public Protector.

(3) A provincial public protector shall be appointed by the Premier of a province in consultation with the Public Protector, provided that the appointment shall be confirmed by resolution of a majority of at least two-thirds of all the members of the provincial legislature.

(4) A provincial public protector shall exercise and perform his or her powers and functions in consultation with the Public Protector, who shall have concurrent jurisdiction in the provinces.

Human Rights Commission (ss. 115-118)

115 Establishment and appointments

(1) There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.

(2) The members of the Commission shall be appointed as provided in subsection (3) and vacancies in the Commission shall be filled accordingly.

(3) The President shall, whenever it becomes necessary, appoint as a member of the Commission a person-

(a) nominated by a joint committee of the Houses of Parliament composed of one member of each party represented in Parliament and willing to participate in the committee; and

(b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph (b), the joint committee shall nominate another person.

(4) The first members of the Commission after the commencement of this Constitution, shall be appointed within 60 days of the first sitting of the Senate under this Constitution.

(5) A Chairperson and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number.

116 Powers and functions

(1) The Commission shall, in addition to any powers and

functions assigned to it by law, be competent and be obliged to-

(a) promote the observance of, respect for and the protection of fundamental rights;

(b) develop an awareness of fundamental rights among all people of the Republic;

(c) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and this Constitution, as well as appropriate measures for the further observance of such rights;

(d) undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; and

(e) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights.

(2) If the Commission is of the opinion that any proposed legislation might be contrary to Chapter 3 or to norms of international human rights law which form part of South African law or to other relevant norms of international law, it shall immediately report that fact to the relevant legislature.

(3) The Commission shall be competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of fundamental rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an

appropriate forum.

117 Staff and expenditure

(1) The Commission shall appoint a director, who shall be the chief executive officer of the Commission and who shall be empowered to appoint staff subject to the approval of the Commission and on such terms and conditions of service as may be determined by or under an Act of Parliament.

(2) Expenditure incidental to the exercise and performance of the powers and functions of the Commission in terms of this Constitution or any other law shall be defrayed from money appropriated by Parliament.

118 Reports

The Commission shall report to the President at least once every year on its activities, and the President shall cause such report to be tabled promptly in the National Assembly and the Senate.

Commission on Gender Equality (ss. 119-120)

119 Establishment

(1) There shall be a Commission on Gender Equality, which shall consist of a chairperson and such number of members as may be determined by an Act of Parliament.

(2) The Commission shall consist of persons who are fit and proper for appointment, South African citizens and broadly representative of the South African community.

(3) The object of the Commission shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women.

120 Composition and functioning

The Act of Parliament referred to in section 119 shall provide for the composition, powers, functions and functioning of the Commission on Gender Issues and for all other matters in connection therewith.

Restitution of Land Rights (ss. 121-123)

121 Claims

(1) An Act of Parliament shall provide for matters relating to the restitution of land rights, as envisaged in this section and in sections 122 and 123.

(2) A person or a community shall be entitled to claim restitution of a right in land from the state if-

(a) such person or community was dispossessed of such right at any time after a date to be fixed by the Act referred to in subsection (1); and

(b) such dispossession was effected under or for the purpose of furthering the object of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8 (2), had that section been in operation at the time of such dispossession.

(3) The date fixed by virtue of subsection (2) (a) shall not be a date earlier than 19 June 1913.

(4) (a) The provisions of this section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act 63 of 1975), or any other law incorporating by reference that Act, or the provisions of that Act with regard to compensation, if just and equitable compensation as contemplated in section 123 (4) was paid in respect of such expropriation.

(b) In this section 'Expropriation Act, 1975' shall include

any expropriation law repealed by that Act.

(5) No claim under this section shall be lodged before the passing of the Act contemplated in subsection (1).

(6) Any claims under subsection (2) shall be subject to such conditions, limitations and exclusions as may be prescribed by such Act, and shall not be justiciable by a court of law unless the claim has been dealt with in terms of section 122 by the Commission established by that section.

112 Commission

(1) The Act contemplated in section 121 (1) shall establish a Commission on Restitution of Land Rights, which shall be competent to-

(a) investigate the merits of any claims;

(b) mediate and settle disputes arising from such claims;

(c) draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court; and

(d) exercise and perform any such other powers and functions as may be provided for in the said Act.

(2) The procedures to be followed for dealing with claims in terms of this section shall be as prescribed by or under the said Act.

123 Court orders

(1) Where a claim contemplated in section 121 (2) is lodged with a court of law and the land in question is-

(a) in the possession of the state and the state

certifies that the restoration of the right in question is feasible, the court may, subject to subsection (4), order the state to restore the relevant right to the claimant; or

(b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (4), order the state to purchase or expropriate such land and restore the relevant right to the claimant.

(2) The court shall not issue an order under subsection (1) (b) unless it is just and equitable to do so, taking into account all relevant factors, including the history of the dispossession, the hardship caused, the use to which the property is being put, the history of its acquisition by the owner, the interests of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under subsection (1) (b) shall be subject to the payment of compensation calculated in the manner provided for in section 28 (3).

(3) If the state certifies that any restoration in terms of subsection (1) (a) or any acquisition in terms of subsection (1) (b) is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (4), order the state, in lieu of the restoration of the said right-

(a) to grant the claimant an appropriate right in available alternative state-owned land designated by the state to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;

(b) to pay the claimant compensation; or

(c) to grant the claimant any alternative relief.

(4) (a) The compensation referred to in subsection (3) shall be determined by the court as being just and equitable, taking into account the circumstances which prevailed at the time of the

dispossession and all such other factors as may be prescribed by the Act referred to in section 121 (1), including any compensation that was paid upon such dispossession.

(b) If the court grants the claimant the relief contemplated in subsection (1) or (3), it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.

CHAPTER 9

PROVINCIAL GOVERNMENT (s 124)

124 Establishment of provinces

(1) The following provinces are hereby established, which for the purposes of this Constitution, but subject to subsection (2), shall be recognised as the provinces of the Republic:

(a) Eastern Cape;

(b) Eastern Transvaal;

(c) Natal;

(d) Northern Cape;

(e) Northern Transvaal;

(f) North-West;

(g) Orange Free State;

(h) Pretoria-Witwatersrand-Vereeniging; and

(i) Western Cape:

Provided that Parliament shall at the request of a provincial

legislature alter the name of a province in accordance with the request of such legislature.

(2) The areas of the respective provinces shall be as defined in Part 1 of Schedule 1: Provided that the establishment of the Northern Cape as a separate province, the establishment in the area of the Eastern Cape of one province, and the inclusion of the areas specified in paragraphs (a) to (f) and (i) to (n) of Part 2 of Schedule 1 within the provinces as defined in Part 1 of Schedule 1, shall be subject to alteration in accordance with this section.

(3) (a) A referendum may be held in terms of this section in each of the areas specified in paragraphs (a) to (n) of Part 2 of Schedule 1 (hereinafter referred to as an affected area) to determine the views of the voters ordinarily resident in such area regarding an issue referred to in subsection (5) or (6).

(b) A referendum referred to in paragraph (a) shall be held in an affected area within three months of the lodging with the Secretary to Parliament of a petition signed by persons entitled to vote and ordinarily resident in such area.

(c) The number of signatures on such a petition shall be at least equal in number to such percentage of the votes recorded in terms of subsection (4) in respect of the affected area in question, as may be determined by the Independent Electoral Commission.

(d) The Independent Electoral Commission shall not be dissolved in terms of the Independent Electoral Commission Act, 1993 (Act 150 of 1993), after the first election held under this Constitution until it has made a determination in terms of paragraph (c) in respect of all the affected areas.

(e) Such a petition shall be lodged with the Secretary to Parliament within a period of six months of the commencement of this Constitution or a period referred to in subsection (10), whichever period expires first.

(4) In the first election of the National Assembly and the provincial legislatures held under this Constitution, votes cast in each of the affected areas shall be counted separately and recorded for use for the purposes of this section.

(5) Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (e), (f), (g) or (h) of Part 2 of Schedule 1, shall be the determination of the views of voters ordinarily resident in such an area, concerning, as the case may be-

(a) the continued inclusion of the area referred to in the said paragraph (e) in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of Natal;

(b) the continued inclusion of the area referred to in the said paragraph (f) in the provincial territory of Pretoria-Witwatersrand-Vereeniging, or its inclusion in the provincial territory of the Eastern Transvaal;

(c) the continued existence of the area referred to in the said paragraph (g) as one province, or its division into two separate provinces on either side of the line forming the eastern boundaries of the districts of Venterstad, Steynsburg, Hofmeyr, Tarka, Fort Beaufort, Albany and Bathurst; or

(d) the continued existence of the area referred to in the said paragraph (h) as a separate province, or its discontinuance as a separate province, in which event those districts of the said area north of the Orange River shall be included in the provincial territory of the North-West, and those districts south of the Orange River shall be included in the provincial territory of the Western Cape:

Provided that in the case of a referendum regarding an issue referred to in-

(i) paragraphs (a) and (b) of this subsection, a

majority of votes cast shall be required to sanction the inclusion of the areas in question in the provincial territories of Natal or the Eastern Transvaal, as the case may be;

(ii) paragraph (c) of this subsection, a majority of at least 60 per cent of the votes cast in either of the two blocks mentioned in paragraph (g) of Part 2 of Schedule 1 shall be required to sanction the division of the said area into two separate provinces; and

(iii) paragraph (d) of this subsection, a majority of at least 60 per cent of the votes cast shall be required to sanction the discontinuance of the Northern Cape as a separate province.

(6) Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (a), (b), (c), (d), (i), (j), (k), (l), (m) or (n) of Part 2 of Schedule 1, shall be the determination of the views of the majority of the voters ordinarily resident in such an area, concerning-

(a) in the case of the area referred to in the said paragraph (a), the continued inclusion of such area in the provincial territory of the Northern Transvaal, or its inclusion in the provincial territory of the Eastern Transvaal;

(b) in the case of the area referred to in the said paragraph (b), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the Western Cape;

(c) in the case of the area referred to in the said paragraph (c), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of the Northern Transvaal;

(d) in the case of the area referred to in the said paragraph (d), the continued inclusion of such area in the provincial territory of the Eastern Cape, or its inclusion in the

provincial territory of Natal;

(e) in the case of the area referred to in the said paragraph (i), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;

(f) in the case of the area referred to in the said paragraph (j), the continued inclusion of such area in the provincial territory of the Orange Free State, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;

(g) in the case of the area referred to in the said paragraph (k), the continued inclusion of such area in the provincial territory of the Western Cape, or its inclusion in the provincial territory of the Northern Cape;

(h) in the case of the area referred to in the said paragraph (l), the continued inclusion of such area in the provincial territory of Natal, or its inclusion in the provincial territory of the Eastern Cape;

(i) in the case of the area referred to in the said paragraph (m), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the North-West; or

(j) in the case of the area referred to in the said paragraph (n), the continued inclusion of such area in the provincial territory of the North-West, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging.

(7) (a) The Independent Electoral Commission shall be competent to make regulations or give directions concerning the implementation of this section, including-

(i) the formulation of the question to be put before the electorate in any particular referendum;

(ii) the determination of the sequence of referendums with reference to a province in respect of which more than one petition contemplated in subsection (3) (e) or (10) is received;

(iii) the drawing up and registering of party lists for an affected area;

(iv) the identification of persons entitled to vote in a referendum or election held in terms of this section;

(v) procedures relating to the drawing up of petitions for the purposes of this section; and

(vi) any other matters which it considers necessary for such implementation.

(b) This subsection shall come into operation on the date of promulgation of this Constitution.

(8) A party or parties representing a majority of voters in an affected area may within a period of one month of the date of the first election under this Constitution of members of the provincial legislature of the province within which such area falls in terms of Part 1 of Schedule 1, petition the Independent Electoral Commission to publish a notice in terms of subsection (9).

(9) If a petition is lodged with the Independent Electoral Commission in terms of subsection (8), requesting that an affected area be altered as contemplated in subsection (5) or (6), and the Independent Electoral Commission is satisfied that the petition has the support of a party or parties representing a majority of voters in that affected area, it shall forthwith cause to be published in the Gazette, notice of the fact that it has received such a petition.

(10) Within five months of the date of publication of a notice referred to in subsection (9) a petition may be lodged with the Secretary to Parliament, calling for a referendum contemplated in subsection (3) to be held in the area in respect of which such

notice was published.

(11) If a petition for a referendum as provided for in subsection (10) is lodged with the Secretary to Parliament, the petition lodged with the Independent Electoral Commission under subsection (8) will lapse, and the result of the referendum in respect of such area will be decisive.

(12) If a petition for a referendum as provided for in subsection (10) is not lodged with the Secretary to Parliament within the period referred to in that subsection, the Independent Electoral Commission shall, upon the expiry of that prescribed period, forthwith cause to be published in the Gazette, notice of that fact, and the alteration contemplated in the notice published in terms of subsection (9) shall thereupon be implemented in accordance with subsection (13).

(13) (a) For the purpose of implementing an alteration in terms of subsection (12), or an alteration pursuant to a referendum held in terms of subsection (3), the Independent Electoral Commission shall, if it considers it necessary to do so as a result of an alteration to be made, give directions concerning-

(i) the establishment of a new provincial legislature or the reconstitution of an existing provincial legislature;

(ii) the holding of an election of a new or reconstituted provincial legislature;

(iii) the allocation of seats within such new or reconstituted provincial legislature; and

(iv) the names of the persons who will become or remain members of such provincial legislature.

(b) The Independent Electoral Commission shall for the purposes of any directions under paragraph (a) have regard to-

(i) representations made to it by political parties who

will or may be affected by any such directions;

(ii) party lists compiled by parties for the purpose of the election of the provincial legislatures which will be dissolved or reconstituted;

(iii) party lists compiled pursuant to any regulation made or directions given by it in terms of subsection (7);

(iv) the provisions of Schedule 2 (without necessarily being bound thereby in regard to the sequence in which seats are to be awarded or forfeited); and

(v) all other factors which in its opinion are relevant to such directions:

Provided that if it is of the opinion that any particular alteration does not require an existing provincial legislature to be reconstituted, it may direct that notwithstanding such alteration, such provincial legislature shall not be reconstituted.

(c) If a Premier, member of the Executive Council of a province, senator or other officer has been elected, appointed or nominated in terms of this Constitution by the members of any provincial legislature affected by directions given by the Independent Electoral Commission in terms of paragraph (a), the Independent Electoral Commission may also give directions that new elections, appointments or nominations be made, in which event such elections, appointments or nominations shall be carried out in accordance with this Constitution, and within such times as the Independent Electoral Commission may prescribe.

(14) The President shall by proclamation in the Gazette, to take effect on such date as may be determined by the Independent Electoral Commission, amend subsection (1) and Schedule 1 to give effect to any alteration made in terms of this section.

(15) Notwithstanding the provisions of section 62, Parliament

may by a majority of votes in each House, effect consequential amendments to this Constitution arising out of any alterations to provinces or provincial boundaries, or directions given by the Independent Electoral Commission in terms of this section.

Provincial Legislative Authority (ss. 125-143)

125 Provincial legislature

(1) There shall be a legislature for each province.

(2) The legislative authority of a province shall, subject to this Constitution, vest in the provincial legislature, which shall have the power to make laws for the province in accordance with this Constitution.

(3) Laws made by a provincial legislature shall, subject to any exceptions as may be provided for by an Act of Parliament, be applicable only within the territory of the province.

126 Legislative competence of provinces

(1) A provincial legislature shall, subject to subsections (3) and (4), have concurrent competence with Parliament to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6.

(2) The legislative competence referred to in subsection (1), shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

(3) An Act of Parliament which deals with a matter referred to in subsection (1) or (2) shall prevail over a provincial law inconsistent therewith, only to the extent that-

(a) it deals with a matter that cannot be regulated effectively by provincial legislation;

(b) it deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic;

(c) it is necessary to set minimum standards across the nation for the rendering of public services;

(d) it is necessary for the determination of national economic policies, the maintenance of economic unity, the protection of the environment, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security; or

(e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.

(4) An Act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.

(5) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that, they are, expressly or by necessary implication, inconsistent with each other.

(6) A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws or in respect of which an Act of Parliament prevails over a provincial law in terms of subsection (3).

127 Composition of provincial legislatures

(1) A provincial legislature shall consist of not fewer than 30 and not more than 100 members elected in accordance with the system of proportional representation of voters provided for in

Schedule 2 and the Electoral Act, 1993.

(2) The number of seats in a provincial legislature shall, subject to subsection (1), be determined in accordance with Schedule 2.

(3) The members of a provincial legislature shall be elected from provincial lists of party candidates for the province in question.

128 Duration and dissolution of provincial legislatures

(1) A provincial legislature, as constituted in terms of an election of such legislature under this Constitution, shall, subject to subsection (2), continue for five years as from the date of such election, at the expiry of which it shall be dissolved.

(2) If during the period referred to in subsection (1) a provincial legislature is dissolved in terms of section 154 (1) or

(3) (c) or 162, the provincial legislature as constituted then, shall continue for the period up to the day immediately preceding the commencement of polling for the election of the provincial legislature held in pursuance of such dissolution.

(3) Notwithstanding any dissolution of a provincial legislature-

(a) every person who at the date of the dissolution is a member of the provincial legislature shall remain a member thereof;

(b) the provincial legislature shall remain competent to perform its functions; and

(c) the Premier of the province shall be competent to summon the provincial legislature by proclamation in the Provincial Gazette to an extraordinary sitting for the dispatch of urgent business,

during the period for which the provincial legislature continues in terms of subsection (2) after the dissolution.

129 Elections

(1) If a provincial legislature is dissolved in terms of section 128 (1), 154 (1) or (3) (c) or 162, the Premier of the province shall upon such dissolution, by proclamation in the Provincial Gazette call an election of such legislature, which election shall take place within 90 days after the dissolution of the legislature on a date or dates specified in the proclamation.

(2) An election referred to in subsection (1), shall be conducted in accordance with the Electoral Act, 1993.

130 Sittings of provincial legislature

(1) The Secretary of a provincial legislature shall convene such legislature within seven days after an election of such legislature.

(2) The provincial legislature shall sit during such periods and on such days and during such hours as it may determine: Provided that the Premier of a province may at any time by proclamation in the Provincial Gazette summon the provincial legislature to an extraordinary sitting for the dispatch of urgent business.

131 Speaker and Deputy Speaker of provincial legislature

(1) At its first sitting after it has been convened under section 130 (1), and after the election of the Premier of the province, a provincial legislature with a judge of the Supreme Court designated by the Chief Justice acting as the chairperson, shall elect one of its members to be the Speaker, and shall thereafter elect another of its members to be the Deputy Speaker of such legislature.

(2) The provisions of Schedule 5 and section 41 (3) to (10)

shall apply mutatis mutandis in respect of the Speaker and the Deputy Speaker of a provincial legislature.

132 Qualification for membership of provincial legislatures

(1) No person shall be qualified to become or remain a member of a provincial legislature unless he or she is qualified to become a member of the National Assembly.

(2) A member of a provincial legislature who is elected as the Premier or appointed as a member of the Executive Council of a province shall for the purposes of section 42 (1) (e) be deemed not to hold an office of profit under the Republic.

(3) The provisions of section 40 (2), (3), (4) and (5) shall mutatis mutandis apply to a person nominated as a candidate for election to a provincial legislature, and in any such application a reference in that section to a regional list shall be construed as a reference to a provincial list as contemplated in Schedule 2.

133 Vacation of seats and filling of vacancies

(1) A member of a provincial legislature shall vacate his or her seat if he or she-

(a) ceases to be eligible to be a member of the provincial legislature in terms of section 132;

(b) ceases to be a member of the party which nominated him or her as a member of the provincial legislature;

(c) resigns his or her seat by submitting his or her resignation in writing to the Secretary of the provincial legislature;

(d) absents himself or herself voluntarily from sittings of the provincial legislature for 30 consecutive sitting days, without having obtained the leave of the provincial legislature in accordance with the rules and orders; or

(e) becomes a member of the National Assembly or the Senate.

(2) The provisions of section 44 (1) and (2) shall apply mutatis mutandis in respect of the filling of vacancies in a provincial legislature, and in any such application a reference to-

(a) the National Assembly shall be construed as a reference to a provincial legislature; and

(b) a list of party candidates shall be construed as a reference to a list referred to in section 127 (3).

(3) A nomination in terms of this section shall be submitted in writing to the Speaker of the provincial legislature in question.

134 Oath or affirmation by members

Every member of a provincial legislature, before taking his or her seat, shall make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a member nominated under section 133, before the Speaker of the provincial legislature.

135 Powers, privileges and immunities of provincial legislatures and benefits of members

(1) A provincial legislature shall have full power to control, regulate and dispose of its internal affairs and shall have all such other powers, privileges and immunities as may, subject to this Constitution, be prescribed by a law of such legislature.

(2) Subject to the rules and orders of a provincial legislature there shall be freedom of speech and debate in or before such legislature and any committee thereof, and such freedom

shall not be impeached or questioned in any court.

(3) A member of a provincial legislature shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to such legislature or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to such legislature or any committee thereof.

(4) There shall be paid out of and as a charge on the Provincial Revenue Fund of a province to a member of the legislature of that province such salary and allowances, and upon his or her retirement, or to his or her widow or widower upon his or her death, such pension and pension benefits, as may be prescribed by a law of the provincial legislature.

136 Penalty for sitting or voting when disqualified

Any person who in terms of this Constitution is disqualified to sit as a member of a provincial legislature and who, while so disqualified and knowing that he or she is so disqualified, sits or votes as such a member, shall be liable to a penalty determined by the rules and orders for each day on which he or she so sits or votes, which may be recovered for credit of the Provincial Revenue Fund concerned by action in a court of law.

137 Rules and orders

(1) A provincial legislature may make rules and orders in connection with the conduct of its business and proceedings.

(2) The provisions of section 58 shall apply mutatis mutandis in respect of a provincial legislature.

138 Quorum

The presence of at least one third or, when a vote is taken on a Bill, of at least one half of all the members of the provincial

legislature other than the Speaker or other presiding member, shall be necessary to constitute a sitting of such legislature.

139 Requisite majorities

Save where otherwise required in this Constitution, all questions before a provincial legislature shall be determined by a majority of votes cast.

140 Assent to Bills

(1) A Bill duly passed by a provincial legislature in accordance with this Constitution shall be assented to by the Premier of the province subject to section 147 (1) (b).

(2) A Bill referred to in subsection (1) to which the Premier has assented and a copy of which he or she has signed, shall upon its promulgation be a law of the provincial legislature in question.

141 Signature and enrolment of provincial laws

(1) A law of a provincial legislature referred to in section 140 (2) shall be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and copies of the law so enrolled shall be conclusive evidence of the provisions of such law.

(2) In the case of a conflict between copies of a law enrolled in terms of subsection (1), the copy signed by the Premier shall prevail.

(3) The public shall have the right of access to copies of a law so enrolled, subject to such laws as may be passed by Parliament to protect the safety and durability of the said copies and with due regard to the convenience of the Registrar's staff.

142 Public access to provincial legislatures

Sittings of a provincial legislature shall be held in public, and the public, including the media, shall have access to such sittings: Provided that reasonable measures may be taken to regulate such access, and to provide for the search of and, where appropriate, the refusal of entry or the removal of any person.

143 Administration of provincial legislatures

(1) For the purposes of setting up a provisional administration of a provincial legislature, the Transitional Executive Council shall as soon as possible after the commencement of this Constitution appoint for each provincial legislature a provisional secretary, who shall hold office as Secretary until an appointment is made in terms of subsection (2).

(2) The Executive Council of a province shall after consultation with the Commission on Provincial Government appoint a Secretary and such other staff as may be necessary for the discharge of the work of such legislature.

(3) Persons appointed under this section shall be remunerated out of and as a charge on the Provincial Revenue Fund of the province.

Provincial Executive Authority (ss. 144-154)

144 Executive authority of provinces

(1) The executive authority of a province shall vest in the Premier of the province, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution.

(2) A province shall have executive authority over all matters in respect of which such province has exercised its legislative competence, matters assigned to it by or under section 235 or any law, and matters delegated to it by or under any law.

145 Election of Premiers

(1) (a) The provincial legislature of a province shall at its first sitting after it has been convened in terms of section 130 (1), elect one of its members as the Premier of the province.

(b) A provincial legislature shall thereafter, as often as it again becomes necessary to elect a Premier, elect one of its members as the Premier of the province.

(c) The provisions of Schedule 5 shall apply mutatis mutandis in respect of the election of the Premier of a province.

(2) A judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over an election referred to in subsection (1).

(3) The election of a Premier in terms of subsection (1) (b) shall take place at a time and on a date fixed by the judge so designated: Provided that-

(a) if such election of a Premier is occasioned by reason of a dissolution of the provincial legislature, it shall take place within 14 days after the election of the provincial legislature held in pursuance of such dissolution; or

(b) if such election of a Premier is occasioned by reason of a vacancy in the office of Premier, it shall take place within 30 days after the vacancy arose.

146 Tenure of and removal from office of Premiers

(1) The Premier of a province elected in terms of section 145 (1) shall, subject to subsection (2) and section 154(2), hold office-

(a) for the period referred to in section 128 (1); or

(b) if the provincial legislature is dissolved during such period, for the period until such dissolution,

and shall thereafter remain in office until a Premier has been elected in terms of section 145 (1) (b) after the dissolution and has assumed office.

(2) The Premier of a province shall cease to hold office on a resolution adopted by the provincial legislature by a majority of at least two-thirds of all its members and impeaching the Premier on the ground of a serious violation of this Constitution or the other laws of the Republic or the province in question, or of misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions in accordance with section 147.

147 Responsibilities, powers and functions of Premiers

(1) The Premier of a province shall be responsible for the observance of the provisions of this Constitution and all other laws by the executive of the province, and shall be competent to exercise and perform the following powers and functions, namely-

(a) to assent to, sign and promulgate Bills duly passed by the provincial legislature;

(b) in the event of a procedural shortcoming in the legislative process, to refer a Bill passed by the provincial legislature back for further consideration by such legislature;

(c) to convene meetings of the Executive Council;

(d) to appoint commissions of enquiry;

(e) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any other law; and

(f) to proclaim referenda and plebiscites in terms of

this Constitution or a provincial law.

(2) The Premier of a province shall exercise and perform all powers and functions assigned to him or her by this Constitution or any other law, except those specified in subsection (1) or where otherwise expressly or by implication provided in this Constitution, in consultation with the Executive Council of the province: Provided that the Executive Council may delegate its consultation function in terms of this subsection, with reference to any particular power or function of the Premier, to any member or members of the Executive Council.

148 Acting Premiers

(1) The Premier of a province shall appoint one of the members of the Executive Council of the province to act as Premier during his or her absence or temporary incapacity.

(2) Should it be necessary that an Acting Premier be appointed and the Premier is absent or unable to make such an appointment, or if the office of Premier is vacant, the other members of the Executive Council shall make such appointment.

(3) An Acting Premier shall while acting as Premier have all the powers and functions vested in the office of Premier.

149 Executive Councils

(1) The Executive Council of a province shall consist 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 Executive Council, shall be entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the provincial legislature relative to the number of seats held by the other participating parties.

(3) Executive Council portfolios shall for the purposes of subsection (2) be allocated mutatis mutandis in accordance with the formula set out in paragraphs (a) to (e) of section 88 (3), to the respective participating parties.

(4) The Premier of a province shall after consultation with the leaders of the participating parties-

(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 this 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 he or she is requested to do so by the leader of the party of which the relevant member of the Executive Council is a member; or

(ii) if it becomes necessary for the purposes of this 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) shall be implemented in the spirit underlying the concept of a government of national unity, and the Premier and the other functionaries concerned shall for the purposes of subsection (4) endeavour 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 shall prevail;

(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 shall prevail; 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 shall prevail.

(6) If any determination of portfolio allocations is varied under subsection (4) (c), the affected members of the Executive Council shall vacate their portfolios but shall be eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.

(7) The Premier or a member of the Executive Council shall, before formally assuming office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before a judge of the Supreme Court designated by the Chief Justice for this purpose.

(8) No member of an Executive Council may take up any other paid employment, engage in activities inconsistent with his or her membership of the Executive Council, or expose himself or herself to any situation which carries with it the risk of a conflict between his or her responsibilities as a member of the Executive Council and his or her private interests.

(9) No member of the Executive Council shall use his or her position as such, or directly or indirectly use information entrusted confidentially to him or her in such capacity, to enrich himself or herself or any other person.

(10) There shall be paid out of and as a charge on the Provincial Revenue Fund of a province to the Premier or a member of

an Executive Council of such province such salary and allowances, and upon his or her retirement, or to his or her widow or widower upon his or her death, such pension and pension benefits, as may be prescribed by a law of the provincial legislature.

150 Executive Council procedure

(1) Meetings of the Executive Council shall be presided over by the Premier.

(2) The Executive Council shall function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

151 Temporary assignment of powers and functions to Executive Council members

Whenever a member of an Executive Council of a province is absent or for any reason unable to exercise and perform any of the powers and functions assigned to him or her, or whenever a member of an Executive Council has vacated his or her office and a successor has not yet been appointed, the Premier may appoint any other member of the Council to act in the said member's stead, either generally or in the exercise or performance of any specific power or function.

152 Transfer of powers and functions from one member to another member

(1) The Premier of a province may assign the administration of a law which is entrusted to any particular member of the Executive Council or which entrusts to any particular member of the Council any power or function, to any other member of the Council.

(2) Any reference in such a law to a particular member of the Executive Council as the member to whom the administration of such a law is entrusted, shall upon the assignment under subsection (1)

of the administration of such a law to another member of the Council, be construed as a reference to the latter.

153 Accountability of members of Executive Councils

(1) A member of an Executive Council of a province shall be accountable individually both to the Premier and the provincial legislature of the province for the administration of the portfolio allocated to him or her, and all members of an Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.

(2) A member of an Executive Council shall administer his or her portfolio in accordance with the policy determined by the Executive Council.

(3) If a member of an Executive Council of a province fails to administer his or her portfolio in accordance with the policy of the Executive Council, the Premier of the province may require the member concerned to bring the administration of the portfolio into conformity with such policy.

(4) If the member concerned fails to comply with a requirement of the Premier under subsection (3), the Premier may, 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 such member's party, remove the member from office.

154 Votes of no confidence

(1) If a provincial legislature passes a vote of no confidence in the Executive Council, including the Premier, the Premier shall, unless he or she resigns, dissolve such legislature and call an election in accordance with section 129.

(2) If a provincial legislature passes a vote of no confidence in the Premier, but not in the other members of the Executive

Council, the Premier shall resign.

(3) If a provincial legislature passes a vote of no confidence in the Executive Council, excluding the Premier, the Premier may-

(a) resign;

(b) reconstitute the Executive Council in accordance with section 149 (4); or

(c) dissolve such legislature and call an election in accordance with section 129.

(4) The Premier shall where required, or where he or she elects, to do so in terms of this section, dissolve the provincial legislature by proclamation in the Provincial Gazette within 14 days of the vote of no confidence.

Provincial Finance and Fiscal Affairs (ss. 155-159)

155 Provinces' share of revenue collected nationally

(1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to exercise and perform its powers and functions.

(2) The equitable share of revenue referred to in subsection

(1) shall consist of-

(a) a percentage, as fixed by an Act of Parliament, of income tax on individuals which is collected within the province;

(b) a percentage, as fixed by an Act of Parliament, of value-added tax or other sales tax which is collected within the province; and

(c) other conditional or unconditional allocations out of national revenue to a province.

(3) The percentages referred to in subsection (2) (a) and (b) shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission.

(4) Allocations referred to in subsection (2) (c) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account-

(a) the provision that has to be made for interest and other payments in respect of the national debt; and

(b) the different fiscal capacities, including the revenues derived from sources referred to in subsection (2) (a) and (b), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and

(c) the legitimate needs and interests of the national government; and

(d) the recommendations of the Financial and Fiscal Commission.

156 Levying of taxes by provinces

(1) A province may levy taxes, surcharges or levies other than of a kind referred to in section 155 (2) (a) or (b), provided that-

(a) it is authorised to do so by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission on the draft text of any such Act have been submitted to and considered by Parliament; and

(b) there is no discrimination against non-residents of

that province who are South African citizens.

(2) A provincial legislature shall not be entitled to levy taxes detrimentally affecting national economic policies, inter-provincial commerce or the national mobility of goods, services, capital and labour.

(3) A provincial legislature shall be competent to enact legislation authorising the imposition of user charges: Provided that-

(a) the criteria to be taken into account in raising such charges may be regulated by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament; and

(b) they do not discriminate against non-residents of that province who are South African citizens.

157 Raising of loans by provinces

(1) A province-

(a) shall, subject to subsection (2), not be competent to raise loans for current expenditure; and

(b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of norms and conditions prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.

(2) Loans referred to in subsection (1) (a) may be raised for bridging finance during a fiscal year, subject to the condition that they shall be redeemed in that same fiscal year and subject to such further conditions as may be prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal

Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.

(3) A province may not guarantee a loan unless-

(a) the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given; and

(b) the giving of the guarantee has been approved by a resolution of Parliament.

158 Revenue allocations by national government

Revenue allocations made by the national government-

(a) to a provincial or local government shall be made through an appropriation Act; and

(b) to a local government shall ordinarily be made through the provincial government of the province in which the local government is situated.

159 Provincial Revenue Funds

(1) There is hereby established in the administration of each province a Provincial Revenue Fund, into which shall be paid all revenue raised by or accruing to the provincial government.

(2) No money may be withdrawn from a Provincial Revenue Fund otherwise than by virtue of an appropriation made in accordance with a law of the provincial legislature concerned.

Provincial Constitutions (ss. 160-162)

160 Adoption of provincial constitutions

(1) The provincial legislature shall be entitled to pass a constitution for its province by a resolution of a majority of at least two-thirds of all its members.

(2) A provincial legislature may make such arrangements as it deems appropriate in connection with its proceedings relating to the drafting and consideration of a provincial constitution.

(3) A provincial constitution shall not be inconsistent with-

(a) a provision of this Constitution, including this Chapter and the Constitutional Principles set out in Schedule 4; and

(b) a provision of the new constitutional text.

(4) The text of a provincial constitution passed by a provincial legislature, or any provision thereof, shall be of no force and effect unless the Constitutional Court has certified that none of its provisions is inconsistent with a provision referred to in subsection (3) (a), and if the new constitutional text is then already passed, also with a provision of the new constitutional text.

(5) A decision of the Constitutional Court in terms of subsection (4) certifying that the text of a provincial constitution is not inconsistent with the said provisions, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.

161 Development of provincial constitutional dispensation

(1) The development of a system of provincial government shall receive the priority attention of the Constitutional Assembly, and in this regard it shall take into consideration any recommendations of the Commission on Provincial Government and any comments thereon by the respective provincial governments.

(2) Any recommendations of the Commission to the Constitutional Assembly shall include draft provisions for inclusion in the new constitutional text in so far as they relate to matters falling

within the ambit of the Commission's object in terms of section 164.

(3) The Constitutional Assembly shall deal with such draft provisions in the same manner as it is required in terms of this Constitution to deal with other constitutional proposals.

(4) Draft provisions recommended by the Commission which are not adopted by the Constitutional Assembly shall lapse, except if the Constitutional Assembly by resolution of a majority of the members present and voting refers the recommended provisions back to the Commission for further consideration.

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

162 Election of new provincial governments

A provincial government may at any time after the commencement of a provincial constitution contemplated in section 160 or of the constitutional dispensation contemplated in section 161, petition the Constitutional Assembly to dissolve its provincial legislature and to call an election for the establishment of a new provincial legislature and executive authority in that province.

Commission on Provincial Government (ss. 163-173)

163 Establishment of Commission on Provincial Government

There is hereby established a Commission on Provincial Government consisting of not less than 10 and not more than 15 members appointed by the President subject to section 165.

164 Object and functions of Commission

(1) The object of the Commission is to facilitate the establishment of provincial government, and the Commission shall for the achievement of that object be competent-

(a) to advise the Constitutional Assembly on the development of a constitutional dispensation with regard to provincial systems of government;

(b) to advise the national government or a provincial government on the establishment and consolidation of administrative institutions and structures in a province or on any matter arising out of the application of section 124; and

(c) to make recommendations to the national government or a provincial government on the rationalisation of statutory enactments or public sector resources directed at the introduction and maintenance of an effective system of provincial government.

(2) Advice to the Constitutional Assembly in terms of subsection (1) (a), shall include recommendations in the form of draft constitutional provisions regarding-

(a) the finalisation of the number and the boundaries of the provinces of the Republic;

(b) the constitutional dispensations of such provinces, including the constitutional structures within such provinces as well as the method of their election and their authority, functions and procedures;

(c) measures, including transitional measures, that provide for the phasing in of new provincial constitutional dispensations;

(d) the final delimitation of powers and functions between national and provincial institutions of government, with due regard to the criteria that are set out in subsection (3);

(e) fiscal arrangements between the institutions of

national government and those of the provincial governments;

(f) the powers and functions of local governments; and

(g) any matter which the Commission considers to be relevant or ancillary to its functions.

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

(a) the provisions of this Constitution;

(b) the Constitutional Principles set out in Schedule 4;

(c) historical boundaries, including those set out in Part 1 of Schedule 1, former provincial boundaries, magisterial district boundaries and infrastructures;

(d) administrative considerations, including the availability or non-availability of infrastructures and nodal points for service;

(e) the need to rationalise existing structures;

(f) cost-effectiveness of government, administration and the delivery of services;

(g) the need to minimise inconvenience;

(h) demographic considerations;

(i) economic viability;

(j) developmental potential; and

(k) cultural and language realities.

(1) The members of the Commission shall be appointed by the President within 30 days of the commencement of this Constitution.

(2) Unless the President otherwise determines, the members of the Commission shall be appointed in a full-time capacity.

(3) At least one member of the Commission shall be appointed from each province with the concurrence of the Premier of the province.

(4) A member of the Commission shall perform his or her functions fairly, impartially and independently.

(5) A member appointed in a full-time capacity shall not perform or commit himself or herself to perform remunerative work outside his or her functions as a member of the Commission.

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

166 Chairperson and Deputy Chairperson

(1) The President shall designate one of the members of the Commission as the Chairperson and another as the Deputy Chairperson.

(2) (a) If the Chairperson is absent or unable to perform his or her functions as chairperson, or when there is a vacancy in the office of Chairperson, the Deputy Chairperson shall act as Chairperson, and if both the Chairperson and the Deputy Chairperson are absent or unable to perform the functions of the Chairperson, the Commission shall elect another member to act as Chairperson.

(b) While acting as Chairperson the Deputy Chairperson or such member may exercise the powers and shall perform the functions of the Chairperson.

167 Vacation of office and filling of vacancies

(1) A member of the Commission shall vacate his or her office if he or she resigns or if he or she becomes disqualified in terms of section 165 to hold office or is removed from office under subsection (2).

(2) A member of the Commission may be removed from office by the President only on the grounds of misbehaviour, incapacity or incompetence established by a judge of the Supreme Court after an enquiry.

(3) If a member of the Commission ceases to hold office, the President may, subject to section 165, appoint a person to fill the vacancy.

168 Meetings of Commission

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

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

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

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

169 Committees

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

(2) The Commission shall designate one of the members of a committee as chairperson thereof, and if any such chairperson is

absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

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

(a) delegate any power granted to it by or under section 164 to such a committee; and

(b) authorise such a committee to perform any function assigned to the Commission by section 164.

(4) The Commission shall not be divested of a power so delegated and the performance of a function so authorised, and may amend or withdraw any decision of a committee.

170 Co-option of persons to committees

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

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

171 Remuneration of members of Commission and other persons

Members of the Commission and persons referred to in section 170 who are not in the employment of the state, shall be paid, from moneys appropriated by Parliament for the purpose, such remuneration and allowances as the Minister responsible for national financial affairs may determine.

172 Appointment of staff

The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration,

and may, in consultation with the Public Service Commission, determine the remuneration and conditions of service of staff members who are not public servants seconded to the service of the Commission.

173 Regulations

The President may make regulations-

(a) prescribing procedures in connection with any function of the Commission or a committee thereof;

(b) prohibiting conduct aimed at influencing or attempting to influence the Commission or any committee or member thereof and prescribing penalties for any contravention of such a prohibition; and

(c) prescribing any other matter in connection with the achievement of the object of the Commission.

CHAPTER 10

LOCAL GOVERNMENT (ss. 174-180)

174 Establishment and status of local government

(1) Local government shall be established for the residents of areas demarcated by law of a competent authority.

(2) A law referred to in subsection (1) may make provision for categories of metropolitan, urban and rural local governments with differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions and other factors which justify or necessitate such categories.

(3) A local government shall be autonomous and, within the limits prescribed by or under law, shall be entitled to regulate its affairs.

(4) Parliament or a provincial legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.

(5) Proposed legislation which materially affects the status, powers or functions of local governments or the boundaries of their jurisdictional areas, shall not be introduced in Parliament or a provincial legislature unless it has been published for comment in the Gazette or the Provincial Gazette, as the case may be, and local governments and interested persons, including organised local government, have been given a reasonable opportunity to make written representations in regard thereto.

175 Powers and functions of local government

(1) The powers, functions and structures of local government shall be determined by law of a competent authority.

(2) A local government shall be assigned such powers and functions as may be necessary to provide services for the maintenance and promotion of the well-being of all persons within its area of jurisdiction.

(3) A local government shall, to the extent determined in any applicable law, make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health services, education, housing and security within a safe and healthy environment, provided that such services and amenities can be rendered in a sustainable manner and are financially and physically practicable.

(4) A local government shall have the power to make by-laws not inconsistent with this Constitution or an Act of Parliament or an applicable provincial law.

(5) A local government shall have such executive powers as to

allow it to function effectively.

(6) A local government may, in its discretion, by means of a resolution of its council provide for the assignment of specified functions to local bodies or submunicipal entities within its area of jurisdiction as prescribed and regulated by or under law where, in the opinion of the council, such assignment of functions will facilitate or enhance the provision or administration of services, the adherence to municipal bylaws or, more generally, good governance in the public interest: Provided that such assignment of functions-

(a) shall not be inconsistent with an Act of Parliament or an applicable provincial law; and

(b) shall not diminish the accountability of such local government.

176 Council resolutions

Matters before the council of a local government pertaining to-

(a) the budget of the local government, shall be decided by a resolution of the council adopted by a majority of at least two-thirds of all its members; and

(b) town planning, shall be decided by a resolution of the council adopted by at least a majority of all its members: Provided that a council may delegate the power to make decisions on matters pertaining to town planning to the executive committee or to a committee appointed for this purpose: Provided further that section 177 shall apply mutatis mutandis to the appointment and functioning of a committee appointed for this purpose.

177 Executive committees

A council of a local government shall elect, according to a system of proportional representation as may be prescribed by a

law, from among its members, an executive committee to exercise such powers and perform such functions as may be determined by such council: Provided that-

(a) the council shall determine the number of members of and the quorum for the executive committee;

(b) the executive committee shall endeavour to exercise its powers and perform its functions on the basis of consensus among its members; and

(c) if consensus on any matter cannot be achieved, such matter may be decided by the committee by resolution of a majority of at least two-thirds of all its members, or the committee may, if a majority of the committee so decides, submit a report and recommendation (if any) on the matter to the council for a decision.

178 Administration and finance

(1) A local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.

(2) A local government shall, subject to such conditions as may be prescribed by law of a competent legislature after taking into consideration any recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its functions: Provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction.

(3) A local government shall be entitled to an equitable allocation by the provincial government of funds, and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations, taking into account the different categories

of local government referred to in section 174(2).

179 Elections

(1) A local government shall be elected democratically, and such election shall take place in terms of an applicable law and at intervals of not less than three and not more than five years: Provided that the first local government elections after the commencement of this Constitution shall take place on the same day.

(2) The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a law referred to in subsection (1).

(3) Subject to section 6, every natural person shall be entitled to vote in an election of a local government if he or she-

(a) is ordinarily resident within the area of jurisdiction of that local government or is under law liable for the payment of property rates, rent, service charges or levies to that local government; and

(b) is registered as a voter on the voters' role of that local government.

(4) A voter shall not have more than one vote per local government.

(5) No person shall be qualified to become or remain a member of a local government if he or she-

(a) is not eligible to vote in terms of subsection (3);

(b) is a member of the National Assembly or the Senate;

(c) is not qualified to become a member of the National Assembly;

(d) is an employee of a local government (unless, with due regard to the public interest, exemption of this disqualification is given by the Executive Council of the province in which the local government is situated and proof of such exemption accompanies the nomination of such person); or

(e) is disqualified in terms of any other law.

180 Code of conduct

An enforceable code of conduct for members and officials of local governments shall be provided for by law.

CHAPTER 11

TRADITIONAL AUTHORITIES (ss. 181-184)

181 Recognition of traditional authorities and indigenous law

(1) A traditional authority which observes a system of indigenous law and is recognised by law immediately before the commencement of this Constitution, shall continue as such an authority and continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority.

(2) Indigenous law shall be subject to regulation by law.

182 Traditional authorities and local government

The traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government referred to in Chapter 10, shall ex officio be entitled to be a member of that local government, and shall be eligible to be elected to any office of such local government.

183 Provincial House of Traditional Leaders

(1) (a) The legislature of each province in which there are traditional authorities and their communities, shall establish a House of Traditional Leaders consisting of representatives elected or nominated by such authorities in the province.

(b) Draft legislation providing, subject to this Chapter, for the establishment, the composition, the election or nomination of representatives, and the powers and functions of a House contemplated in paragraph (a), and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of such a House, shall be introduced in a provincial legislature not later than six months after the election of the first Premier of such province in terms of this Constitution.

(c) The traditional authorities resident in a province shall before the introduction of draft legislation referred to in paragraph (b), be consulted, in a manner determined by resolution of the provincial legislature, to establish their views on the content of such legislation.

(2) (a) A House referred to in subsection (1) (a), shall be entitled to advise and make proposals to the provincial legislature or government in respect of matters relating to traditional authorities, indigenous law or the traditions and customs of traditional communities within the province.

(b) Any provincial Bill pertaining to traditional authorities, indigenous law or such traditions and customs, or any other matters having a bearing thereon, shall be referred by the Speaker of the provincial legislature to the House for its comments before the Bill is passed by such legislature.

(c) The House shall, within 30 days as from the date of such referral, indicate by written notification to the provincial legislature its support for or opposition to the Bill, together with any comments it wishes to make.

(d) If the House indicates in terms of paragraph (c) that it is opposed to the Bill, the provincial legislature shall not pass the Bill before a period of 30 days as from the date of receipt by the Speaker of such written notification has lapsed.

(e) If the House fails to indicate within the period prescribed by paragraph (c) whether it supports or opposes the Bill, the provincial legislature may proceed with the Bill.

184 Council of Traditional Leaders

(1) There is hereby established a Council of Traditional Leaders consisting of a chairperson and 19 representatives elected by traditional authorities in the Republic.

(2) The Chairperson and members of the Council shall be elected by an electoral college constituted by the members of the Houses of Traditional Leaders referred to in section 183.

(3) (a) Draft legislation providing, subject to this Chapter, for the composition, the election of representatives and the powers and functions of the Council established by subsection (1), and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of the Council, shall be introduced in Parliament not later than six months as from the commencement of this Constitution.

(b) Section 183 (1) (c) shall apply mutatis mutandis in respect of draft legislation referred to in paragraph (a) of this subsection, and in such application a reference therein to a provincial legislature shall be construed as a reference to Parliament.

(4) The Council shall, in addition to any other powers and functions assigned to it by any other law, be competent-

(a) to advise and make recommendations to the national government with regard to any matter pertaining to traditional

authorities, indigenous law or the traditions and customs of traditional communities anywhere in the Republic, or any other matters having a bearing thereon; and

(b) at the request of the President, to advise him or her on any matter of national interest.

(5) (a) Any parliamentary Bill pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities or any other matters having a bearing thereon, shall, after having been passed by the House in which it was introduced but before it is passed by the other House, be referred by the Secretary to Parliament to the Council for its comments.

(b) The Council shall, within 30 days as from the date of such referral, indicate by written notification to the Secretary to Parliament its support for or opposition to the Bill, together with any comments it wishes to make.

(c) If the Council indicates in terms of paragraph (b) its opposition to the Bill, the other House shall not pass the Bill before a period of 30 days as from the date of receipt by the said Secretary of such written notification has lapsed.

(d) If the Council fails to indicate within the period prescribed by paragraph (b) whether it supports or opposes the Bill, Parliament may proceed with the Bill.

CHAPTER 12

FINANCE

General Financial Affairs (ss. 185-195)

185 National Revenue Fund

(1) There is hereby established a National Revenue Fund, into

which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by an Act of Parliament in accordance with this Constitution: Provided that revenue to which a province is entitled in terms of section 155 (2) (a) and (b) shall form a direct charge against the National Revenue Fund to be credited to the respective Provincial Revenue Funds.

186 Annual budget

The Minister responsible for national financial affairs shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of revenue and expenditure, which shall, inter alia, reflect capital and current expenditure of the government for that year.

187 Procurement administration

(1) The procurement of goods and services for any level of government shall be regulated by an Act of Parliament and provincial laws, which shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.

(2) The tendering system referred to in subsection (1) shall be fair, public and competitive, and tender boards shall on request give reasons for their decisions to interested parties.

(3) No organ of state and no member of any organ of state or any other person shall improperly interfere with the decisions and operations of the tender boards.

(4) All decisions of any tender board shall be recorded.

188 Guarantees by national government

The national government may not guarantee any provincial or local government loan, unless-

(a) the guarantee complies with the norms and conditions for such a guarantee as set out in an Act of Parliament; and

(b) the Financial and Fiscal Commission has made a recommendation concerning compliance of the guarantee concerned with such norms and conditions.

189 Special pensions

(1) Provision shall be made by an Act of Parliament for the payment of special pensions by the national government to-

(a) persons who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order, including members of any armed or military force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a political organisation; or

(b) dependants of such persons.

(2) The Act of Parliament referred to in subsection (1) shall prescribe the qualifications of a beneficiary of a special pension referred to in subsection (1), the conditions for the granting thereof and the manner of the determination of the amount of such pension, taking into account all relevant factors, including, inter alia, any other remuneration or pension received by such beneficiary.

190 Income tax of elected representatives

Without derogating from the Receiver of Revenue's powers and functions, the Receiver of Revenue shall annually assess the income tax returns of all elected representatives at all levels of

government.

Auditor-General (ss. 191-194)

191 Establishment and appointment

(1) There shall be an Auditor-General for the Republic.

(2) The President shall whenever it becomes necessary appoint as Auditor-General a person-

(a) nominated by a joint committee of the Houses of Parliament, composed of one member of each party represented in Parliament and willing to participate in the committee; and

(b) approved by the National Assembly and the Senate by resolution adopted, without debate, by a majority of at least two-thirds of the members present and voting at a joint meeting:

Provided that if any nomination is not approved as required in paragraph (b), the joint committee shall nominate another person.

(3) The Auditor-General shall be a South African citizen who is a fit and proper person to hold such office and who shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

(4) Unless the new constitutional text provides otherwise, the Auditor-General shall be appointed for a period of not less than five years and not more than ten years and shall not thereafter be eligible for re-appointment.

(5) If the Auditor-General is absent or unable to exercise and perform his or her powers and functions, or if the office of Auditor-General is vacant, the highest ranking member of the Auditor-General's staff shall act as Auditor-General until the vacancy is filled, and shall for that purpose have all the powers and functions of the Auditor-General.

(6) The remuneration and other conditions of service of the Auditor-General shall be as prescribed by or under an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(7) The Auditor-General shall not perform remunerative work outside his or her official duties.

(8) The Auditor-General shall not hold office in any political party or political organisation.

(9) The Auditor-General may be removed from office by the President, but only on the grounds of misconduct, incapacity or incompetence determined by a joint committee of the Houses of Parliament composed as provided for in subsection (2) (a), and upon receipt of a request for such removal made by Parliament in pursuance of a resolution to that effect adopted at a joint sitting of the National Assembly and the Senate.

(10) An Auditor-General who is the subject of an investigation by a joint committee in terms of subsection (9), may be suspended by the President pending a decision in such investigation.

(11) The Auditor-General may at any time resign, subject to his or her conditions of service, by lodging his or her resignation in writing with the President.

192 Independence and impartiality

(1) The Auditor-General shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed under section 194 (1) shall have such immunities and privileges as may be assigned to them by or under an Act of Parliament for the purpose of ensuring the independent and impartial exercise and performance of their powers and functions.

(3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with the Auditor-General or a person appointed under section 194 (1) in the exercise or performance of his or her powers or functions.

(4) All organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the exercise and performance of his or her powers and functions.

193 Powers and functions

(1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial level of government, other than that of the office of Auditor-General, and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets.

(2) The Auditor-General shall audit and report on all the accounts and financial statements of any local government, board, fund, institution, company, corporation or other organisation established or constituted by or under any law and of which the accounts and financial statements are required in terms of a law to be audited by the Auditor-General, and the accounts and financial statements of all persons in the employment of such a body who have been entrusted by it with its assets, or any other assets.

(3) The Auditor-General shall also, at the request of the President or Parliament, conduct performance audits.

(4) The Auditor-General may, whenever he or she considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

(5) No further duties or functions may be imposed upon or

assigned to the Auditor-General other than by means of an Act of Parliament.

(6) Whenever the Auditor-General or a person appointed in terms of section 194 (1) exercises or performs his or her powers and functions in terms of this Constitution, he or she shall have access to all books, records and other documents and information relating to the accounts and financial statements referred to in this section.

(7) The Auditor-General shall report on the accounts examined by him or her and submit such reports to the authorities designated by an Act of Parliament to receive them, and, unless otherwise provided by an Act of Parliament, such reports or a report by the Auditor-General on any other matter shall be submitted to Parliament within seven days after receipt thereof by such authority.

(8) The Auditor-General shall make public any report referred to in subsection (7) after the expiry of a period of 14 days from the date on which such report was submitted to the authorities concerned.

194 Staff and expenditure

(1) The Auditor-General may appoint, in accordance with a law, such persons as may be necessary for the discharge of the work of the office of the Auditor-General.

(2) The Auditor-General may, subject to such conditions as may be prescribed by or under a law, delegate any of his or her powers to a person referred to in subsection (1), or authorise such a person to perform any function of the Auditor-General.

(3) Expenditure incurred during the exercise and performance of the powers and functions of the Auditor-General in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament for such purpose and from fees raised or money obtained in a manner authorised by an Act of Parliament.

South African Reserve Bank (ss. 195-197)

195 Central Bank

The South African Reserve Bank, established and regulated by an Act of Parliament, shall be the central bank of the Republic.

196 Primary objectives

(1) The primary objectives of the South African Reserve Bank shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its functions independently, subject only to an Act of Parliament referred to in section 197: Provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

197 Powers and functions

The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks, which powers and functions shall be determined by an Act of Parliament and shall be exercised or performed subject to such conditions as may be prescribed by or under such Act.

Financial and Fiscal Commission (ss. 198-206)

198 Establishment

There is hereby established a Financial and Fiscal Commission.

199 Objects and functions

(1) The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including-

(a) financial and fiscal policies;

(b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;

(c) taxes, levies, imposts and surcharges that a provincial government intends to levy;

(d) the raising of loans by a provincial or local government and the financial norms applicable thereto;

(e) criteria for the allocation of financial and fiscal resources; and

(f) any other matter assigned to the Commission by this Constitution or any other law.

(2) In performing its functions the Commission shall take into consideration, inter alia, the provisions of section 155 (4) (b) and any other provision of this Constitution.

200 Constitution, expertise and impartiality

(1) The Commission shall consist of-

(a) a chairperson and deputy chairperson, appointed by the President in consultation with the Cabinet;

(b) a person designated by each of the various Executive

Councils of the provinces, who shall be appointed by the President;
and

(c) seven members appointed by the President on the advice of the Cabinet, at least one of whom shall have expertise in local government finance.

(2) The first appointment of members of the Commission shall be effected within 60 days from the date of commencement of this Constitution.

(3) No person shall be qualified to be appointed to the Commission unless he or she-

(a) is a South African citizen; and

(b) is a person who, by reason of his or her training and experience, has expertise in economics, public finance, public administration, taxation, management or accountancy.

(4) (a) Unless the new constitutional text provides otherwise, a member of the Commission may be removed from office only by the President and only on account of misconduct, incapacity or incompetence.

(b) The President shall within 14 days after the removal from office of a member of the Commission, notify Parliament and the provincial legislatures by message of such removal and of the reasons therefor.

(5) Vacancies in the Commission shall be filled in accordance with the relevant provisions of this section under which the former member concerned was appointed.

(6) The chairperson and the deputy chairperson shall be appointed for a period of five years, and the other members of the Commission for a period of two years, but shall be eligible for re-appointment.

(7) A member of the Commission shall perform his or her duties fairly, impartially and independently.

(8) The chairperson and deputy chairperson shall not perform or commit himself or herself to perform remunerative work outside his or her official duties.

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

(10) It shall be an offence to influence or attempt to influence a member of the Commission to act otherwise than in accordance with the provisions of subsection (7).

(11) The chairperson and deputy chairperson-

(a) shall be the only full-time members of the Commission;

(b) shall be the chief executive officer and deputy chief executive officer, respectively, of the Commission.

201 Meetings of Commission

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

(b) If both the chairperson and deputy chairperson are absent from a meeting, the members present shall elect one from among their number to act as chairperson.

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

(3) A decision of two-thirds of the members present shall constitute a decision of the Commission.

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

202 Committees

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

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

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

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

(i) delegate any power conferred upon it by or under section 199 to such a committee; and

(ii) grant authority that a function assigned to it by or under section 199 may be performed by such a committee.

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

203 Co-option of persons by committees

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

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

204 Remuneration and allowances of members and other persons

Members of the Commission and persons referred to in section 203 who are not in the employment of the state, shall be paid, from money appropriated by Parliament for that purpose, such remuneration and allowances as the Minister responsible for national financial affairs may determine.

205 Appointment of staff

(1) The Commission may appoint staff and accept secondment of staff as it may deem necessary in consultation with the Public Service Commission.

(2) Expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament.

206 Regulations

The President may make regulations regarding-

(a) procedures in connection with the performance of any function of the Commission; and

(b) any other matter in connection with the achievement of the objects of the Commission.

Commission on Remuneration of Representatives (ss. 207-208)

207 Establishment

(1) There shall be established by an Act of Parliament a Commission on Remuneration of Representatives.

(2) The Commission shall make recommendations to Parliament, the provincial legislatures and local governments regarding the nature, extent and conditions of the remuneration and allowances of

the members of all elected legislative bodies of the national government and of provincial and local governments, including members of the Provincial Houses of Traditional Leaders and the Council of Traditional Leaders.

208 Composition and functioning

(1) The composition, structure, powers, functions and procedures of the Commission and related matters shall be provided for in the Act referred to in section 207.

(2) Reports by the Commission shall be tabled in Parliament: Provided that the Commission shall report to Parliament on its activities at least once every year.

CHAPTER 13

PUBLIC SERVICE COMMISSION AND PUBLIC SERVICE

Public Service Commission (ss. 209-211)

209 Establishment

(1) There shall be a Public Service Commission for the Republic, which shall have the powers and functions entrusted to it by this Constitution or by a law of a competent authority.

(2) The Commission shall in respect of the exercise and performance of its powers and functions be accountable to Parliament.

210 Powers and functions

(1) The Commission shall be competent-

(a) to make recommendations, give directions and conduct enquiries with regard to-

(i) the organisation and administration of

departments and the public service;

(ii) the conditions of service of members of the public service and matters related thereto;

(iii) personnel practices in the public service, appointments, promotions, transfers, discharge and other career incidents of members of the public service and matters in connection with the employment of personnel;

(iv) the promotion of efficiency and effectiveness in departments and the public service; and

(v) a code of conduct applicable to members of the public service;

(b) when so requested, to advise the President, a Minister or a member of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by Parliament or a provincial legislature;

(c) to exercise such other powers and perform such other functions as may be entrusted to it by a law of a competent authority; and

(d) subject to any limitation imposed by law, to delegate any of its powers to a member of the Commission or an official in the public service or authorise any such member or official to perform any of its functions.

(2) Until amended by law, the powers and functions of the Commission set out in subsection (1) shall be exercised and performed in accordance with the laws in force at the commencement of this Constitution.

(3) A recommendation or direction of the Commission shall be implemented by the appropriate person or institution within six months unless-

(a) such recommendation or direction involves expenditure from public funds and the approval of the treasury for such expenditure is not obtained; or

(b) the President rejects it and refers it back to the Commission before its implementation.

(4) The Commission may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of its work.

(5) Expenditure incurred in connection with the exercise and the performance of the powers and functions of the Commission in terms of this Constitution or any other law shall be defrayed from money appropriated by Parliament and from fees raised or money obtained in a manner authorised by an Act of Parliament.

(6) On the recommendation of the Commission the President may assign by proclamation in the Gazette any power or function of the Commission to a provincial service commission.

(7) The Commission shall annually submit a report on its activities to Parliament.

211 Composition

(1) (a) The Commission shall consist of not fewer than three members and not more than five members appointed by the President, one of whom shall be designated as the Chairperson of the Commission by the President.

(b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently.

(c) The remuneration and other conditions of service of a member of the Commission shall be determined in accordance with an

Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(d) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions.

(e) A member of the Commission may be removed from office by the President on account of misconduct, or unfitness for his or her duties, or incapacity to carry them out efficiently, or if, for reasons other than unfitness or incapacity, his or her removal from office will promote efficiency, and particulars of the removal, including the reasons therefor, shall be submitted by the President to Parliament within 14 days after such removal.

(2) A person shall be qualified to be appointed to the Commission if he or she-

(a) is a South African citizen; and

(b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.

(3) The composition, appointment, tenure, vacation of office, conditions of service and functioning of the Commission shall be as determined by Act of Parliament, and such Act shall ensure the independence and impartiality of the Commission and the efficient and effective exercise and performance of its powers and functions.

The Public Service (s 212)

212. (1) There shall be a public service for the Republic, structured in terms of a law to provide effective public administration.

(2) Such public service shall-

(a) be non-partisan, career-orientated and function according to fair and equitable principles;

(b) promote an efficient public administration broadly representative of the South African community;

(c) serve all members of the public in an unbiased and impartial manner;

(d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning and terms and conditions of service;

(e) loyally execute the policies of the government of the day in the performance of its administrative functions; and

(f) be organised in departments and other organisational components, and the head of such department or organisational component shall be responsible for the efficient management and administration of his or her department or organisational component.

(3) Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law for employment in such service.

(4) In the making of any appointment or the filling of any post in the public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.

(5) Subsection (4) shall not preclude measures to promote the objectives set out in subsection (2).

(6) Provision shall be made by law for a pension for a member of the public service by means of a pension fund or funds

established by law, and members of the public service who are required by law to be members of a pension fund shall be entitled to fair representation on the body which manages the applicable fund.

(7) (a) In the event of changes to the law governing pension funds which prejudice a member of a fund, the real value of the accrued benefits of such member of a fund, and his or her beneficiary, as represented by the fund's actuarial liability towards the member or his or her beneficiary, shall be maintained.

(b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.

(8) For the purposes of this section the public service shall include the permanent force of the National Defence Force referred to in section 226 (1).

Provincial Service Commissions (s 213)

213. (1) A provincial legislature may provide by law for a provincial service commission and, subject to norms and standards applying nationally, such commission shall, in respect of public servants employed by the province, be competent-

(a) to make recommendations, give directions and conduct inquiries with regard to-

(i) the establishment and organisation of departments of the province;

(ii) appointments, promotions, transfers, discharge and other career incidents of such public servants; and

(iii) the promotion of efficiency and effectiveness in departments of the province;

(b) when so requested, to advise the Premier or a member

of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds wholly or partly appropriated by a provincial legislature;

(c) subject to any limitation imposed by a law, to delegate any of its powers to a member of such commission or official in the public service or authorise any such member or official to perform any of its functions; and

(d) to exercise and perform such other powers and functions of the Public Service Commission assigned to it by the President with the approval of the Premier of the province.

(2) The provisions of sections 210 (2), (3), (4), (5) and (7) and 211 pertaining to the Public Service Commission, shall mutatis mutandis apply to a provincial service commission, except that any reference to an Act of Parliament, Parliament or the President shall be deemed to be a reference to a provincial law, a provincial legislature or the Premier of a province, respectively.

CHAPTER 14

POLICE AND DEFENCE

South African Police Service (ss. 214-223)

214 Establishment

(1) There shall be established and regulated by an Act of Parliament a South African Police Service, which shall be structured at both national and provincial levels and shall function under the direction of the national government as well as the various provincial governments.

(2) The Act of Parliament referred to in subsection (1) shall-

(a) subject to sections 216, 217 and 218, provide for the appointment of a Commissioner of the South African Police Service (hereinafter in this Chapter called the `National Commissioner') and a Commissioner for each province (hereinafter in this Chapter called a `Provincial Commissioner');

(b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding-

(i) the exercise of police powers;

(ii) the recruitment, appointment, promotion and transfer of members of the Service;

(iii) suspension, dismissal, disciplinary and grievance procedures;

(iv) the training, conduct and conditions of service of members of the Service;

(v) the general management, control, maintenance and provisioning of the Service;

(vi) returns, registers, records, documents, forms and correspondence; and

(vii) generally, all matters which are necessary or expedient for the achievement of the purposes of this Constitution.

215 Powers and functions

The powers and functions of the Service shall be-

(a) the prevention of crime;

(b) the investigation of any offence or alleged offence;

(c) the maintenance of law and order; and

(d) the preservation of the internal security of the Republic.

216 Minister and National Commissioner

(1) The President shall, subject to this Constitution, charge a Minister with responsibility for the Service.

(2) (a) The President shall, subject to section 236 (1) and (2), appoint the National Commissioner.

(b) The National Commissioner shall exercise executive command of the Service, subject to section 219 (1) and the directions of the Minister referred to in subsection (1).

(3) The President may, if the National Commissioner has lost the confidence of the Cabinet, institute appropriate proceedings against the Commissioner in accordance with a law.

217 Powers of provinces

(1) The Premier of a province shall charge a member of the Executive Council of the province with responsibility for the performance by the Service in or in regard to that province of the functions set out in section 219 (1).

(2) The member of the Executive Council referred to in subsection (1)-

(a) shall approve or veto the appointment of the relevant Provincial Commissioner in terms of section 218 (1) (b); and

(b) may, if the Provincial Commissioner has lost the confidence of the Executive Council, institute appropriate proceedings against the said Commissioner in accordance with a law.

(3) A provincial legislature may pass laws not inconsistent

with national legislation regarding the functions of the Service set out in section 219 (1).

(4) No provincial law may-

(a) permit lower standards of performance of the functions of the Service than those provided for by an Act of Parliament; or

(b) detract from the rights which citizens have under an Act of Parliament.

218 Responsibilities of National Commissioner

(1) Subject to section 214 and the directions of the Minister referred to in section 216 (1), the National Commissioner shall be responsible for-

(a) the maintenance of an impartial, accountable, transparent and efficient police service;

(b) the appointment of provincial commissioners, subject to section 217 (2) (a);

(c) the preservation of the internal security in the Republic;

(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: Provided that the Act referred to in section 214 (1) shall set out the circumstances which shall be regarded as organised crime and the circumstances which require national investigation and prevention or specialised skills;

(e) international police liaison;

(f) the keeping and provision of crime intelligence data, criminal records and statistics;

(g) the training of members of the Service, including any municipal or metropolitan police services to be established;

(h) the recruitment, appointment, promotion and transfer of all members of the Service;

(i) the provision of forensic laboratory services;

(j) such functions relating to border control and the import and export of goods as may be assigned to the Service by law;

(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: Provided that the Act referred to in section 214 (1) shall provide that the President, in consultation with the Cabinet, may direct the National Commissioner to deploy the said unit in circumstances where the Provincial Commissioner is unable to maintain public order and the deployment of the said unit is necessary to restore public order;

(l) national protection services;

(m) the establishment of a special task force for high risk operations which require specialised skills; and

(n) subject to section 219, such other functions as-

(i) are necessary to achieve the objectives referred to in section 217; and

(ii) are appropriate for the National Commissioner to take responsibility for.

(2) The National Commissioner may after consultation with the Executive Council of the province concerned assign responsibility for any function set out in this section to a Provincial Commissioner: Provided that the National Commissioner shall ensure that sufficient resources are made available to the Provincial

Commissioner for such purpose.

219 Provincial Commissioners

(1) Subject to sections 214 and 218 and the directions of the relevant member of the Executive Council referred to in section 217

(1), a Provincial Commissioner shall be responsible for-

(a) the investigation and prevention of crime;

(b) the development of community-policing services;

(c) the maintenance of public order;

(d) the provision in general of all other visible policing services, including-

(i) the establishment and maintenance of police stations;

(ii) crime reaction units; and

(iii) patrolling services;

(e) protection services in regard to provincial institutions and personnel;

(f) transfers within the province of members of the Service performing functions in terms of this section; and

(g) the promotion, up to the rank of lieutenant-colonel, of members of the Service performing functions in terms of this section.

(2) Subject to sections 214 and 218 and the directions of the National Commissioner, a Provincial Commissioner shall be responsible for-

(a) the maintenance and discipline of the Service in the

province concerned;

(b) the recruitment of members of the Service responsible for the functions set out in subsection (1), and the promotion of any such members to the rank of colonel or above;

(c) such other functions as may be assigned to him or her by the National Commissioner under section 218 (2); and

(d) subject to such procedures or mechanisms as may be established by the Board of Commissioners referred to in section 220(2), the transfer of members of the Service under his or her command to or from positions outside his or her jurisdiction.

220 Co-ordination and co-operation

(1) A committee consisting of the Minister referred to in section 216 (1) and the respective members of the Executive Councils referred to in section 217 (1) shall be established to ensure the effective co-ordination of the Service and effective co-operation between the various Commissioners.

(2) The Act referred to in section 214 (1) shall provide for the appointment of a Board of Commissioners, consisting of the National Commissioner and the Provincial Commissioners and presided over by the National Commissioner or his or her nominee, in order to promote co-operation and co-ordination in the Service.

221 Local policing

(1) The Act referred to in section 214 (1) shall provide for the establishment of community-police forums in respect of police stations.

(2) The functions of community-police forums referred to in subsection (1) may include-

(a) the promotion of accountability of the Service to local communities and co-operation of communities with the Service;

(b) the monitoring of the effectiveness and efficiency of the Service;

(c) advising the Service regarding local policing priorities;

(d) the evaluation of the provision of visible police services, including-

(i) the provision, siting and staffing of police stations;

(ii) the reception and processing of complaints and charges;

(iii) the provision of protective services at gatherings;

(iv) the patrolling of residential and business areas; and

(v) the prosecution of offenders; and

(e) requesting enquiries into policing matters in the locality concerned.

(3) The Act referred to in section 214 (1) shall make provision for the establishment by any local government of a municipal or metropolitan police service: Provided that-

(a) such a police service may only be established with the consent of the relevant member of the Executive Council of the province referred to in section 217 (1);

(b) the powers of such a police service shall be limited to crime prevention and the enforcement of municipal and metropolitan by-laws;

(c) the said member of the Executive Council of the province shall, subject to paragraph (b) and the provisions of the said Act, determine the powers and functions of such a police service; and

(d) the said Act shall provide that its provisions shall, as far as practicable, apply mutatis mutandis to any such police service.

222 Independent complaints mechanism

There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner.

223 Acts of members outside their territorial jurisdiction

(1) No act of a member of the Service shall be invalid solely by reason of the fact that it was committed outside the province in which that member is stationed.

(2) The National Commissioner shall by regulation determine the procedures and the relevant powers of the members of the Service to enable them to perform their functions outside their area of provincial jurisdiction.

National Defence Force (ss. 224-228)

224 Establishment of National Defence Force

(1) The National Defence Force is hereby established as the only defence force for the Republic.

(2) The National Defence Force shall at its establishment consist of all members of-

(a) the South African Defence Force;

(b) any defence force of any area forming part of the national territory; and

(c) any armed force as defined in section 1 of the Transitional Executive Council Act, 1993 (Act 151 of 1993),

and whose names, at the commencement of this Constitution, are included in a certified personnel register referred to in section 16 (3) or (9) of the said Act: Provided that this subsection shall not apply to members of any such defence or armed force if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did not take part in the first election of the National Assembly and the provincial legislatures under this Constitution.

(3) Save for the National Defence Force, no other armed force or military force or armed organisation or service may be established in or for the Republic other than-

(a) as provided for in this Constitution;

(b) a force established by or under an Act of Parliament for the protection of public property or the environment; or

(c) a service established by or under law for the protection of persons or property.

225 Chief of National Defence Force

Subject to section 236 (1) and (2), the President shall appoint a Chief of the National Defence Force, who shall exercise military executive command of the National Defence Force, subject to the directions of the Minister responsible for defence and, during a state of national defence, of the President.

226 Members of National Defence Force

(1) The National Defence Force shall comprise both a permanent force and a part-time reserve component.

(2) The establishment, organisation, training, conditions of service and other matters concerning the permanent force shall be as provided for by an Act of Parliament.

(3) The establishment, organisation, training, state of preparedness, calling up, obligations and conditions of service of the part-time reserve component shall be as provided for by an Act of Parliament.

(4) The National Defence Force shall be established in such a manner that it will provide a balanced, modern and technologically advanced military force, capable of executing its functions in terms of this Constitution.

(5) All members of the National Defence Force shall be properly trained in order to comply with international standards of competency.

(6) No member of the permanent force shall hold office in any political party or political organisation.

(7) A member of the National Defence Force shall be obliged to comply with all lawful orders, but shall be entitled to refuse to execute any order if the execution of such order would constitute an offence or would breach international law on armed conflict binding on the Republic.

(8) Provision shall be made by an Act of Parliament for the payment of adequate compensation to-

(a) a member of the National Defence Force who suffers loss due to physical or mental disability sustained in the execution of his or her duties as such a member; and

(b) the immediate dependants of a member of the National Defence Force who suffer loss due to the death or physical or

mental disability of such a member resulting from the execution of his or her duties as such a member.

227 Functions of National Defence Force

(1) The National Defence Force may, subject to this Constitution, be employed-

(a) for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;

(b) for service in compliance with the international obligations of the Republic with regard to international bodies and other states;

(c) for service in the preservation of life, health or property;

(d) for service in the provision or maintenance of essential services;

(e) for service in the upholding of law and order in the Republic in co-operation with the South African Police Service under circumstances set out in a law where the said Police Service is unable to maintain law and order on its own; and

(f) for service in support of any department of state for the purpose of socio-economic upliftment.

(2) The National Defence Force shall-

(a) exercise its powers and perform its functions solely in the national interest by-

(i) upholding the Constitution;

(ii) providing for the defence of the Republic; and

(iii) ensuring the protection of the inhabitants

of the Republic,

in accordance with this Constitution and any law;

(b) exercise its powers and perform its functions under the directions of the government of the Republic;

(c) refrain from furthering or prejudicing party-political interests;

(d) not breach international customary law binding on the Republic relating to aggression;

(e) in armed conflict comply with its obligations under international customary law and treaties binding on the Republic; and

(f) be primarily defensive in the exercise or performance of its powers and functions.

(3) The employment for service, training, organisation and deployment of the National Defence Force shall be effected in accordance with the requirements of subsection (2).

228 Accountability

(1) The Minister responsible for defence shall be accountable to Parliament for the National Defence Force.

(2) Parliament shall annually approve a budget for the defence of the Republic.

(3) (a) A joint standing committee of Parliament on defence shall be established, consisting of members of all political parties holding more than 10 seats in the National Assembly and willing to participate in the committee.

(b) The total membership of the committee shall be as

determined by or under the rules and orders.

(c) Such a party shall be entitled to designate a member or members on the committee in accordance with the principle of proportional representation and as determined in accordance with the following formula:

(i) A quota of seats per member of the committee shall be determined by dividing the total number of seats in the National Assembly held jointly by all the parties referred to in paragraph (a) by the total number of members of the committee plus one.

(ii) The result, disregarding third and subsequent decimals, if any, shall be the quota of seats per member.

(iii) The number of members that a participating party shall be entitled to designate on the committee, shall be determined by dividing the total number of seats held by such party in the National Assembly by the quota referred to in subparagraph (ii).

(iv) The result shall, subject to subparagraph (v), indicate the number of members that such party is entitled to designate on the committee.

(v) Where the application of the above formula yields a surplus not absorbed by the number of members allocated to a party, such surplus shall compete with other similar surpluses accruing to another party or parties, and any member or members which remain unallocated shall be allocated to the party or parties concerned in sequence of the highest surplus.

(d) The committee shall be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

(4) (a) The President shall, when the National Defence Force

is employed for service referred to in section 227 (1) (a), (b) or (e), forthwith inform Parliament of the reasons for such employment.

(b) If, in the case of such an employment referred to in section 227 (1) (a) or (b), Parliament is not sitting, the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the commencement of such employment, and shall inform the committee of the reasons for such employment.

(5) Parliament may by resolution terminate any employment referred to in section 227 (1) (a), (b) or (e), but such termination of employment shall not affect the validity of anything done in terms of such employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such employment.

CHAPTER 15

GENERAL AND TRANSITIONAL PROVISIONS (ss. 229-251)

229 Continuation of existing laws

Subject to this Constitution, all laws which immediately before the commencement of this Constitution were in force in any area which forms part of the national territory, shall continue in force in such area, subject to any repeal or amendment of such laws by a competent authority.

230 Repeal of laws

(1) The laws mentioned in Schedule 7 are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Notwithstanding the repeal of sections 13 and 101 (2) of the previous Constitution, any pension which, but for such repeal, would have been payable shall continue to be payable as if such

repeal had not been effected.

231 Continuation of international agreements and status of international law

(1) All rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic within the meaning of the previous Constitution, shall be vested in or binding on the Republic under this Constitution, unless provided otherwise by an Act of Parliament.

(2) Parliament shall, subject to this Constitution, be competent to agree to the ratification of or accession to an international agreement negotiated and signed in terms of section 82 (1) (i).

(3) Where Parliament agrees to the ratification of or accession to an international agreement under subsection (2), such international agreement shall be binding on the Republic and shall form part of the law of the Republic, provided Parliament expressly so provides and such agreement is not inconsistent with this Constitution.

(4) The rules of customary international law binding on the Republic, shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic.

232 Interpretation

(1) Unless it is inconsistent with the context or clearly inappropriate, a reference in a law referred to in section 229-

(a) to the Republic or to any territory which after the commencement of this Constitution forms part of the national territory-

(i) as a constitutional institution, shall be construed as a reference to the Republic referred to in section 1;

or

(ii) as a territorial area, shall be construed as a reference to that part of the national territory in which the law in question was in force immediately before such commencement, unless such law is applied by a law of a competent authority to the whole or any part of the national territory;

(b) to a Parliament, House of a Parliament or legislative assembly or body of any territory which after the commencement of this Constitution forms part of the national territory, shall-

(i) if the administration of such a law is allocated in terms of this Constitution to the national government, be construed as a reference to Parliament referred to in section 36; or

(ii) if the administration of such law is allocated or assigned in terms of this Constitution to a government of a province, be construed as a reference to the provincial legislature of that province;

(c) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of any territory which after the commencement of this Constitution forms part of the national territory, shall-

(i) if the administration of such law is allocated in terms of this Constitution to the national government, be construed as a reference to the President acting in accordance with this Constitution; or

(ii) if the administration of such law is allocated or assigned in terms of this Constitution to a government of a province, be construed as a reference to the Premier of such province acting in terms of this Constitution;

(d) to an official language or to both official languages, shall be construed, with due regard to section 3, as a reference to any of the official South African languages under this Constitution.

(2) (a) Any reference in this Constitution to any particular law shall be construed as a reference to that law as it exists from time to time after any amendment or replacement thereof by a competent authority.

(b) An amendment, replacement or repeal of a law referred to in paragraph (a), shall for the purposes of section 62 not be considered to be an amendment of this Constitution, and any such amendment, replacement or repeal of a law shall for its validity be dependent on its consistency with this Constitution in terms of section 4 (1).

(3) No law shall be constitutionally invalid solely by reason of the fact that the wording used is prima facie capable of an interpretation which is inconsistent with a provision of this Constitution, provided such a law is reasonably capable of a more restricted interpretation which is not inconsistent with any such provision, in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation.

(4) In interpreting this Constitution a provision in any Schedule, including the provision under the heading 'National Unity and Reconciliation', to this Constitution shall not by reason only of the fact that it is contained in a Schedule, have a lesser status than any other provision of this Constitution which is not contained in a Schedule, and such provision shall for all purposes be deemed to form part of the substance of this Constitution.

(5) (a) Notwithstanding the provisions of the Independent Electoral Commission Act, 1993 (Act 150 of 1993), the President may at any time after the dissolution of the Independent Electoral Commission in terms of section 9 of that Act, by proclamation in the Gazette, reconvene the Commission for the purposes of a referendum or election referred to in section 124.

(b) If any person who before its dissolution was a member of the Commission, cannot or is unwilling to serve as a member after it has been reconvened under paragraph (a), Parliament may, by resolution adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses, appoint any suitably qualified person to replace any such member.

233 Definitions

(1) In this Constitution, unless the context otherwise indicates-

`Chief Justice' means the Chief Justice of the Supreme Court of South Africa referred to in section 97 (1);

`Commission on Provincial Government' means the Commission established by section 163;

`Financial and Fiscal Commission' means the Commission established by section 198;

`House', in relation to Parliament, means the National Assembly or the Senate;

`Independent Electoral Commission' means the Commission established by section 4 of the Independent Electoral Commission Act, 1993 (Act 150 of 1993);

`National Defence Force' means the Defence Force established by section 224 (1);

`National Revenue Fund' means the Revenue Fund established by section 185;

`new constitutional text' means the text of a new Constitution contemplated in Chapter 5;

`organ of state' includes any statutory body or functionary;

`previous Constitution' means the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983);

`Provincial Revenue Fund' means the Revenue Fund of a province established by section 159 (1);

`Public Service Commission' means the Commission established by section 209;

`Republic' means the Republic of South Africa referred to in section 1;

`Transitional Executive Council' means the Council established by section 2 of the Transitional Executive Council Act, 1993 (Act 151 of 1993).

(2) A reference in this Constitution to rules and orders shall according to the context be construed as a reference to the rules and orders of the National Assembly or the Senate, or the joint rules and orders of the National Assembly and the Senate, or the rules and orders of the Constitutional Assembly, or the rules and orders of a provincial legislature.

(3) Where in this Constitution any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary: Provided that if such other functionary is a body of persons it shall express its concurrence in accordance with its own decision-making procedures.

(4) Where in this Constitution any functionary is required to take a decision after consultation with another functionary, such decision shall be taken in good faith after consulting and giving serious consideration to the views of such other functionary.

(1) A person who immediately before the commencement of this Constitution was a member of Parliament or of any other legislature (excluding a local government) which exercised legislative powers in respect of any area which forms part of the national territory, shall upon such commencement cease to be such a member, but shall for the purpose of any law relating to the payment of pension benefits to such members not be disqualified solely by reason of this section.

(2) A person who immediately before the commencement of this Constitution was employed by Parliament, shall after such commencement continue in such employment, subject to and in accordance with the applicable laws regulating such employment.

(3) The provisions of section 236 (4), (5) and (6) shall apply mutatis mutandis in respect of a person referred to in subsection (2).

(4) A person who immediately before the commencement of this Constitution was employed by a legislature referred to in subsection (1) other than Parliament, shall be deemed to be employed by the administration in that part of the national territory in which such legislature exercised legislative powers, subject to and in accordance with the applicable laws regulating such employment, and sections 236 and 237 shall apply mutatis mutandis in respect of such person.

(5) Any matter before Parliament or any such other legislature which immediately before the commencement of this Constitution was not yet disposed of by Parliament or such legislature, as the case may be, shall lapse upon such commencement.

(6) The rules and orders of Parliament in force immediately before the commencement of this Constitution, shall, to the extent that they can mutatis mutandis be applied in respect of the business and proceedings of Parliament under this Constitution, continue in force until amended or replaced in terms of this Constitution.

235 Transitional arrangements: Executive authorities

(1) A person who immediately before the commencement of this Constitution was-

(a) the State President or a Minister or Deputy Minister of the Republic within the meaning of the previous Constitution;

(b) the Administrator or a member of the Executive Council of a province; or

(c) the President, Chief Minister or other chief executive or a Minister, Deputy Minister or other political functionary in a government under any other constitution or constitutional arrangement which was in force in an area which forms part of the national territory,

shall continue in office until the President has been elected in terms of section 77 (1) (a) and has assumed office: Provided that a person referred to in paragraph (a), (b) or (c) shall for the purposes of section 42 (1) (e) and while continuing in office, be deemed not to hold an office of profit under the Republic.

(2) Any vacancy which may occur in an office referred to in subsection (1) (a), (b) or (c) shall, if necessary, be filled by a person designated by the persons continuing in office in terms of subsection (1) (a), acting in consultation with the Transitional Executive Council.

(3) Executive authority which was vested in a person or persons referred to in subsection (1) (a), (b) or (c) in terms of a constitution or constitutional arrangement in force immediately before the commencement of this Constitution, shall during the period in which the said person or persons continue in office in terms of subsection (1), be exercised in accordance with such constitution or constitutional arrangement, as if it had not been repealed or superseded by this Constitution, and any such person or persons shall continue to be competent to administer any department of state, administration, force or other institution which was

entrusted to, and to exercise and perform any power or function which was vested in, him or her or them immediately before the said commencement: Provided that-

(a) no such executive authority, power or function shall be exercised or performed if the Transitional Executive Council disapproves thereof; and

(b) once the election results of the National Assembly have been certified by the Independent Electoral Commission in terms of the Independent Electoral Commission Act, 1993, the State President referred to in subsection (1) (a) shall exercise and perform his or her powers and functions in consultation with the leader of the party which has received the largest number of votes in the said election.

(4) The Transitional Executive Council may by resolution of a majority of all its members at any time during the period in which the said State President continues in office in terms of subsection (1), require him or her, or any other appropriate authority, to take such steps in terms of any law as are necessary to maintain law and order, including the declaration of a state of emergency or of an area to be an unrest area in terms of an applicable law.

(5) Upon the assumption of office by the President in terms of this Constitution-

(a) the executive authority of the Republic as contemplated in section 75 shall vest in the President acting in accordance with this Constitution; and

(b) the executive authority of a province as contemplated in section 144 shall, subject to subsections (8) and (9), vest in the Premier of that province acting in accordance with this Constitution, or while the Premier of a province has not yet assumed office, in the President acting in accordance with section 75 until the Premier assumes office.

(6) The power to exercise executive authority in terms of laws

which, immediately prior to the commencement of this Constitution, were in force in any area which forms part of the national territory and which in terms of section 229 continue in force after such commencement, shall be allocated as follows:

(a) All laws with regard to matters which-

(i) do not fall within the functional areas specified in Schedule 6; or

(ii) do fall within such functional areas but are matters referred to in paragraphs (a) to (e) of section 126 (3) (which shall be deemed to include all policing matters until the laws in question have been assigned under subsection (8) and for the purposes of which subsection (8) shall apply mutatis mutandis), shall be administered by a competent authority within the jurisdiction of the national government: Provided that any policing function which but for subparagraph (ii) would have been performed subject to the directions of a member of the Executive Council of a province in terms of section 219 (1) shall be performed after consultation with the said member within that province.

(b) All laws with regard to matters which fall within the functional areas specified in Schedule 6 and which are not matters referred to in paragraphs (a) to (e) of section 126 (3) shall-

(i) if any such law was immediately before the commencement of this Constitution administered by or under the authority of a functionary referred to in subsection (1) (a) or (b), be administered by a competent authority within the jurisdiction of the national government until the administration of any such law is with regard to any particular province assigned under subsection (8) to a competent authority within the jurisdiction of the government of such province; or

(ii) if any such law was immediately before the said commencement administered by or under the authority of a

functionary referred to in subsection (1) (c), subject to subsections (8) and (9) be administered by a competent authority within the jurisdiction of the government of the province in which that law applies, to the extent that it so applies: Provided that this subparagraph shall not apply to policing matters, which shall be dealt with as contemplated in paragraph (a).

(c) In this subsection and subsection (8) 'competent authority' shall mean-

(i) in relation to a law of which the administration is allocated to the national government, an authority designated by the President; and

(ii) in relation to a law of which the administration is allocated to the government of a province, an authority designated by the Premier of the province.

(7) (a) The President may, after consultation with the Premier of a province, by proclamation in the Gazette take such measures, including legislative measures, as he or she considers necessary for the better achievement of this section.

(b) A copy of a proclamation under paragraph (a), shall be submitted to Parliament within 14 days after the publication thereof.

(c) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.

(8) (a) The President may, and shall if so requested by the Premier of a province, and provided the province has the administrative capacity to exercise and perform the powers and

functions in question, by proclamation in the Gazette assign, within the framework of section 126, the administration of a law referred to in subsection (6) (b) to a competent authority within the jurisdiction of the government of a province, either generally or to the extent specified in the proclamation.

(b) When the President so assigns the administration of a law, or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may-

(i) amend or adapt such law in order to regulate its application or interpretation;

(ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or to the extent that the assignment relates to them; and

(iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to sections 236 and 237) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(c) In regard to any policing power the President may only make that assignment effective upon the rationalisation of the police service as contemplated in section 237: Provided that such assignment to a province may be made where such rationalisation has been completed in such a province.

(d) Any reference in a law to the authority administering such law, shall upon the assignment of such law in terms of paragraph (a) be deemed to be a reference mutatis mutandis to the appropriate authority of the province concerned.

(9) (a) If for any reason a provincial government is unable to assume responsibility within 14 days after the election of its Premier, for the administration of a law referred to in subsection (6) (b), the President shall by proclamation in the Gazette assign the administration of such law to a special administrator or other appropriate authority within the jurisdiction of the national government, either generally or to the extent specified in the proclamation, until that provincial government is able to assume the said responsibility.

(b) Subsection (8) (b) and (d) shall mutatis mutandis apply in respect of an assignment under paragraph (a) of this subsection.

236 Transitional arrangements: Public administration

(1) A public service, department of state (including a police force), administration, military force as defined in section 224

(2) (a) or (b) or other institution (excluding any local government) which immediately before the commencement of this Constitution performed governmental functions under the control of an authority referred to in section 235 (1) (a), (b) or (c), shall, subject to subsection (7), continue to function as such in accordance with the laws applicable to it until it is, as the case may be, abolished or incorporated or integrated into any appropriate institution or is rationalised as contemplated in any other Chapter, consolidated with any other institution or otherwise rationalised as contemplated in section 237, as the case may be: Provided that a military force referred to in this subsection shall not be employed for service referred to in section 227 (1) (a), (b) or (e) otherwise than by the President and shall only be used for such service by the authority referred to in section 225 in accordance with section 227 (2).

(2) A person who immediately before the commencement of this Constitution was employed by an institution referred to in subsection (1) shall continue in such employment subject to and in accordance with this Constitution and other applicable laws regulating such employment.

(3) Subject to subsections (1) and (2), all powers, directions, orders, instructions or delegations which were in force in respect of an institution which immediately before the commencement of this Constitution performed governmental functions as contemplated in subsection (1) shall, after the said commencement, continue in force for the purpose of the continued functioning within the contemplation of subsection (1) of any such institution, until cancelled or otherwise no longer in force in law.

(4) Subject to this Constitution and subsection (5), the terms and conditions of employment applicable to a person employed by an institution referred to in subsection (1) immediately before the commencement of this Constitution, shall continue to apply to him or her until amended by or under any law, including any law enacted in order to establish uniformity of the terms and conditions of employment in accordance with those generally prevailing at such commencement.

(5) Subject to any law relating to unfitness or incapacity of a person to carry out his or her duties efficiently, the pensionable salary or pensionable salary scale of a person referred to in subsection (2) shall not be reduced below that applicable to such person immediately before the commencement of this Constitution.

(6) Notwithstanding the provisions of this section, 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 or may occur between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2), or any class of such persons, may, at the instance of a Minister or a member of the Executive Council of a province, within one year of the commencement of this Constitution be reviewed by a commission appointed by the President and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the commission may reverse or alter the contract, appointment, promotion or award.

(7) (a) At the commencement of this Constitution the South African Police existing in terms of the Police Act, 1958 (Act 7 of 1958), and all other police forces established by law shall be deemed to constitute the South African Police Service referred to in section 214, and any reference to the South African Police or any such force in the said Act or law shall be deemed to be a reference to the said Service.

(b) Any reference in any law to the South African Police or any other police force (excluding a municipal police service) shall, unless the context indicates otherwise, be construed as a reference to the said South African Police Service.

(8) (a) The National Defence Force referred to in section 224 shall, subject to this Constitution and any Act of Parliament, mutatis mutandis be governed by the Defence Act, 1957 (Act 44 of 1957).

(b) Any reference in any law to a defence force referred to in section 224 (2) (a) or (b), shall be deemed to be a reference to the National Defence Force.

(c) If the number of the members of the National Defence Force exceeds the personnel strength determined in respect of the force design and structure for the Force, any member of the Force who, due to integration, consolidation and rationalisation of the National Defence Force is not accommodated in such force design and structure, shall be dealt with in accordance with a law.

(d) The continuance of membership of members of the National Defence Force referred to in section 224 (2) (c) shall be subject to such members entering into an agreement for temporary or permanent appointment with the National Defence Force within a reasonable time: Provided that such agreements shall be in accordance with normal employment policies and terms and conditions of service.

(1) (a) All institutions referred to in section 236 (1), excluding military forces referred to in section 224 (2), shall as soon as is possible after the commencement of this Constitution be rationalised with a view to establishing within the public service contemplated in section 212 (1)-

(i) an effective administration at the national level of government to deal with matters within the jurisdiction of the national government referred to in section 235 (5) (a); and

(ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government referred to in section 235 (5) (b).

(b) All military forces referred to in section 224 (2) shall be rationalised for the purposes of the National Defence Force.

(2) (a) The responsibility for the rationalisation of-

(i) institutions referred to in section 236 (1), excluding military forces, shall primarily but not exclusively rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments and the Commission on Provincial Government, and with due regard to the advice of the Public Service Commission: Provided that in the case of policing services, the national government shall exercise such responsibility in co-operation with the committee referred to in section 220 (1) and the Board of Commissioners referred to in section 220 (2); and

(ii) military forces shall rest with the national government.

(b) Subject to section 235 (6), (7), (8) and (9), the responsibility for the internal rationalisation of an administration referred to in subsection (1) (a) (ii) shall primarily rest with the relevant provincial government, with due regard to the advice of the Public Service Commission and any relevant provincial service commission: Provided that the rationalisation of all police

forces shall be dealt with in accordance with paragraph (a) (i).

(3) (a) The President may, subject to subsection (2) (a), by proclamation in the Gazette take such steps as he or she considers necessary in order to achieve the aim mentioned in subsection (1).

(b) Without derogating from the generality of paragraph (a), the steps referred to in that paragraph may include-

(i) the amendment, repeal or replacement of any law regulating the establishment, functions and other matters relating to an institution referred to in section 236 (1), or of any law referred to in section 236 (2), or of any law which deals with any of the foregoing matters in a consequential manner: Provided that if a law referred to in section 236 (2) is repealed, provision shall be made for the application of any law of general application regulating the employment of persons or any class of persons in the employment of the state, to the persons or class of persons affected by such repeal; and

(ii) measures relating to the transfer or secondment of personnel, or the allocation of property, funds, rights and obligations, including administrative records, in order to establish the administrations referred to in subsection (2) and rationalise the South African Police Service and the National Defence Force.

(c) A copy of a proclamation under paragraph (a), shall be submitted to Parliament within 14 days after the publication thereof.

(d) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the

said date under and by virtue of such proclamation.

(4) (a) The labour appeal court established by section 17A of the Labour Relations Act, 1956 (Act 28 of 1956), sitting as a special tribunal in terms of an Act to be passed by Parliament, shall be competent to determine any claim or dispute of right in terms of a law regulating as at 1 November 1993 employment in an institution referred to in section 236 (1) and arising out of the implementation of this section and section 236.

(b) The Act of Parliament contemplated in paragraph (a) shall prescribe expeditious procedures for the adjudication of claims and disputes contemplated in this section, including the granting of interim and final relief.

(c) Notwithstanding the provisions of any law the procedures contemplated in paragraph (b) shall be the only procedures to be followed in such court.

(d) A decision of the court on any such claim or dispute shall be final and binding.

(e) This subsection and the Act of Parliament contemplated in paragraph (a) shall lapse one year from the commencement of this Constitution, save that any matter properly before the court referred to in paragraph (a) on that date shall be heard and determined as if this subsection and the said Act had not lapsed.

238 Transitional arrangements: Public service commissions

(1) A public service commission established for a public service referred to in section 236 (1) shall, subject to subsections (3) and (4), after the commencement of this Constitution continue to function as such in accordance with the laws applicable to it.

(2) (a) A person who immediately before the commencement of this Constitution was the chairperson or member of a public service commission referred to in subsection (1) shall, subject to

subsections (3) and (4) and section 237, after such commencement, continue in office in accordance with the laws regulating his or her appointment.

(b) Section 236 (3), (4) and (5) shall apply mutatis mutandis in respect of a person referred to in paragraph (a) of this subsection.

(3) The Commission for Administration established by the Commission for Administration Act, 1984 (Act 65 of 1984), shall cease to exist upon the appointment of the members of the Public Service Commission referred to in section 209: Provided that a person who immediately before such appointment held office as the chairperson or a member of the Commission for Administration shall be entitled to be appointed as a member of the Public Service Commission.

(4) A public service commission, other than the Commission for Administration referred to in subsection (3), which continues to perform its functions in any part of the national territory, shall mutatis mutandis be subject to rationalisation under section 237 and shall cease to exist to the extent that it is superseded by the establishment of a provincial service commission contemplated in section 213 or otherwise rationalised or abolished under section 237.

(5) If-

(a) the chairperson or a member referred to in the proviso to subsection (3) elects not to be appointed to the Public Service Commission; or

(b) the chairperson or a member of a public service commission referred to in subsection (4), is not upon the abolition of such public service commission appointed to any provincial service commission,

the period of office for which such a chairperson or member has been appointed shall for the purpose of any applicable law

regulating retirement benefits, be deemed to have been completed.

(6) Any reference in any law to the Commission for Administration referred to in subsection (3), shall be deemed to be a reference to the Public Service Commission.

239 Transitional arrangements: Assets and liabilities

(1) All assets, including funds and administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 235 (1) (a), (b) or (c), or in a government, administration or force under the control of such an authority, shall be allocated as follows:

(a) Where any asset is applied or intended to be applied for or in connection with a matter which-

(i) does not fall within a functional area specified in Schedule 6; or

(ii) does fall within such a functional area but is a matter referred to in paragraphs (a) to (e) of section 126 (3) (which shall be deemed to include a police asset),

such asset shall vest in the national government.

(b) Where any asset is applied or intended to be applied for or in connection with a matter which is not a matter referred to in paragraphs (a) to (e) of section 126 (3), such asset shall, subject to paragraph (c), vest in the relevant provincial government.

(c) Where any asset referred to in paragraph (b) is applied or intended to be applied for or in connection with the administration of a particular law or the performance of a particular function in a particular area, such asset shall vest in the government to which the administration of that law is assigned, or is assigned in that particular area, in terms of section 235 (6), (8) or (9), or to which the performance of that function is

entrusted, or entrusted in the particular area, in terms of section 237.

(d) Where any asset cannot in terms of the foregoing rules be classified with reference to a particular matter, law or function, or where there is disagreement between two or more governments, the advice of the Commission on Provincial Government shall be obtained, and any dispute shall be resolved with due regard to such advice.

(e) Parliament shall be competent to enact a law to facilitate the application of this section and to prescribe guidelines for the resolution of disputes arising from such application.

(f) All assets under the control of a police force shall vest in the South African Police Service.

(2) (a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of this section, make such entries or endorsements in or on any relevant register, title deed or other document to register such immovable property in the name of such government.

(b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).

(3) (a) Subject to paragraph (b), all debts and liabilities-

(i) directly linked to an asset vesting in terms of subsection (1) in a provincial government, shall be assumed by such provincial government; and

(ii) other than those referred to in subparagraph (i) shall be assumed by the national government:

Provided that the servicing of all state debts and liabilities not provided for in this Constitution shall be undertaken by the

national government until allocated to the relevant level of government.

(b) Parliament shall be competent to pass a law regulating the re-allocation of debts and liabilities to the national government and the respective provincial governments, but no such law shall be passed unless a report and recommendations of the Financial and Fiscal Commission has been tabled in and considered by Parliament.

(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.

(5) Anything done in terms of this section shall be subject to audit by the Auditor-General.

240 Transitional arrangements: State Revenue Fund

(1) At the commencement of this Constitution the State Revenue Fund established in terms of section 81 of the previous Constitution shall continue to exist until an Act of Parliament contemplated in section 185(1) is adopted prescribing the administration of the National Revenue Fund.

(2) While the State Revenue Fund continues to exist it shall for all purposes be deemed to be the National Revenue Fund.

(3) The Accounts of the State Revenue Fund referred to in section 82 of the previous Constitution shall be phased out and closed as soon as circumstances permit.

(4) In the 1994/1995 financial year the head of the department of the Treasury, as defined in section 1 of the Exchequer Act, 1975 (Act 66 of 1975), may, in consultation with the Minister responsible for national financial matters, from the Exchequer Account, on conditions aimed at ensuring financial control, grant advances to provincial governments as he or she deems necessary for the purposes of establishing and funding of structures of government at provincial level as contemplated in this Constitution

until Parliament has appropriated money for such purposes.

(5) Any Revenue Fund established before the commencement of this Constitution by a law in force in an area which forms part of the national territory, excluding the State Revenue Fund referred to in subsection (1), shall, subject to subsection (6) and any laws governing the application and withdrawal of moneys from such Revenue Fund, continue to exist until the money therein is transferred under this Chapter to the National Revenue Fund or to any relevant Provincial Revenue Fund, as the case may be, or otherwise dealt with by a competent authority.

(6) Moneys in a Revenue Fund referred to in subsection (5) may only be withdrawn in order to meet expenditure for services in the area in respect of which the Fund was established and in respect of which an appropriation has been made for the current or in the immediately preceding financial year or for which there is other statutory authority: Provided that no withdrawal shall be made from such Revenue Fund other than with the concurrence of a person designated by the President for that purpose.

241 Transitional arrangements: Judiciary

(1) Every court of law existing immediately before the commencement of this Constitution in an area which forms part of the national territory, shall be deemed to have been duly constituted in terms of this Constitution or the laws in force after such commencement, and shall continue to function as such in accordance with the laws applicable to it until changed by a competent authority.

(2) The Chief Justice of South Africa, the judges-president and deputy judges-president of the various divisions of the Supreme Court of South Africa, the judges of appeal of the Appellate Division of the said Supreme Court, and the other judges of the said Supreme Court, holding office immediately before the commencement of this Constitution, shall be deemed to have been duly appointed to the corresponding positions in terms of Chapter 7 and shall continue to hold office in accordance with the

applicable laws.

(3) All other judicial officers holding office immediately before the commencement of this Constitution in terms of a law, shall continue to hold such office in accordance with such law.

(4) Every attorney-general holding office immediately before the commencement of this Constitution in terms of a law, shall continue to hold such office in accordance with such law.

(5) Subject to this Constitution, all measures which immediately before the commencement of this Constitution were in operation and applied to judicial officers and attorneys-general, including measures regarding the remuneration, pension and pension benefits, leave gratuity and any other term and condition of service, shall continue in operation and to apply to the said judicial officers and attorneys-general, until amended or repealed by a competent authority: Provided that no such measure shall, except in accordance with an applicable law, be changed in a manner which affects such judicial officers and attorneys-general to their detriment.

(6) The provisions of section 236 (5) and (6) shall apply mutatis mutandis in respect of persons referred to in subsections (3) and (4) of this section.

(7) Persons referred to in subsections (2), (3) and (4) shall within 30 days of the election of the President in terms of section 77 (1) (a) make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose, or, in the case of a person continuing in office or appointed as the Chief Justice or the President of the Constitutional Court, before the President.

(8) All proceedings which immediately before the commencement of this Constitution were pending before any court of law, including any tribunal or reviewing authority established by or

under law, exercising jurisdiction in accordance with the law then in force, shall be dealt with as if this Constitution had not been passed: Provided that if an appeal in such proceedings is noted or review proceedings with regard thereto are instituted after such commencement such proceedings shall be brought before the court having jurisdiction under this Constitution.

(9) Any legal proceedings instituted before or after the commencement of this Constitution by or against a government, authority or functionary which ceased to exist at or after such commencement, may be continued by or against the relevant government, authority or functionary which superseded the said government, authority or functionary.

(10) The laws and other measures which immediately before the commencement of this Constitution regulated the jurisdiction of courts of law, court procedures, the power and authority of judicial officers and all other matters pertaining to the establishment and functioning of courts of law, shall continue in force subject to any amendment or repeal thereof by a competent authority.

242 Rationalisation of court structures

(1) All jurisdictional areas and court structures appropriate thereto existing immediately before the commencement of this Constitution, shall as soon as possible after such commencement be rationalised in accordance with an Act of Parliament with a view to establishing the jurisdictional areas and court structures contemplated in Chapter 7.

(2) The rationalisation of the jurisdictional areas and court structures referred to in subsection (1) shall be the responsibility of the national government after consultation with the Judicial Service Commission.

(3) The rationalisation contemplated in subsection (1) includes-

(a) the amendment, repeal or replacement of any law regulating the establishment, functions, jurisdiction and other matters relating to a court referred to in section 241 (1), or of any law referred to in section 241 (2), or of any law which deals with any of the foregoing matters in a consequential manner: Provided that if a law referred to in section 241 (2) is repealed, provision shall be made for the application of any law of general application regulating the service of judicial officers or any class of judicial officers, to the judicial officers or class of judicial officers affected by such repeal; and

(b) measures relating to the transfer or secondment of judicial officers, or the allocation of property, including court and administrative records, in order to establish the said jurisdictional areas or court structures.

243 Transitional arrangements: Ombudsman

(1) A person who immediately before the commencement of this Constitution was-

(a) the Ombudsman in terms of the Ombudsman Act, 1979 (Act 118 of 1979), shall continue to hold office and to exercise and perform the powers and functions of the Ombudsman in accordance with the said Act until the Public Protector has been appointed under section 110 and has assumed office;

(b) an assistant to the Ombudsman, shall continue as such until the Public Protector has been appointed and has assumed office, whereupon such person shall be deemed to have been appointed under section 113; or

(c) an ombudsman in terms of a law of an area which forms part of the national territory (other than the Ombudsman referred to in paragraph (a)), or in the employ of such an ombudsman, shall continue in such office or employment in accordance with the law which regulated such office or employment, until the office of such ombudsman is abolished or such ombudsman or person is appointed as, or to the office of, a provincial public

protector contemplated in section 114.

(2) Section 236 (4), (5) and (6) shall apply mutatis mutandis to a person referred to in subsection (1) (c).

244 Transitional arrangements: Auditor-General

(1) A person who immediately before the commencement of this Constitution was-

(a) the Auditor-General in terms of the Auditor-General Act, 1989 (Act 52 of 1989), shall continue in office subject to section 191 and the laws applicable to such office;

(b) employed in terms of the Audit Arrangements Act, 1992 (Act 122 of 1992), shall continue in such employment subject to and in accordance with this Constitution, the said Act and any other applicable law regulating such employment; and

(c) the auditor-general of any area which forms part of the national territory (other than the Auditor-General referred to in paragraph (a)), shall continue in such office or employment in accordance with the laws regulating such office or employment, until such office of auditor-general is abolished by law: Provided that any such auditor-general shall be eligible for appointment under section 194: Provided further that should such a person not be appointed, he or she shall have the right to retire and if he or she so retires he or she shall be entitled to such pension as he or she would have been entitled to under the pensions law applicable to him or her if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(2) For the purpose of subsection (1), the persons referred to in that subsection shall not be dealt with less favourably than an officer or employee in a public service.

245 Transitional arrangements: Local government

(1) Until elections have been held in terms of the Local

Government Transition Act, 1993, local government shall not be restructured otherwise than in accordance with that Act.

(2) Restructuring of local government which takes place as a result of legislation enacted by a competent authority after the elections referred to in subsection (1) have been held, shall be effected in accordance with the principles embodied in Chapter 10 and the Constitution as a whole.

(3) (a) For the purposes of the first election of members of a local government after the commencement of this Constitution, the area of jurisdiction of such local government shall be divided into wards in accordance with the Act referred to in subsection (1).

(b) Forty per cent of the members of the local government shall be elected according to the system of proportional representation applicable to an election of the National Assembly and regulated specifically by or under the Act referred to in subsection (1), and sixty per cent of the members shall be elected on the basis that each such member shall represent a ward as contemplated in paragraph (b): Provided that, notwithstanding anything to the contrary contained in this Constitution, where the area of jurisdiction of the local government includes-

(i) the area of jurisdiction of any institution or body as was referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961); and

(ii) any other area not falling within the area of jurisdiction of the institution or body referred to in subparagraph (i),

no area referred to in subparagraph (i) or (ii) shall be allocated less than half of the total number of wards of the local government concerned: Provided further that an area referred to in subparagraph (i) shall be deemed not to include any area for which a local government body referred to in paragraphs (a), (b) and (c) of the definition of 'local government body' in section 1 (1) of the Act referred to in subsection (1) of this section (as that Act exists

at the commencement of this Constitution), has been established.

246 Transitional arrangements: Pensions of political of-

fice-bearers

The right of any person in terms of any law which at the commencement of this Constitution provides for the payment of pensions from the exchequer or from any pension fund or arrangement to which the state contributes or has contributed, to or in respect of political office-bearers or former political office-bearers (including members and former members of Parliament and of any other legislative assembly which exercised legislative powers in respect of any area which forms part of the national territory) shall continue and shall not be diminished: Provided that those who have already received benefits that were due to them shall not benefit again by reason of the provisions of this section.

247 Special provisions regarding existing educational institutions

(1) The national government and the provincial governments as provided for in this Constitution shall not alter the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools under laws existing immediately before the commencement of this Constitution unless an agreement resulting from bona fide negotiation has been reached with such bodies and reasonable notice of any proposed alteration has been given.

(2) The national government shall not alter the rights, powers and functions of the controlling bodies of universities and technikons under laws existing immediately before the commencement of this Constitution, unless agreement resulting from bona fide negotiation has been reached with such bodies, and reasonable notice of any proposed alteration has been given.

(3) Should agreement not be reached in terms of subsection (1) or (2), the national government and the provincial governments

shall, subject to the other provisions of this Constitution, not be precluded from altering the rights, powers and functions of the governing bodies, management councils or similar authorities of departmental, community-managed or state-aided primary or secondary schools, as well as the controlling bodies of universities and technikons, provided that interested persons and bodies shall be entitled to challenge the validity of any such alteration in terms of this Constitution.

(4) In order to ensure an acceptable quality of education, the responsible government shall provide funds to departmental, community-managed or state-aided primary or secondary schools on an equitable basis.

248 National flag and anthem

(1) The State President may at any time before the commencement of this Constitution or while continuing in office in terms of section 235 (1) (a), exercise, on the advice of the Transitional Executive Council, the powers conferred upon the President by section 2 (1) and (2), and if the State President in the exercise of such powers issues a proclamation referred to in that section, such proclamation shall for all purposes be deemed to form part of this Constitution.

(2) This section shall come into operation on the date of promulgation of this Constitution.

249 First election of National Assembly

(1) Notwithstanding the fact that Chapter 4 may not yet be in force, the State President may, by proclamation in the Gazette, call an election in terms of the Electoral Act, 1993, for the election of the members of the National Assembly.

(2) Such election shall be conducted in accordance with Schedule 2 and the Electoral Act, 1993.

(3) This section shall come into operation on the date of

promulgation of this Constitution.

250 Non-certification of election by Independent Electoral Commission

(1) If in the application of section 18 of the Independent Electoral Commission Act, 1993, the Independent Electoral Commission declares that it is unable to certify that any election referred to in that section was substantially free and fair, the Commission shall declare that either-

(a) it is able to determine a result based on the votes which could be counted; or

(b) it is unable to determine any result.

(2) If the Independent Electoral Commission declares as contemplated in subsection (1) (a)-

(a) a new election shall be held for the National Assembly and the provincial legislatures or a relevant provincial legislature, as the case may be, mutatis mutandis in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable but in any event not later than 12 months after the date of the election in question: Provided that any reference to the Transitional Executive Council in the said Act shall be deemed to be a reference to Parliament;

(b) Parliament and the provincial legislatures or a provincial legislature, as the case may be, shall be established on the basis of the result determined in terms of subsection (1) (a): Provided that no provincial legislature shall be established unless the National Assembly is established;

(c) no amendment by a Parliament established on the basis of a declaration in terms of subsection (1) (a), of this Constitution, the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993, or

the Independent Broadcasting Authority Act, 1993, shall be permissible until the election contemplated in paragraph (a) has been certified as substantially free and fair in terms of the Independent Electoral Commission Act, 1993; and

(d) any provincial legislature established on the basis of a declaration in terms of subsection (1) (a), shall have no legislative competence save for the enactment of laws necessary for the appropriation of revenue or moneys, or the imposition of taxation within the framework of section 126, until the election contemplated in paragraph (a) has been certified as substantially free and fair in terms of the Independent Electoral Commission Act, 1993.

(3) If the Independent Electoral Commission declares as contemplated in subsection (1) (b)-

(a) a new election shall be held for the National Assembly and the provincial legislatures, or a relevant provincial legislature, as the case may be, in accordance with this Constitution and the Electoral Act, 1993, as soon as practicable, but in any event not later than within 10 weeks after the date of the election in question: Provided that a new election for the National Assembly and the provincial legislatures shall be held simultaneously; and

(b) the constitutional arrangements under the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), the Transitional Executive Council Act, 1993, the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority Act, 1993, shall apply, until the election referred to in paragraph (a) has been held.

(4) Notwithstanding the provisions of any other law, the Independent Electoral Commission shall continue to exist for the purposes set out in this section and the Commission shall exercise its function contemplated in section 18 of the Independent Electoral Commission Act, 1993, with reference to an election

referred to in this section: Provided that section 232 (5) (b) shall apply mutatis mutandis in respect of the replacement of members of the Commission.

251 Short title and commencement

(1) This Act shall be called the Constitution of the Republic of South Africa, 1993, and shall, subject to subsection (2), come into operation on 27 April 1994.

(2) The State President may, in consultation with the Transitional Executive Council, by proclamation in the Gazette provide that a provision of this Constitution specified in the proclamation shall come into operation on a date prior to the date referred to in subsection (1).

(3) Different dates may be fixed in terms of subsection (2) in respect of different provisions of this Constitution.

(4) A reference in a provision of this Constitution to the commencement of this Constitution shall, unless the context otherwise indicates, be construed as a reference to the commencement of such provision.

National Unity and Reconciliation

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and

strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

Nkosi sikelel' iAfrika. God seen Suid-Afrika

Morena boloka sechaba sa heso. May God bless our country

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika

Schedule 1

PART 1

DEFINITIONS OF PROVINCES

THE PROVINCE OF NATAL

Districts created in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944)

Alfred Kranskop Nqutu*

Babanango Lions River Paulpietersburg

Bergville Lower Tugela Piet Retief (2)

Camperdown Lower Umfolozi Pietermaritzburg

Chatsworth Mapumulo* Pinetown

Dannhauser Mhlabatini* Polela

Dundee Mooi River Port Shepstone

Durban Mount Currie (1) Richmond

Eshowe Msinga* Ubombo

Estcourt Mtonjaneni Umbumbulu*

Glencoe Mtunzini Umlazi*

Hlabisa Ndwedwe* Umvoti

Impendle New Hanover Umzinto

Inanda Newcastle Underberg

Ingwavuma* Ngotshe Utrecht

Ixopo Nkandhla* Vryheid

Klip River Nongoma* Weenen

(1) Excluding land mentioned in Proclamations R141 of 30

September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127.

(2) Only the Simdlangentsha and Pongola areas, described as:

PONGOLA

From the north-western beacon of Portion 45 (Diagram A 4265/55) of the farm Pongola 61 HU on the boundary between the Republic of South Africa and Swaziland; thence east along the said boundary between the Republic of South Africa and Swaziland to the north-eastern corner of the farm Devils Dive 79 HU, thence generally south along the said boundary to the south-eastern corner of the farm Lebombo's Poort 92 HU, thence generally west along the middle of the Pongola River, to the south-eastern corner of the farm Zwartkloof 60 HU; thence generally north along the boundaries of the following so as to exclude them out of this area: the said farm Zwartkloof 60 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4275/55) of the farm Pongola 61 HU to the north-eastern beacon of the last-named Portion 45, the place of beginning.

SIMDLANGENTSHA

From the north-western beacon of Portion 10 (Diagram A 1373/39) of the farm Voorslag 24 HU, in a south-eastern direction along the north-eastern boundary of the said Voorslag 24 HU to the north-western beacon of the farm Beginsel 56 HU; thence eastwards along the northern boundaries of the following properties: the said farm Beginsel 56 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4265/55) of the farm Pongola 61 HU, to the north-eastern beacon of the latter portion; thence in a general southern direction along the boundaries of the following properties so as to include them in

this area: the said Portion 45 HU, the farm Kranskloof 59 HU and Zwartkloof 60 HU to the south-eastern beacon of the latter farm in the middle of the Pongola River; thence in a general western direction along the middle of the said Pongola River to the northernmost beacon of the farm Gunsteling 45 HU; thence in a general north-eastern direction along the boundaries of the following properties so as to include them in this area: the said farm Gunsteling 45 HU, Prudentie 46 HU, Oranjedal 38 HU, Tobolsk 28 HU, Belgrade 27 HU and Portion 10 (Diagram A 1373/39) of the farm Voorslag 24 HU to the north-western beacon of the latter farm, the place of beginning.

* Kwazulu districts, as they were on 1 February 1977.

THE PROVINCE OF NORTHERN CAPE

Districts created in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944)

Barkly West Hartswater Philipstown

Britstown Hay Postmasburg

Calvinia Herbert Prieska

Carnarvon Hopetown Richmond

Colesberg Kenhardt Sutherland

De Aar Kimberley Victoria West

Fraserburg Kuruman (1) Warrenton

Gordonia Namaqualand Williston

Hanover Noupoort

(1) Excluding the areas as described in Proclamation 103 of 31 October 1991.

THE PROVINCE OF NORTHERN TRANSVAAL

(a) Districts created in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944)

Dzanani* Phalaborwa Thabazimbi (3)

Ellisras Pietersburg Vuvani*

Letaba 1 Potgietersrust Warmbaths (4)

Letaba 2 Sibasa* Waterberg

Messina (1) Soutpansberg 1 (2)

Mutale* Soutpansberg 2

(1) Including the areas as described in Proclamations 187 of 24 September 1982, R51 of 27 March 1986 and 178 of 28 October 1988

(2) Including the areas as described in Proclamation R51 of 27 March 1986

(3) Excluding the areas as described in Proclamation R222 of 28 November 1986

(4) Excluding the areas as described in Proclamation R98 of 30 June 1989

* Venda districts, as they were on 13 September 1979

(b) The area for which the Gazankulu Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971)

(c) The area for which the Lebowa Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971), excluding the area consisting of the following properties-

(i) Remainder of the farm Elandsfontein 435 KT, in extent 5678,5521 hectares, according to Diagram A2306/1927; and

(ii) Portion 1, in extent 1457,4567 hectares, of the farm Dientjie 453 KT, according to Diagram A1939/1964.

THE PROVINCE OF NORTH-WEST

Districts created in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944)

Bloemhof Lehurutshe* Pretoria (7)

Bafokeng* Lichtenburg (4) Rustenburg 1 (8)

Brits (1) Madikwe* Rustenburg 2 (9)

Christiana Mafeking (5) Schweizer-Reneke

Coligny Mankwe* Swartruggens (10)

Delareyville (2) Marico 1 (6) Taung*

Ditsobotla* Marico 2 Tlhaping-Tlharo*

Ganyesa* Molopo Ventersdorp

Klerksdorp Moretele* Vryburg (11)

Koster Odi* Warmbaths (12)

Kuruman (3) Potchefstroom Wolmaransstad

(1) Including-

(a) areas as described in Part 1 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978);

(b) the areas as described in Proclamations R222 of 28 November 1986 and R98 of 30 June 1989

(2) Including the areas as described in Proclamation R98 of 30 June 1989

(3) Only-

(a) land as described in Part 4 of the Schedule to the

Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978);

(b) the areas as described in Proclamation 103 of 31
October 1991

(4) Including the areas as described in Proclamation R98 of
30 June 1989

(5) Including-

(a) land as described in the Schedule to the Bophu-
thatswana Border Extension Act, 1978 (Act 8 of 1978);

(b) the areas as described in Proclamations 70 of 1
April 1990 and 103 of 31 October 1991

(6) Including the areas as described in Proclamations R222 of
28 November 1986; 43 of 18 March 1988; R220 of 30 December 1988;
R98 of 30 June 1989; 70 of 1 April 1990; and 103 of 31 October 1991

(7) Only those areas as described in Proclamations R137 of 25
September 1987 and R98 of 30 June 1989

(8) Including-

(a) land as described in Part 3 of the Schedule to the
Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978);

(b) the areas as described in Proclamation 4 of 3
February 1989

(9) Including the areas as described in Proclamations 103 of
31 October 1991; 70 of 1 April 1990 and R98 of 30 June 1989

(10) Including the areas as described in Proclamation 103 of
31 October 1991

(11) Including-

(a) land as described in Part 5 of the Schedule to the
Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978);

(b) the areas as described in Proclamations 103 of 31
October 1991; 70 of 1 April 1990; R98 of 30 June 1989; R23 of 28
February 1986; and R259 of 31 December 1981

(12) Only those areas as described in Proclamation R. 98 of 30
June 1989

* Districts of Bophuthatswana, as they were on 6 December
1977 as well as the areas as described in Proclamation R222 of 28
November 1986.

THE PROVINCE OF EASTERN CAPE

Districts created in terms of the Magistrates' Courts Act,

1944 (Act 32 of 1944)

BLOCK `A'

Aberdeen Graaff-Reinet Pearston

Adelaide Hankey Port Elizabeth

Albany Hofmeyr Somerset East

Alexandria Humansdorp Steynsburg

Bathurst Jansenville Steytlerville

Bedford Joubertina Tarka

Cradock Kirkwood Uitenhage

Fort Beaufort (1) Middelburg Venterstad

Willowmore

BLOCK `B'

Albert Komgha Qumbu#

Aliwal North Lady Grey St Marks#

Barkly East Libode# Sterkstroom

Bizana# Lusikisiki# Stockenstrm (6)

Butterworth# Maclear Stutterheim (7)

Cathcart (2) Matatiele# Tabankulu#

Elliot Mdantsane* Tsolo#

Elliotdale# Middledrift* Tsomo#

Engcobo# Molteno Umtata#

Flagstaff# Mount Fletcher# Umzimkulu#

Glen Grey# Mount Ayliff# Victoria East*

Herschel# Mount Frere# Willowvale#

Hewu* Mqanduli# Wodehouse

Idutywa# Ngqeleni# Xalanga#

Indwe Nqamakwe# Zwelitsha*

Keiskammahoek* East London (4)

Kentani# Peddie*

King William's Town (3) Port St Johns#

Queenstown (5)

(1) Including the areas as described in Proclamation 75 of 30

April 1987

(2) Including the areas as described in Proclamation 187 of

3 November 1989

(3) Including the areas as described in Proclamations 101 of

26 June 1987; 127 of 12 August 1988 and 187 of 3 November 1989, as corrected by Correction Notice 380 of 23 February 1990

(4) Including the areas as described in Proclamations 15 of

3 March 1989 and 187 of 3 November 1989

(5) Including the areas as described in Proclamations R211 of 29 October 1982 and 101 of 26 June 1987

(6) Including the areas as described in Proclamation 187 of 3 November 1989

(7) Including the areas as described in Proclamations 75 of 30 April 1987; R139 of 25 September 1987; and 15 of 3 March 1989

* Districts of the Ciskei, as they were on 4 December 1981

Districts of the Transkei, as they were on 26 October 1976, including the land mentioned in Proclamations R141 of 30 September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127

THE PROVINCE OF EASTERN TRANSVAAL

(a) Districts created in terms of the Magistrates'

Courts Act, 1944 (Act 32 of 1944)

Amersfoort Highveld Ridge Pilgrim's Rest 1

Balfour Kriel Pilgrim's Rest 2

Barberton Lydenburg Piet Retief (2)

Belfast Mathanjana (1) Standerton

Bethal Middelburg Volksrust

Carolina Moutse 1 Wakkerstroom

Delmas Moutse 2 Waterval-Boven

Ermelo Moutse 3 Witbank

Groblersdal Nelspruit White River

(1) As described in Part 2 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978);

(2) Excluding the Simdlangentsha and Pongola areas, described as:

PONGOLA

From the north-western beacon of Portion 45 (Diagram A 4265/55) of the farm Pongola 61 HU on the boundary between the Republic of South Africa and Swaziland; thence east along the said boundary between the Republic of South Africa and Swaziland to the north-eastern corner of the farm Devils Dive 79 HU; thence generally south along the said boundary to the south-eastern corner of the farm Lebombo's Poort 92 HU; thence generally west along the middle of the Pongola River, to the south-eastern corner of the farm Zwartkloof 60 HU; thence generally north along the boundaries

of the following so as to exclude them out of this area: the said farm Zwartkloof 60 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4275/55) of the farm Pongola 61 HU to the north-eastern beacon of the last-named Portion 45, the place of beginning.

SIMDLANGENTSHA

From the north-western beacon of Portion 10 (Diagram A 1373/39) of the farm Voorslag 24 HU, in a south-eastern direction along the north-eastern boundary of the said Voorslag 24 HU to the north-western beacon of the farm Beginsel 56 HU; thence eastwards along the northern boundaries of the following properties: the said farm Beginsel 56 HU, Kranskloof 59 HU and Portion 45 (Diagram A 4265/55) of the farm Pongola 61 HU, to the north-eastern beacon of the latter portion; thence in a general southern direction along the boundaries of the following properties so as to include them in this area: the said Portion 45 HU, the farm Kranskloof 59 HU and Zwartkloof 60 HU to the south-eastern beacon of the latter farm in the middle of the Pongola River; thence in a general western direction along the middle of the said Pongola River to the northernmost beacon of the farm Gunsteling 45 HU; thence in a general north-eastern direction along the boundaries of the following properties so as to include them in this area: the said farm Gunsteling 45 HU, Prudentie 46 HU, Oranjedal 38 HU, Tobolsk 28 HU, Belgrade 27 HU and Portion 10 (Diagram A 1373/39) of the farm Voorslag 24 HU to the north-western beacon of the latter farm, the place of beginning.

(b) The area for which the Kangwane Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971)

(c) The area for which the Kwandebele Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971)

(d) As well as the following properties forming part of the area for which the Lebowa Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971):

(i) Remainder of the farm Elandsfontein 435 KT, in extent 5678,5521 hectares, according to Diagram A2306/1927; and

(ii) Portion 1, in extent 1457,4567 hectares, of the farm Dientjie 453 KT, according to Diagram A1939/1964.

THE PROVINCE OF THE ORANGE FREE STATE

(a) Districts created in terms of the Magistrates'

Courts Act, 1944 (Act 32 of 1944)

Bethlehem Heilbron Rouxville

Bethulie Hennenman Sasolburg

Bloemfontein (1) Hoopstad Senekal

Boshof Jacobsdal Smithfield

Bothaville Jagersfontein Thaba Nchu*

Botshabelo Koffiefontein Theunissen

Brandfort Koppies Trompsburg

Bultfontein Kroonstad Ventersburg

Clocolan Ladybrand Viljoenskroon

Dewetsdorp Lindley Virginia

Edenburg Marquard Vrede

Excelsior (2) Odendaalsrus Vredefort

Fauresmith Parys Welkom

Ficksburg Petrusburg Wepener

Fouriesburg Philippolis Wesselsbron

Frankfort Reddersburg Winburg

Harrismith Reitz Zastron

(1) Including the areas as described in Proclamation R 98 of
30 June 1989

(2) Including the areas as described in Proclamations R142 of
30 September 1983 and R98 of 30 June 1989

* Districts of Bophuthatswana, as described on 6 December
1977

(b) The area for which the QwaQwa Legislative Assembly
has been instituted in terms of section 1 of the Self-governing
Territories Constitution Act, 1971 (Act 21 of 1971)

THE PROVINCE OF PRETORIA-WITWATERSRAND-VEREENIGING

Districts created in terms of the Magistrates' Courts Act,
1944 (Act 32 of 1944)

BLOCK `A'

Alberton Kempton Park Springs

Benoni Krugersdorp Vanderbijlpark

Boksburg Nigel Vereeniging

Brakpan Oberholzer Westonaria

Germiston Randburg

Heidelberg Randfontein

Johannesburg Roodepoort

BLOCK `B'

Bronkhorstspruit Pretoria (1) Soshanguve 2

Cullinan Soshanguve 1 Wonderboom

(1) Excluding the areas as described in Proclamations R137 of
25 September 1987 and R. 98 of 30 June 1989

THE PROVINCE OF THE WESTERN CAPE

Districts created in terms of the Magistrates' Courts Act,
1944 (Act 32 of 1944)

Beaufort West Ladismith Somerset West

Bellville Laingsburg Stellenbosch

Bredasdorp Malmesbury Strand

Caledon Mitchells Plain Swellendam

Calitzdorp Montagu Tulbagh

Ceres Moorreesburg Uniondale

Clanwilliam Mossel Bay Van Rhynsdorp

George Murraysburg Vredendal

Goodwood Oudtshoorn Vredenburg

Heidelberg Paarl Wellington

Hermanus Piquetberg Worcester

Hopefield Prince Albert Wynberg

Cape Riversdale

Knysna Robertson

Kuils River Simonstown

PART 2

Affected Areas

(a) Bosbokrand- Consisting of the Mala district of
Gazankulu and the Mapumaleng district of Lebowa

(b) District of Namaqualand

(c) District of Groblersdal

(d) Northern Transkei/Pondoland- Consisting of the
Bizana, Flagstaff, Libode, Lusikisiki, Nqeleni, Port St Johns and
Tabankulu districts of Transkei, as they were defined on 26 October
1976

(e) District of Umzimkulu of Transkei, as it was defined
on 26 October 1976

(f) The area consisting of the districts of block `B'
envisaged in Part 1 in respect of the province of
Pretoria-Witwatersrand-Vereeniging

(g) The areas consisting of the districts of the two blocks envisaged in Part 1 in respect of the province of Eastern Cape

(h) Province of Northern Cape

(i) The area for which the KwaNdebele Legislative Assembly has been instituted in terms of section 1 of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971), including the districts of Moutse 1, 2 and 3 and the district of Mathanjana as described in Part 2 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978)

(j) District of Sasolburg

(k) The area consisting of the districts of Clanwilliam, Vredendal and Van Rhynsdorp

(l) District of Mount Currie, including land mentioned in Proclamations R141 of 30 September 1983 and 43 of 26 April 1985 and the farms Drumleary 130 and Stanford 127

(m) The area consisting of the districts of Kuruman, including the area defined in Proclamation 103 of 31 October 1991, Postmasburg and Hartswater

(n) The area consisting of-

(i) the district of Brits, excluding the areas as described in Part 1 of the Schedule to the Bophuthatswana Border Extension Act, 1978 (Act 8 of 1978), and Proclamations R222 of 28 November 1986 and R98 of 30 June 1989;

(ii) the districts of Moretele and Odi of Bophuthatswana, as they were defined on 6 December 1977.

Schedule 2

System for Election of National Assembly and Provincial Legislatures

Election of National Assembly

1. Parties registered in terms of the Electoral Act, 1993, 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 the Electoral Act, 1993.

2. The 400 seats in the National Assembly referred to in section 40 (1), shall be filled as follows:

(a) 200 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 a particular election, taking into account available scientifically based data in respect

of voters, representations by interested parties and the following proposed determination in respect of the various regions:

Western Cape -21 seats

Eastern Cape -26 seats

Northern Cape - 4 seats

Natal -40 seats

Orange Free State -15 seats

North-West -17 seats

Northern Transvaal -20 seats

Eastern Transvaal -14 seats

Pretoria-Witwatersrand-

Vereeniging -43 seats

; and

(b) 200 seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.

3. The lists of candidates submitted by a party, shall in total contain the names of not more than 400 candidates, and each such list shall denote such names in such fixed order of preference as the party may determine.

4. A party's lists of candidates shall consist of-

(a) both a national list and a list for each region; or

(b) a list for each region,

with such number of names on each list as the party may determine subject to item 3.

5. The 200 seats referred to in item 2 (a) shall be allocated per region to the parties contesting an election, as follows:

(a) A quota of votes per seat shall be determined in respect of each region by dividing the total number of votes cast in a region by the number of seats, plus one, reserved for such region under item 2 (a).

(b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular region.

(c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party, shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party in a region by the

quota of votes per seat indicated by paragraph (b) for that region.

(d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph (c), shall be awarded to the party or parties concerned in sequence of the highest surplus.

(e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular region shall indicate that party's provisional allocation of the seats reserved under item 2 (a) for that region.

(f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), shall indicate its provisional allocation of the seats referred to in item 2 (a).

(g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.

6. The 200 seats referred to in item 2 (b) shall be allocated to parties contesting an election, as follows:

(a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by 401, and the result plus one, disregarding fractions, shall be the quota of votes per seat.

(b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph (a).

(c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be

awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph.

(d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5 (f) and the result shall indicate that party's provisional allocation of the seats referred to in item 2 (b).

(e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.

7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular region in terms of item 5 (e), such allocation shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5 (e) for the region in question, minus the number of seats forfeited by it in respect of its list for such region, shall become its final allocation in respect of the seats reserved for such region in terms of item 2 (a).

(b) An amended quota of votes per seat shall be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph (a), by the

number of seats, plus one, reserved for such region under item 2

(a), minus the number of seats finally allocated to the said party in terms of paragraph (a).

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such region for purposes of the said recalculation.

(d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph (c) for such region.

(e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.

(f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such region shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2 (a) for that region.

(3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6 (d), such allocation shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 6 (d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2 (b).

(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 401, minus the number of seats finally allocated to the said party in terms of paragraph (a).

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said

recalculation.

(d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c).

(e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph.

(f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of item 5 (g), and the result shall, subject to subitem (4), indicate that party's final allocation of the seats referred to in item 2 (b).

(4) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the procedure provided for in this item shall mutatis mutandis be repeated until all seats have been allocated.

8. (1) Where a party submitted both a national list and regional lists, the seats finally allocated to it-

(a) in terms of item 5 (g), shall be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and

(b) in terms of item 6 (e), shall be filled from its national list in accordance with its final allocation of seats in terms of that item.

(2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.

9. (1) Where a party submitted regional lists only, the seats finally allocated to it-

(a) in terms of item 5 (g), shall be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and

(b) in terms of item 6 (e), shall be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph (a) are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5 (g): Provided that if a party was not allocated any seats in terms of item 5 (g), the seats allocated to it in terms of item 6 (e) shall be filled from its regional lists in proportion to the number of votes received by that party in each of the regions: Provided further that surplus fractions shall be disregarded save that any remaining seats shall be awarded to regions in sequence of the highest surplus fractions.

(2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.

Election of provincial legislatures

10. The Commission shall determine the number of seats in each provincial legislature, taking into account available scientifically based data in respect of voters, representations by interested parties and the following proposed determination:

Western Cape -42 seats

Eastern Cape -52 seats

Northern Cape -30 seats

Natal -80 seats

Orange Free State -30 seats

North-West -34 seats

Northern Transvaal -40 seats

Eastern Transvaal -30 seats

Pretoria-Witwatersrand-Vereeniging -86 seats

Provided that the Commission may for the purposes of any provincial election after the first election under this Constitution vary any determination under this item.

11. Parties registered in terms of the Electoral Act, 1993, 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 the Electoral Act, 1993.

12. Each party shall be entitled to submit only one list per province, which shall contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.

13. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows-

(a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, shall be the quota of votes per seat for such province.

(b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a).

(c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus.

(d) The aggregate of a party's awards in terms of paragraphs (b) and (c), shall indicate that party's provisional allocation of seats in the provincial legislature in question.

(e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph (d), shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 shall become the final allocation of such seats to the various parties.

14. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it

in terms of item 13 (d), it shall forfeit a number of seats equal to the deficit.

(2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned shall be recalculated as follows:

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 (d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned.

(b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a).

(c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation.

(d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such province to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province.

(e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.

(f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subitem (3), indicate that party's final allocation of the seats determined under item 10 in respect of that province.

(3) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item shall mutatis mutandis be repeated until all seats have been allocated.

Declaration of support by one party of another party

15. (1) A party intending to contest the election of one or more or all the provincial legislatures, but not the election of the National Assembly, may, within the time and in the manner prescribed by or under the Electoral Act, 1993, declare that it supports another party which is contesting the election of the National Assembly, and if it so declares, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be votes cast in favour of such other party.

(2) A party intending to contest the election of the National Assembly, but not the election of one or more or any of the provincial legislatures, may, within the time and in the manner prescribed by or under the Electoral Act, 1993, declare that it supports another party which is contesting the election of a provincial legislature which the first-mentioned party is not contesting, and if it so declares, all votes cast in its favour shall, for the purpose of the election of that particular provincial legislature or legislatures, be deemed to be votes cast in favour of such other party.

(3) A party intending to contest the election of one or more provincial legislatures, but not the election of all the provincial legislatures, may, within the time and in the manner prescribed by or under the Electoral Act, 1993, declare that it supports another party which is contesting the election of a provincial legislature or legislatures which the first-mentioned party is not contesting, and if it so declares, all votes cast in its favour shall, for the purpose of the election of the last-mentioned provincial legislature or legislatures, be deemed to be votes cast in favour of such other party.

(4) For the purposes of subitems (2) and (3), a party may support different parties in the different provincial legislatures.

(5) This item shall apply only to an election of the National Assembly which is held simultaneously with the election of the

provincial legislatures.

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 has been certified by the Commission as having been free and fair or a declaration has been made by the Commission under section 250 (1) (a), the Commission shall, within two days after such certification or declaration, designate from each list of candidates published in terms of section 23 of the Electoral Act, 1993, the representatives of each party in each 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 of both the National Assembly and a provincial legislature 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 certification or declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate shall 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 all legislatures.

Supplementation of lists of candidates

17. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 16, save where provided for by an Act of Parliament.

18 Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, if-

(a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;

(b) a representative is elected as a member of the Senate;

(c) a name is deleted from a list in terms of item 16

(2); or

(d) a vacancy has occurred and the appropriate list of

candidates of the party concerned is depleted.

19. Lists of candidates of a party published in terms of section 23 of the Electoral Act, 1993, 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.

20. The number of names on lists of candidates as supplemented in terms of item 18 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by a party

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:

- (a) all vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

Vacancies

23. (1) In the event of a vacancy occurring in the representation of a party in any legislature, such vacancy shall forthwith be filled in accordance with section 44 or 133.

(2) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 43 (b) or 133 (1) (b), 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.

Alteration of numbers and boundaries of provinces

24. If the numbers or boundaries of provinces are altered pursuant to section 124, the Commission shall review the determinations made in terms of items 2 and 10, and such revised determinations shall then be the basis of any elections for the National Assembly or the provincial legislatures held after any such alteration.

Definitions

25. In this Schedule-

`Commission' means the Independent Electoral Commission, established by the Independent Electoral Commission Act, 1993 (Act 150 of 1993), or, in relation to any election held after the first election under this Constitution, that Commission or any other body established or designated by an Act of Parliament;

`national list' means a list of candidates prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats on a national basis;

`provincial list' means a list of candidates prepared by a party for an election of a provincial legislature;

`region' means the territorial area of a province;

`regional list' means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats in respect of such region.

Application of Schedule with reference to section 124

26. The provisions of this Schedule shall be subject to any regulations made or directions given by the Commission in terms of section 124 (7) in so far as affected areas within the meaning of that section are concerned.

Schedule 3

OATHS OF OFFICE AND SOLEMN AFFIRMATIONS

Oath of office or solemn affirmation of President and Acting President

In the presence of those assembled here and in full realisation of the high calling I assume as President/Acting President in the service of the Republic of South Africa I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa, and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the

Republic; to obey, observe, uphold and maintain the Constitution and all other Law of the Republic; to 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; to do justice to all; and to devote myself to the well-being of the Republic and all its people.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Executive Deputy Presidents

In the presence of those assembled here and in full

realisation of the high calling I assume as Executive Deputy

President in the service of South Africa I, A.B., do hereby

swear/solemnly affirm to be faithful to the Republic of South

Africa, and do solemnly and sincerely promise at all times to

promote that which will advance and to oppose all that may harm the

Republic; to obey, observe, uphold and maintain the Constitution

and all other Law of the Republic; to 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; to do justice to all; and to

devote myself to the well-being of the Republic and all its people.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Ministers and Deputy

Ministers

I, A.B., do hereby swear/solemnly affirm to be faithful to the

Republic of South Africa and undertake before those assembled here

to hold my office as Minister/Deputy Minister with honour and

dignity; to respect and uphold the Constitution and all other Law

of the Republic of South Africa; to be a true and faithful

counsellor; not to divulge directly or indirectly any matters which

are entrusted to me under secrecy; and to perform the duties of my

office conscientiously and to the best of my ability.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Premiers and members of

Executive Councils

I, A.B., do hereby swear/solemnly affirm to be faithful to the

Republic of South Africa and undertake before those assembled here

to hold my office as Premier/Member of the Executive Council of my

province with honour and dignity; to respect and uphold the

Constitution and all other Law of the Republic of South Africa; to

be a true and faithful counsellor; not to divulge directly or

indirectly any matters which are entrusted to me under secrecy; and

to perform the duties of my office conscientiously and to the best of my ability.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of members of National Assembly, Senate or provincial legislature

I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my functions as a member of the National Assembly/Senate/provincial legislature to the best of my ability.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Judges

I, A.B., do hereby swear/solemnly affirm that I will in my capacity as Judge of the Supreme Court/Constitutional Court of the Republic of South Africa uphold and protect the Constitution of the Republic and the fundamental rights entrenched therein and in so doing administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the Law of the Republic.

(In the case of an oath: So help me God.)

Oath of office or solemn affirmation of Attorneys-General

I, A.B., do hereby swear/solemnly affirm that I will in my capacity as Attorney-General uphold and protect the Constitution of the Republic of South Africa and the fundamental rights entrenched therein and in so doing enforce the Law of the Republic without fear, favour or prejudice, in accordance with the Constitution and the Law of the Republic.

(In the case of an oath: So help me God.)

Schedule 4

CONSTITUTIONAL PRINCIPLES

I

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

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due

consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

V

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

VI

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

VII

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

VIII

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

IX

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

X

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

XI

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

encouraged.

XII

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

XIII

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

XIV

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

XV

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

XVI

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

XVII

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

XVIII

The powers, boundaries and functions of the national government and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the

legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

XIX

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

XX

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

XXI

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

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity- in particular in relation to other states- powers should be allocated to the national government.

4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.

5. The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

6. Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia-

(a) for the purposes of provincial planning and development and the rendering of services; and

(b) in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province.

7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.

8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXIII

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

XXIV

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive

powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

XXV

The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

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

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

Notwithstanding the provisions of Principle XII, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.

XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South

African community, functioning on a basis of fairness and which shall serve all members or the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.

2. Every member of the public service shall be entitled to a fair pension.

XXXI

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

XXXII

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.

XXXIII

The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.

Schedule 5

PROCEDURE FOR ELECTION OF PRESIDENT

1. Nominations of candidates for election as President shall be called for by the Chief Justice or the other judge presiding at the meeting at which the President is to be elected.
2. Every nomination shall be submitted on the form prescribed by the Chief Justice and shall be signed by two members of Parliament and also by the person nominated, unless the person nominated has in writing signified his or her willingness to accept the nomination.
3. The names of the persons duly nominated as provided for in item 2 shall be announced at the meeting at which the election is to take place by the person presiding thereat, and no debate shall be allowed at the election.
4. If in respect of any election only one nomination has been

received, the person presiding at the meeting shall declare the candidate in question to be duly elected.

5. Where more than one candidate is nominated, a vote shall be taken by secret ballot, each person present and entitled to vote having one vote, and any candidate in whose favour the majority of all the votes cast is recorded, shall be declared duly elected by the person presiding at the meeting.

6. (a) If no candidate obtains a majority of all the votes so cast, the candidate who has received the smallest number of votes shall be eliminated and a further ballot shall be taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast and is declared duly elected.

(b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the meeting shall by separate vote, to be repeated as often as may be necessary, determine which of those candidates shall for the purpose of paragraph (a) be eliminated.

7. Whenever-

(a) only two candidates have been nominated; or

(b) after the elimination of one or more candidates in accordance with this Schedule, only two candidates remain, and there is an equality of votes between those two candidates, the person presiding at the meeting shall at the time the result of the election is announced, fix the time at and date on which a further meeting will be held, being a date not more than seven days thereafter.

8. At the further meeting referred to in item 7, the provisions of this Schedule shall apply as if such further meeting were the first meeting called for the purpose of the election in question.

9. (1) The Chief Justice shall make rules in regard to the procedure to be observed at a meeting at which the President is to be elected, and rules defining the duties of the presiding officer and of any person appointed to assist him and prescribing the manner in which the ballot at any such meeting shall be conducted.

(2) Any such rules shall be made known in such manner as the Chief Justice may consider necessary.

LEGISLATIVE COMPETENCES OF PROVINCES

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at all levels, excluding university and technikon
education

Environment

Health services

Housing

Language policy and the regulation of the use of official
languages within a province, subject to section 3.

Local government, subject to the provisions of Chapter 10

Nature conservation, excluding national parks, national
botanical gardens and marine resources

Police, subject to the provisions of Chapter 14

Provincial public media

Public transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

Schedule 7

Number and year Title of law Extent of
repeal

Act 46 of 1959 Representation between the Republic The whole
of South Africa and Self-governing

Territories Act, 1959

Act 32 of 1961 Provincial Government Act, 1961 The whole

Act 22 of 1963 Provincial Councils and Executive The whole
Committees Act, 1963

Act 48 of 1963 Transkei Constitution Act, 1963 The whole

Act 101 of 1967 Transkei Constitution Amendment Act, The whole
1967

Act 36 of 1968 Transkei Constitution Amendment Act, The whole

1968

Act 26 of 1969 South Africa Act Amendment Act, 1969 The whole

Act 26 of 1970 National States Citizenship Act, The whole

1970

Act 21 of 1971 Self-governing Territories The whole

Constitution Act, 1971

Act 31 of 1971 Transkei Constitution Amendment Act, The whole

1971

Act 61 of 1975 Transkei Constitution Amendment Act, The whole

1975

Act 3 of 1976 Transkei Constitution Amendment Act, The whole

1976

Act 65 of 1976 Financial Relations Act, 1976 The whole,

except

sections

27 and 28

Act 100 of 1976 Status of Transkei Act, 1976 The whole

Act 30 of 1977 Constitution Amendment Act, 1977 The whole

Act 31 of 1977 Financial Relations Amendment Act, The whole

1977

Act 89 of 1977 Status of Bophuthatswana Act, 1977 The whole

Act 8 of 1978 Bophuthatswana Border Extension Act, The whole

1978

Act 13 of 1978 National States Citizenship Amendment The whole

Act, 1978

Act 36 of 1978 Alteration of Provincial Boundaries The whole

Act, 1978

Act 107 of 1979 Status of Venda Act, 1979 The whole

Act 2 of 1980 Borders of Particular States The whole

Extension Act, 1980

Act 70 of 1980 Republic of South Africa Constitution The whole

Amendment Act, 1980

Act 101 of 1980 Republic of South Africa Constitution The whole

Fifth Amendment Act, 1980

Act 77 of 1981 Borders of Particular States The whole

Extension Amendment Act, 1981

Act 101 of 1981 Republic of South Africa Constitution The whole

Second Amendment Act, 1981

Act 102 of 1981 Financial Relations Amendment Act, The whole

1981

Act 110 of 1981 Status of Ciskei Act, 1981 The whole

Act 34 of 1982 Financial Relations Amendment Act, The whole

1982

Act 25 of 1983 Borders of Particular States The whole

Extension Amendment Act, 1983

Act 88 of 1983 Provincial Affairs Act, 1983 The whole,

except

section 5

Act 109 of 1983 Borders of Particular States The whole

Extension Second Amendment Act,

1983

Act 110 of 1983 Republic of South Africa Constitution The whole

Act, 1983

Act 105 of 1984 Constitution Amendment Act, 1984 The whole,

except

sections

12, 13 and

14

Act 114 of 1984 Financial Relations Amendment Act, The whole

1984

Act 3 of 1985 Financial Relations Amendment Act, The whole

1985

Act 26 of 1985 Alteration of Provincial Boundaries The whole

Act, 1985

Act 104 of 1985 Constitutional Affairs Amendment Act, The whole

1985

Act 69 of 1986 Provincial Government Act, 1986 The whole,

except

section 20

Act 80 of 1986 Joint Executive Authority for KwaZulu The whole

and Natal Act, 1986

Act 112 of 1986 Borders of Particular States The whole

Extension Amendment Act, 1986

Act 20 of 1987 Constitution Amendment Act, 1987 The whole

Act 32 of 1987 Constitutional Laws Amendment Act, Sections

1987 18, 19,

20, 31 and

32

Act 43 of 1988 Constitutional Laws Amendment Act, Sections
1988 10, 11, 12
and 13

Act 50 of 1988 Constitution Amendment Act, 1988 The whole

Act 59 of 1988 Borders of Particular States The whole
Extension Act, 1988

Act 85 of 1988 National States Constitution The whole
Amendment Act, 1988

Act 86 of 1988 Promotion of Constitutional The whole
Development Act, 1988

Act 101 of 1988 Constitution Third Amendment Act, The whole
1988

Act 42 of 1989 Incorporation of Certain Land in the The whole
Republic of South Africa Act, 1989

Act 71 of 1989 Constitution Fourth Amendment Act, The whole
1989

Act 61 of 1990 Constitution Amendment Act, 1990 The whole

Act 111 of 1990 National States Constitution The whole
Amendment Act, 1990

Act 59 of 1991 Provincial Matters Amendment Act, The whole
1991

Act 62 of 1991 Financial Relations Amendment Act, The whole
1991

Act 74 of 1991 Joint Executive Authority for The whole
KwaZulu and Natal Amendment Act,
1991

Act 146 of 1992 Constitution Second Amendment Act, The whole
1992

Act 149 of 1992 Constitution Amendment Act, 1992 The whole

Act 82 of 1993 Constitution Amendment Act, 1993 The whole

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AZANIAN PEOPLES ORGANISATION (AZAPO) AND OTHERS v THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

CCT 17/96

Constitutional Court

25 July 1996

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The applicants applied for direct access to the Constitutional Court and for an order declaring s 20(7) of the Promotion of National Unity and Reconciliation Act 34 of 1995 unconstitutional. Section 20(7), read with other sections of the Act, permits the Committee on Amnesty established by the Act to grant amnesty to a perpetrator of an unlawful act associated with a political objective and committed prior to 6 December 1993. As a result of the grant of amnesty, the perpetrator cannot be criminally or civilly liable in respect of that act. Equally, the state or any other body, organisation or person that would ordinarily have been vicariously liable for such act, cannot be liable in law.

The Court upheld the constitutionality of the section. It acknowledged that the section limited the applicants' right in terms of s 22 of the interim Constitution to 'have justiciable disputes settled by a court of law, or . . . other independent or impartial forum'. However, in terms of s 33(2) of the Constitution, violations of rights are permissible either if sanctioned by the Constitution or if justified in terms of s 33(1) of the Constitution (the limitation section). The Court held that the epilogue ('National Unity and Reconciliation') to the Constitution sanctioned the limitation on the right of access to court.

The Court held that amnesty for criminal liability was permitted by the epilogue because without it there would be no incentive for offenders to disclose the truth about past atrocities. The truth might unfold with such an amnesty, assisting in the process of reconciliation and reconstruction. Further, the Court noted that such an amnesty was a crucial component of the negotiated settlement itself, without which the Constitution would not have come into being. It found that the amnesty provisions were not inconsistent with international norms and did not breach any of the country's obligations in terms of public international law instruments.

The Court held that the amnesty for civil liability was also permitted by the epilogue, again because the absence of such an amnesty would constitute a disincentive for the disclosure of the truth.

The Court held that the epilogue permitted the granting of amnesty to the state for any civil liability. The Court said that Parliament was entitled to adopt a wide concept of reparations. This would allow the state to decide on proper reparations for victims of past abuses having regard to the resources of the state and the competing demands thereon. Further, Parliament was authorised to provide for individualised and nuanced reparations taking into account the claims of all the victims, rather than preserving state liability for provable and unprescribed delictual claims only.

The Court held that the epilogue authorised the granting of amnesty to bodies, organisations or other persons which would otherwise have been vicariously liable for acts committed in the past. The truth might not be told if these organisations or individuals were not given amnesty. Indeed, according to the Court, the Constitution itself might not have been negotiated had this

amnesty not been provided for.

The judgment of the Court was delivered by Mahomed DP and was concurred in by the other members of the Court. Didcott J delivered a separate concurring judgment.

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 17/96

THE AZANIAN PEOPLES ORGANIZATION

(AZAPO) First Applicant

NONTSIKELELO MARGARET BIKO Second Applicant

CHURCHILL MHLELI MXENGE Third Applicant

CHRIS RIBEIRO Fourth Applicant

versus

THE PRESIDENT OF THE REPUBLIC OF

SOUTH AFRICA First Respondent

THE GOVERNMENT OF THE REPUBLIC OF

SOUTH AFRICA Second Respondent

THE MINISTER OF JUSTICE Third Respondent

THE MINISTER OF SAFETY AND SECURITY Fourth Respondent

THE CHAIRPERSON OF THE TRUTH AND

RECONCILIATION COMMISSION Fifth Respondent

Heard on: 30 May 1996

Decided on: 25 July 1996

JUDGMENT

MAHOMED DP:

[1] For decades South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict as the resistance of those punished by their denial was met by laws designed to counter the effectiveness of such resistance. The conflict deepened with the increased sophistication of the economy, the rapid acceleration of knowledge and education and the ever increasing hostility of an international community steadily outraged by the inconsistency which had become manifest between its own articulated ideals after the Second World War and the official practices which had become institutionalised in South Africa through laws enacted to give them sanction and teeth by a Parliament elected only by a privileged minority. The result was a debilitating war of internal political dissension and confrontation, massive expressions of labour militancy, perennial student unrest, punishing international economic isolation, widespread dislocation in crucial areas of national endeavour, accelerated levels of armed conflict and a dangerous combination of anxiety, frustration and anger among expanding proportions of the populace. The legitimacy of law itself was deeply wounded as the country haemorrhaged dangerously in the face of this tragic conflict which had begun to traumatise the entire nation.

[2] During the eighties it became manifest to all that our country with all its natural wealth, physical beauty and human resources was on a disaster course unless that conflict was reversed. It was this realisation which mercifully rescued us in the early nineties as those who controlled the levers of state power began to negotiate a different future with those who had been imprisoned, silenced, or driven into exile in consequence of their resistance to that control and its consequences. Those negotiations resulted in an interim Constitution committed to a transition towards a more just, defensible and democratic political order based on the protection of fundamental human rights. It was wisely appreciated by those involved in the preceding negotiations that the task of building such a new democratic order was a very difficult task because of the previous history and the deep emotions and indefensible inequities it had generated; and

that this could not be achieved without a firm and generous commitment to reconciliation and national unity. It was realised that much of the unjust consequences of the past could not ever be fully reversed. It might be necessary in crucial areas to close the book on that past.

[3] This fundamental philosophy is eloquently expressed in the epilogue to the Constitution which reads as follows:

"National Unity and Reconciliation

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country."

Pursuant to the provisions of the epilogue, Parliament enacted during 1995 what is colloquially referred to as the Truth and Reconciliation Act. Its proper name is the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the Act").

[4] The Act establishes a Truth and Reconciliation Commission. The objectives of that Commission are set out in section 3. Its main objective is to "promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past". It is enjoined to pursue that objective by "establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights" committed during the period commencing 1 March 1960 to the "cut-off date". For this purpose the Commission is obliged to have regard to "the perspectives of the victims and the

motives and perspectives of the persons responsible for the commission of the violations". It also is required to facilitate

"... the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective ..."

The Commission is further entrusted with the duty to establish and to make known "the fate or whereabouts of victims" and of "restoring the human and civil dignity of such victims" by affording them an opportunity to relate their own accounts of the violations and by recommending "reparation measures" in respect of such violations and finally to compile a comprehensive report in respect of its functions, including the recommendation of measures to prevent the violation of human rights.

[5] Three committees are established for the purpose of achieving the objectives of the Commission. The first committee is the Committee on Human Rights Violations which conducts enquiries pertaining to gross violations of human rights during the prescribed period, with extensive powers to gather and receive evidence and information. The second committee is the Committee on Reparation and Rehabilitation which is given similar powers to gather information and receive evidence for the purposes of ultimately recommending to the President suitable reparations for victims of gross violations of human rights. The third and the most directly relevant committee for the purposes of the present dispute is the Committee on Amnesty. This is a committee which must consist of five persons of which the chairperson must be a judge. The Committee on Amnesty is given elaborate powers to consider applications for amnesty. The Committee has the power to grant amnesty in respect of any act, omission or offence to which the particular application for amnesty relates, provided that the applicant concerned has made a full disclosure of all relevant facts and provided further that the relevant act, omission or offence is associated with a political objective committed in the course of the conflicts of the past, in accordance with the provisions of sections 20(2) and 20(3) of the Act. These sub-sections contain very detailed provisions pertaining to what may properly be considered to be acts "associated with a political objective". Sub-section (3) of section 20 provides as follows:

"Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria:

- (a) The motive of the person who committed the act, omission or offence;
- (b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;
- (c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;

(d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;

(e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and

(f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued,

but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted-

(i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or

(ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed."

[6] After making provision for certain ancillary matters, section 20(7) (the constitutionality of which is impugned in these proceedings) provides as follows:

"(7) (a) No person who has been granted amnesty in respect of an act, omission or offence shall be criminally or civilly liable in respect of such act, omission or offence and no body or organisation or the State shall be liable, and no person shall be vicariously liable, for any such act, omission or offence.

(b) Where amnesty is granted to any person in respect of any act, omission or offence, such amnesty shall have no influence upon the criminal liability of any other person contingent upon the liability of the first-mentioned person.

(c) No person, organisation or state shall be civilly or vicariously liable for an act, omission or offence committed between 1 March 1960 and the cut-off date by a person who is deceased, unless amnesty could not have been granted in terms of this Act in respect of such an act, omission or offence."

Section 20(7) is followed by sections 20(8), 20(9) and 20(10) which deal expressly with both the formal and procedural consequences of an amnesty in the following terms:

"(8) If any person-

(a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or

(b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted,

the criminal proceedings shall forthwith upon publication of the proclamation referred to in subsection (6) become void or the sentence so imposed shall upon such publication lapse and the person so in custody shall forthwith be released.

(9) If any person has been granted amnesty in respect of any act or omission which formed the ground of a civil judgment which was delivered at any time before the granting of the amnesty, the publication of the proclamation in terms of subsection (6) shall not affect the operation of the judgment in so far as it applies to that person.

(10) Where any person has been convicted of any offence constituted by an act or omission associated with a political objective in respect of which amnesty has been granted in terms of this Act, any entry or record of the conviction shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes, including the application of any Act of Parliament or any other law, be deemed not to have taken place: Provided that the Committee may recommend to the authority concerned the taking of such measures as it may deem necessary for the protection of the safety of the public."

[7] What is clear from section 20(7), read with sections 20(8), (9) and (10), is that once a person has been granted amnesty in respect of an act, omission or offence

(a) the offender can no longer be held "criminally liable" for such offence and no prosecution in respect thereof can be maintained against him or her;

(b) such an offender can also no longer be held civilly liable personally for any damages sustained by the victim and no such civil proceedings can successfully be pursued against him or her;

(c) if the wrongdoer is an employee of the state, the state is equally discharged from any civil liability in respect of any act or omission of such an employee, even if the relevant act or omission was effected during the course and within the scope of his or her employment; and

(d) other bodies, organisations or persons are also exempt from any liability for any of the acts or omissions of a wrongdoer which would ordinarily have arisen in consequence of their vicarious liability for such acts or omissions.

[8] The applicants sought in this court to attack the constitutionality of section 20(7) on the grounds that its

consequences are not authorised by the Constitution. They aver that various agents of the state, acting within the scope and in the course of their employment, have unlawfully murdered and maimed leading activists during the conflict against the racial policies of the previous administration and that the applicants have a clear right to insist that such wrongdoers should properly be prosecuted and punished, that they should be ordered by the ordinary courts of the land to pay adequate civil compensation to the victims or dependants of the victims and further to require the state to make good to such victims or dependants the serious losses which they have suffered in consequence of the criminal and delictual acts of the employees of the state. In support of that attack Mr Soggot SC, who appeared for the applicants together with Mr Khoza, contended that section 20(7) was inconsistent with section 22 of the Constitution which provides that

"[e]very person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent or impartial forum."

He submitted that the Amnesty Committee was neither "a court of law" nor an "independent or impartial forum" and that in any event the Committee was not authorised to settle "justiciable disputes". All it was simply required to decide was whether amnesty should be granted in respect of a particular act, omission or offence.

[9] The effect of an amnesty undoubtedly impacts upon very fundamental rights. All persons are entitled to the protection of the law against unlawful invasions of their right to life, their right to respect for and protection of dignity and their right not to be subject to torture of any kind. When those rights are invaded those aggrieved by such invasion have the right to obtain redress in the ordinary courts of law and those guilty of perpetrating such violations are answerable before such courts, both civilly and criminally. An amnesty to the wrongdoer effectively obliterates such rights.

[10] There would therefore be very considerable force in the submission that section 20(7) of the Act constitutes a violation of section 22 of the Constitution, if there was nothing in the Constitution itself which permitted or authorised such violation. The crucial issue, therefore, which needs to be determined, is whether the Constitution, indeed, permits such a course. Section 33(2) of the Constitution provides that

"[s]ave as provided for in subsection (1) or any other provision of this Constitution, no law, whether a rule of common law, customary law or legislation, shall limit any right entrenched in this Chapter."

Two questions arise from the provisions of this sub-section. The first question is whether there is "any

other provision in this Constitution" which permits a limitation of the right in section 22 and secondly if there is not, whether any violation of section 22 is a limitation which can be justified in terms of section 33(1) of the Constitution which reads as follows:

"The rights entrenched in this Chapter may be limited by law of general application, provided that such limitation-

(a) shall be permissible only to the extent that it is-

(i) reasonable; and

(ii) justifiable in an open and democratic society based on freedom and equality; and

(b) shall not negate the essential content of the right in question,

and provided further that any limitation to-

(aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or

(bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,

shall, in addition to being reasonable as required in paragraph (a)(i), also be necessary."

[11] Mr Marcus, who together with Mr D Leibowitz appeared for the Respondents, contended that the epilogue, which I have previously quoted, is indeed a "provision of this Constitution" within the meaning of section 33(2). He argued that any law conferring amnesty on a wrongdoer in respect of acts, omissions and offences associated with political objectives and committed during the prescribed period, is therefore a law properly authorised by the Constitution.

[12] It is therefore necessary to deal, in the first place, with the constitutional status of the epilogue. In the founding affidavit in support of the application for direct access to this court made by the deputy president of the first applicant, reliance was placed on the Constitutional Principles contained in schedule 4 to the Constitution and it was submitted that

"[the] Constitutional Principles in Schedule 4 enjoy a higher status to that of other sections of the Constitution, in that, in terms of Section 74(1) of the Constitution, it is not permissible to amend the Constitutional Principles and they shall be included in the final Constitution.

To the extent that, therefore, the post-end clause is in conflict with Constitutional Principle VI, the latter should prevail."

Constitutional Principle VI provides that "[t]here shall be a separation of powers between the legislature, executive and the judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

[13] During oral argument before us this submission was wisely not pressed by counsel for the applicants. Even assuming in favour of the applicants that there is some potential tension between the language of section 20(7) of the Act and Constitutional Principle VI, it can be of no assistance to the applicants in their attack on the status of the epilogue. The purpose of schedule 4 to the Constitution is to define the principles with which a new constitutional text adopted by the Constitutional Assembly must comply. The new constitutional text has no force and effect unless the Constitutional Court has certified that the provisions of the text comply with these Constitutional Principles.

[14] The Constitutional Principles have no effect on the status of the epilogue. That status is determined by section 232(4) of the Constitution which provides as follows:

"In interpreting this Constitution a provision in any Schedule, including the provision under the heading '*National Unity and Reconciliation*', to this Constitution shall not by reason only of the fact that it is contained in a Schedule, have a lesser status than any other provision of this Constitution which is not contained in a Schedule, and such provision shall for all purposes be deemed to form part of the substance of this Constitution."

The epilogue, therefore, has no lesser status than any other part of the Constitution. As far as section 22 is concerned it therefore would have the same effect as a provision within section 22 itself which enacted that:

"Nothing contained in this sub-section shall preclude Parliament from adopting a law providing for amnesty to be granted in respect of acts, omissions and offences associated with political objectives committed during a defined period and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed."

What is clear is that Parliament not only has the authority in terms of the epilogue to make a law providing for amnesty to be granted in respect of the acts, omissions and offences falling within the category defined therein but that it is in fact obliged to do so. This follows from the wording in the material part of the

epilogue which is that "Parliament under this Constitution shall adopt a law" providing, inter alia, for the "mechanisms, criteria and procedures ... through which ... amnesty shall be dealt with".

[15] It was contended that even if this is the proper interpretation of the status of the epilogue and even if the principle of "amnesty" is authorised by the Constitution, it does not authorise, in particular, the far-reaching amnesty which section 20(7) allows. In his heads of argument on behalf of the applicants, Mr Soggot conceded that the wording of the epilogue provides

"... a clear indication that the Constitution contemplates the grant of amnesty in respect of offences associated with political objectives and committed in the course of the conflicts of the past, including offences involving gross violations of human rights."

At the commencement of oral argument Mr Soggot informed us, however, that he had been instructed by his clients to withdraw this concession and he therefore did not abandon the submission that section 20(7) was unconstitutional in all respects and that Parliament had no constitutional power to authorise the Amnesty Committee to indemnify any wrongdoer either against criminal or civil liability arising from the perpetration of acts falling within the categories described in the legislation.

Amnesty in respect of criminal liability

[16] I understand perfectly why the applicants would want to insist that those wrongdoers who abused their authority and wrongfully murdered, maimed or tortured very much loved members of their families who had, in their view, been engaged in a noble struggle to confront the inhumanity of apartheid, should vigorously be prosecuted and effectively be punished for their callous and inhuman conduct in violation of the criminal law. I can therefore also understand why they are emotionally unable to identify themselves with the consequences of the legal concession made by Mr Soggot and if that concession was wrong in law I would have no hesitation whatsoever in rejecting it.

[17] Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated. Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the laws which permitted the incarceration of persons or the investigation of crimes, nor the methods and the culture which informed such investigations, were easily open to public investigation, verification and correction. Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof. Loved ones have disappeared, sometimes mysteriously and most of them no longer survive to tell their tales. Others have had their freedom invaded, their dignity assaulted or their reputations tarnished by grossly unfair imputations hurled in the fire and the cross-fire of a deep and wounding conflict. The wicked and the innocent have often both

been victims. Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible, witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law. The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible. That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do. Without that incentive there is nothing to encourage such persons to make the disclosures and to reveal the truth which persons in the positions of the applicants so desperately desire. With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. The families of those unlawfully tortured, maimed or traumatised become more empowered to discover the truth, the perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or an anxiety they might be living with for many long years, the country begins the long and necessary process of healing the wounds of the past, transforming anger and grief into a mature understanding and creating the emotional and structural climate essential for the "reconciliation and reconstruction" which informs the very difficult and sometimes painful objectives of the amnesty articulated in the epilogue.

[18] The alternative to the grant of immunity from criminal prosecution of offenders is to keep intact the abstract right to such a prosecution for particular persons without the evidence to sustain the prosecution successfully, to continue to keep the dependants of such victims in many cases substantially ignorant about what precisely happened to their loved ones, to leave their yearning for the truth effectively unassuaged, to perpetuate their legitimate sense of resentment and grief and correspondingly to allow the culprits of such deeds to remain perhaps physically free but inhibited in their capacity to become active, full and creative members of the new order by a menacing combination of confused fear, guilt, uncertainty and sometimes even trepidation. Both the victims and the culprits who walk on the "historic bridge" described by the epilogue will hobble more than walk to the future with heavy and dragged steps delaying and impeding a rapid and enthusiastic transition to the new society at the end of the bridge, which is the vision which informs the epilogue.

[19] Even more crucially, but for a mechanism providing for amnesty, the "historic bridge" itself might never have been erected. For a successfully negotiated transition, the terms of the transition required not only the agreement of those victimized by abuse but also those threatened by the transition to a "democratic society based on freedom and equality". If the Constitution kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation might never have been forthcoming, and if it had, the bridge itself would have remained wobbly and insecure, threatened by fear from some and anger from others. It was for this reason that those who negotiated the Constitution made a deliberate choice, preferring understanding over vengeance, reparation over retaliation, ubuntu over victimisation.

[20] Is section 20(7), to the extent to which it immunizes wrongdoers from criminal prosecution, nevertheless objectionable on the grounds that amnesty might be provided in circumstances where the victims, or the dependants of the victims, have not had the compensatory benefit of discovering the truth at last or in circumstances where those whose misdeeds are so obscenely excessive as to justify punishment, even if they were perpetrated with a political objective during the course of conflict in the past? Some answers to such difficulties are provided in the sub-sections of section 20. The Amnesty Committee may grant amnesty in respect of the relevant offence only if the perpetrator of the misdeed makes a full disclosure of all relevant facts. If the offender does not, and in consequence thereof the victim or his or her family is not able to discover the truth, the application for amnesty will fail. Moreover, it will not suffice for the offender merely to say that his or her act was associated with a political objective. That issue must independently be determined by the Amnesty Committee pursuant to the criteria set out in section 20(3), including the relationship between the offence committed and the political objective pursued and the directness and proximity of the relationship and the proportionality of the offence to the objective pursued.

[21] The result, at all levels, is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the victims of that truth; between a correction in the old and the creation of the new. It is an exercise of immense difficulty interacting in a vast network of political, emotional, ethical and logistical considerations. It is an act calling for a judgment falling substantially within the domain of those entrusted with lawmaking in the era preceding and during the transition period. The results may well often be imperfect and the pursuit of the act might inherently support the message of Kant that "out of the crooked timber of humanity no straight thing was ever made". There can be legitimate debate about the methods and the mechanisms chosen by the lawmaker to give effect to the difficult duty entrusted upon it in terms of the epilogue. We are not concerned with that debate or the wisdom of its choice of mechanisms but only with its constitutionality. That, for us, is the only relevant standard. Applying that standard, I am not satisfied that in providing for amnesty for those guilty of serious offences associated with political objectives and in defining the mechanisms through which and the manner in which such amnesty may be secured by such offenders, the lawmaker, in section 20(7), has offended any of the express or implied limitations on its powers in terms of the Constitution.

[22] South Africa is not alone in being confronted with a historical situation which required amnesty for criminal acts to be accorded for the purposes of facilitating the transition to, and consolidation of, an overtaking democratic order. Chile, Argentina and El Salvador are among the countries which have in modern times been confronted with a similar need. Although the mechanisms adopted to facilitate that process have differed from country to country and from time to time, the principle that amnesty should, in appropriate circumstances, be accorded to violators of human rights in order to facilitate the consolidation of new democracies was accepted in all these countries and truth commissions were also established in such countries.

[23] The Argentinean truth commission was created by Executive Decree 187 of 15 December 1983. It disclosed to the government the names of over one thousand alleged offenders gathered during the investigations. The Chilean Commission on Truth and Reconciliation was established on 25 April 1990. It came to be known as the Rettig Commission after its chairman, Raul Rettig. Its report was published in 1991 and consisted of 850 pages pursuant to its mandate to clarify "the truth about the most serious human right violations ... in order to bring about the reconciliation of all Chileans". The Commission on the Truth for El Salvador was established with similar objectives in 1992 to investigate "serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth". In many cases amnesties followed in all these countries.

[24] What emerges from the experience of these and other countries that have ended periods of authoritarian and abusive rule, is that there is no single or uniform international practice in relation to amnesty. Decisions of states in transition, taken with a view to assisting such transition, are quite different from acts of a state covering up its own crimes by granting itself immunity. In the former case, it is not a question of the governmental agents responsible for the violations indemnifying themselves, but rather, one of a constitutional compact being entered into by all sides, with former victims being well-represented, as part of an ongoing process to develop constitutional democracy and prevent a repetition of the abuses.

[25] Mr Soggot contended on behalf of the applicants that the state was obliged by international law to prosecute those responsible for gross human rights violations and that the provisions of section 20(7) which authorised amnesty for such offenders constituted a breach of international law. We were referred in this regard to the provisions of article 49 of the first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, article 50 of the second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, article 129 of the third Geneva Convention relative to the Treatment of Prisoners of War and article 146 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. The wording of all these articles is exactly the same and provides as follows:

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches ..."

defined in the instruments so as to include, inter alia, wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health. They add that each High Contracting Party shall be under an obligation to search for persons alleged to have committed such grave breaches and shall bring such persons, regardless of their nationality, before its own courts.

[26] The issue which falls to be determined in this Court is whether section 20(7) of the Act is inconsistent

with the Constitution. If it is, the enquiry as to whether or not international law prescribes a different duty is irrelevant to that determination. International law and the contents of international treaties to which South Africa might or might not be a party at any particular time are, in my view, relevant only in the interpretation of the Constitution itself, on the grounds that the lawmakers of the Constitution should not lightly be presumed to authorise any law which might constitute a breach of the obligations of the state in terms of international law. International conventions and treaties do not become part of the municipal law of our country, enforceable at the instance of private individuals in our courts, until and unless they are incorporated into the municipal law by legislative enactment.

[27] These observations are supported by the direct provisions of the Constitution itself referring to international law and international agreements. Section 231(3) of the Constitution makes it clear that when Parliament agrees to the ratification of or accession to an international agreement such agreement becomes part of the law of the country only if Parliament expressly so provides and the agreement is not inconsistent with the Constitution. Section 231(1) provides in express terms that

"[a]ll rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic within the meaning of the previous Constitution, shall be vested in or binding on the Republic under this Constitution, unless provided otherwise by an Act of Parliament."

It is clear from this section that an Act of Parliament can override any contrary rights or obligations under international agreements entered into before the commencement of the Constitution. The same temper is evident in section 231(4) of the Constitution which provides that

"[t]he rules of customary international law binding on the Republic, shall unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic."

Section 35(1) of the Constitution is also perfectly consistent with these conclusions. It reads as follows:

"In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law."

The court is directed only to "have regard" to public international law if it is applicable to the protection of the rights entrenched in the chapter.

[28] The exact terms of the relevant rules of public international law contained in the Geneva Conventions relied upon on behalf of the applicants would therefore be irrelevant if, on a proper interpretation of the Constitution, section 20(7) of the Act is indeed authorised by the Constitution, but the content of these Conventions in any event do not assist the case of the applicants.

[29] In the first place it is doubtful whether the Geneva Conventions of 1949 read with the relevant Protocols thereto apply at all to the situation in which this country found itself during the years of the conflict to which I have referred.

[30] Secondly, whatever be the proper ambit and technical meaning of these Conventions and Protocols, the international literature in any event clearly appreciates the distinction between the position of perpetrators of acts of violence in the course of war (or other conflicts between states or armed conflicts between liberation movements seeking self-determination against colonial and alien domination of their countries), on the one hand, and their position in respect of violent acts perpetrated during other conflicts which take place within the territory of a sovereign state in consequence of a struggle between the armed forces of that state and other dissident armed forces operating under responsible command, within such a state on the other. In respect of the latter category, there is no obligation on the part of a contracting state to ensure the prosecution of those who might have performed acts of violence or other acts which would ordinarily be characterised as serious invasions of human rights. On the contrary, article 6(5) of Protocol II to the Geneva Conventions of 1949 provides that

"[a]t the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."

[31] The need for this distinction is obvious. It is one thing to allow the officers of a hostile power which has invaded a foreign state to remain unpunished for gross violations of human rights perpetrated against others during the course of such conflict. It is another thing to compel such punishment in circumstances where such violations have substantially occurred in consequence of conflict between different formations within the same state in respect of the permissible political direction which that state should take with regard to the structures of the state and the parameters of its political policies and where it becomes necessary after the cessation of such conflict for the society traumatised by such a conflict to reconstruct

itself. The erstwhile adversaries of such a conflict inhabit the same sovereign territory. They have to live with each other and work with each other and the state concerned is best equipped to determine what measures may be most conducive for the facilitation of such reconciliation and reconstruction. That is a difficult exercise which the nation within such a state has to perform by having regard to its own peculiar history, its complexities, even its contradictions and its emotional and institutional traditions. What role punishment should play in respect of erstwhile acts of criminality in such a situation is part of the complexity. Some aspects of this difficulty are covered by Judge Marvin Frankel in a book he authored with Ellen Saideman.

"The call to punish human rights criminals can present complex and agonising problems that have no single or simple solution. While the debate over the Nuremberg trials still goes on, that episode - trials of war criminals of a defeated nation - was simplicity itself as compared to the subtle and dangerous issues that can divide a country when it undertakes to punish its own violators.

A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous. If the army and the police have been the agencies of terror, the soldiers and the cops aren't going to turn overnight into paragons of respect for human rights. Their numbers and their expert management of deadly weapons remain significant facts of life. ... The soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population at large. If they are treated too harshly - or if the net of punishment is cast too widely - there may be a backlash that plays into their hands. But their victims cannot simply forgive and forget.

These problems are not abstract generalities. They describe tough realities in more than a dozen countries. If, as we hope, more nations are freed from regimes of terror, similar problems will continue to arise.

Since the situations vary, the nature of the problems varies from place to place."

The agonies of a nation seeking to reconcile the tensions between justice for those wronged during conflict, on the one hand, and the consolidation of the transition to a nascent democracy, on the other, has also been appreciated by other international commentators. It is substantially for these reasons that amnesty clauses are not infrequent in international agreements concluded even after a war between different states.

"Amnesty clauses are frequently found in peace treaties and signify the will of the parties to apply the principle of *tabula rasa* to past offences, generally political delicts such as treason, sedition and rebellion, but also to war crimes. As a sovereign act of oblivion, amnesty may be granted to all persons guilty of such offences or only to certain categories of offenders."

[32] Considered in this context, I am not persuaded that there is anything in the Act and more particularly in the impugned section 20(7) thereof, which can properly be said to be a breach of the obligations of this country in terms of the instruments of public international law relied on by Mr Soggot. The amnesty contemplated is not a blanket amnesty against criminal prosecution for all and sundry, granted automatically as a uniform act of compulsory statutory amnesia. It is specifically authorised for the purposes of effecting a constructive transition towards a democratic order. It is available only where there is a full disclosure of all facts to the Amnesty Committee and where it is clear that the particular transgression was perpetrated during the prescribed period and with a political objective committed in the course of the conflicts of the past. That objective has to be evaluated having regard to the careful criteria listed in section 20(3) of the Act, including the very important relationship which the act perpetrated bears in proportion to the object pursued.

Amnesty in respect of the civil liability of individual wrongdoers

[33] Mr Soggot submitted that chapter 3 of the Constitution, and more particularly section 22, conferred on every person the right to pursue, in the ordinary courts of the land or before independent tribunals, any claim which such person might have in civil law for the recovery of damages sustained by such a person in consequence of the unlawful delicts perpetrated by a wrongdoer. He contended that the Constitution did not authorise Parliament to make any law which would have the result of indemnifying (or otherwise rendering immune from liability) the perpetrator of any such delict against any claims made for damages suffered by the victim of such a delict. In support of that argument he suggested that the concept of "amnesty", referred to in the epilogue to the Constitution, was, at worst for the applicants, inherently limited to immunity from criminal prosecutions. He contended that even if a wrongdoer who has received amnesty could plead such amnesty as a defence to a criminal prosecution, such amnesty could not be used as a shield to protect him or her from claims for delictual damages suffered by any person in consequence of the act or omission of the wrongdoer.

[34] There can be no doubt that in some contexts the word "amnesty" does bear the limited meaning contended for by counsel. Thus one of the meanings of amnesty referred to in The Oxford English Dictionary is "... a general overlooking or pardon of past offences, by the ruling authority" and in similar vein, Webster's Dictionary gives as the second meaning of amnesty "a deliberate overlooking, as of an offense". Wharton's Law Lexicon also refers to amnesty in the context "by which crimes against the Government up to a certain date are so obliterated that they can never be brought into charge.

[35] I cannot, however, agree that the concept of amnesty is inherently to be limited to the absolution from criminal liability alone, regardless of the context and regardless of the circumstances. The word has no inherently fixed technical meaning. Its origin is to be found from the Greek concept of "amnestia" and it

indicates what is described by Webster's Dictionary as "an act of oblivion". The degree of oblivion or obliteration must depend on the circumstances. It can, in certain circumstances, be confined to immunity from criminal prosecutions and in other circumstances be extended also to civil liability. Describing the effects of amnesty in treaties concluded between belligerent parties, a distinguished writer states:

"An amnesty is a complete forgetfulness of the past; and as the treaty of peace is meant to put an end to every subject of discord, the amnesty should constitute its first article. Accordingly, such is the common practice at the present day. But though the treaty should make no mention of it, the amnesty is necessarily included in it, from the very nature of the agreement.

Since each of the belligerents claims to have justice on his side, and since there is no one to decide between them (Book III, ' 188), the condition in which affairs stand at the time of the treaty must be regarded as their lawful status, and if the parties wish to make any change in it the treaty must contain an express stipulation to that effect. Consequently all matters not mentioned in the treaty are to continue as they happen to be at the time the treaty is concluded. This is also a result of the promised amnesty. All the injuries caused by the war are likewise forgotten; and no action can lie on account of those for which the treaty does not stipulate that satisfaction shall be made; they are considered as never having happened.

But the effect of the settlement or amnesty can not be extended to things which bear no relation to war terminated by the treaty. Thus, claims based upon a debt contracted, or an injury received, prior to the war, but which formed no part of the motives for undertaking the war, remain as they were, and are not annulled by the treaty, unless the treaty has been made to embrace the relinquishment of all claims whatsoever. The same rule holds for debts contracted during the war, but with respect to objects which have no relation to it, and for injuries received during the war, but not as a result of it." (My emphasis)

[36] What are the material circumstances of the present case? As I have previously said, what the epilogue to the Constitution seeks to achieve by providing for amnesty is the facilitation of "reconciliation and reconstruction" by the creation of mechanisms and procedures which make it possible for the truth of our past to be uncovered. Central to the justification of amnesty in respect of the criminal prosecution for offences committed during the prescribed period with political objectives, is the appreciation that the truth will not effectively be revealed by the wrongdoers if they are to be prosecuted for such acts. That justification must necessarily and unavoidably apply to the need to indemnify such wrongdoers against civil claims for payment of damages. Without that incentive the wrongdoer cannot be encouraged to reveal the whole truth which might inherently be against his or her material or proprietary interests. There is nothing in the language of the epilogue which persuades me that what the makers of the Constitution intended to do was to encourage wrongdoers to reveal the truth by providing for amnesty against criminal prosecution in respect of their acts but simultaneously to discourage them from revealing that truth by keeping intact the threat that such revelations might be visited with what might in many cases be very substantial claims for civil damages. It appears to me to be more reasonable to infer that the legislation contemplated in the epilogue would, in the circumstances defined, be wide enough to allow for an amnesty which would protect a wrongdoer who told the truth, from both the criminal and the civil consequences of his or her admissions.

[37] This conclusion appears to be fortified by the fact that what the epilogue directs is that

"amnesty shall be granted in respect of acts, omissions and offences ...".

If the purpose was simply to provide mechanisms in terms of which wrongdoers could be protected from criminal prosecution in respect of offences committed by them, why would there be any need to refer also to "acts and omissions" in addition to offences? The word "offences" would have covered both acts and omissions in any event.

[38] In the result I am satisfied that section 20(7) is not open to constitutional challenge on the ground that it invades the right of a victim or his or her dependant to recover damages from a wrongdoer for unlawful acts perpetrated during the conflicts of the past. If there is any such invasion it is authorised and contemplated by the relevant parts of the epilogue.

The effect of amnesty on any potential civil liability of the state

[39] Mr Soggot contended forcefully that whatever be the legitimate consequences of the kind of amnesty contemplated by the epilogue for the criminal and civil liability of the wrongdoer, the Constitution could not justifiably authorise any law which has the effect of indemnifying the state itself against civil claims made by those wronged by criminal and delictual acts perpetrated by such wrongdoers in the course and within the scope of their employment as servants of the state. Section 20(7) of the Act, he argued, had indeed that effect and was therefore unconstitutional to that extent.

[40] This submission has one great force. It is this. If the wrongdoer in the employment of the state is not personally indemnified in the circumstances regulated by the Act, the truth might never unfold. It would remain shrouded in the impenetrable mysteries of the past, leaving the dependants of many victims with a grief unrelieved by any knowledge of the truth. But how, it was argued, would it deter such wrongdoers from revealing the truth if such a revelation held no criminal or civil consequences for them? How could such wrongdoers be discouraged from disclosing the truth if their own liberty and property was not to be threatened by such revelations, but the state itself nevertheless remained liable to compensate the families of victims for such wrongdoings perpetrated by the servants of the state?

[41] This is a serious objection which requires to be considered carefully. I think it must be conceded that in many cases, the wrongdoer would not be discouraged from revealing the whole truth merely because the consequences of such disclosure might be to saddle the state with a potential civil liability for damages arising from the delictual acts or omissions of a wrongdoer (although there may also be many cases in which such a wrongdoer, still in the service of the state, might in some degree be inhibited or even coerced from making disclosures implicating his or her superiors).

[42] The real answer, however, to the problems posed by the questions which I have identified, seems to lie in the more fundamental objectives of the transition sought to be attained by the Constitution and articulated in the epilogue itself. What the Constitution seeks to do is to facilitate the transition to a new democratic order, committed to "reconciliation between the people of South Africa and the reconstruction of society". The question is how this can be done effectively with the limitations of our resources and the legacy of the past.

[43] The families of those whose fundamental human rights were invaded by torture and abuse are not the only victims who have endured "untold suffering and injustice" in consequence of the crass inhumanity of apartheid which so many have had to endure for so long. Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living for so many. The country has neither the resources nor the skills to reverse fully these massive wrongs. It will take many years of strong commitment, sensitivity and labour to "reconstruct our society" so as to fulfill the legitimate dreams of new generations exposed to real opportunities for advancement denied to preceding generations initially by the execution of apartheid itself and for a long time after its formal demise, by its relentless consequences. The resources of the state have to be deployed imaginatively, wisely, efficiently and equitably, to facilitate the reconstruction process in a manner which best brings relief and hope to the widest sections of the community, developing for the benefit of the entire nation the latent human potential and resources of every person who has directly or indirectly been burdened with the heritage of the shame and the pain of our racist past.

[44] Those negotiators of the Constitution and leaders of the nation who were required to address themselves to these agonising problems must have been compelled to make hard choices. They could have chosen to direct that the limited resources of the state be spent by giving preference to the formidable delictual claims of those who had suffered from acts of murder, torture or assault perpetrated by servants of the state, diverting to that extent, desperately needed funds in the crucial areas of education, housing and primary health care. They were entitled to permit a different choice to be made between competing demands inherent in the problem. They could have chosen to direct that the potential liability of the state be limited in respect of any civil claims by differentiating between those against whom prescription could have been pleaded as a defence and those whose claims were of such recent origin that a defence of prescription would have failed. They were entitled to reject such a choice on the grounds that it was irrational. They could have chosen to saddle the state with liability for claims made by insurance companies which had compensated institutions for delictual acts performed by the servants of the state and

to that extent again divert funds otherwise desperately needed to provide food for the hungry, roofs for the homeless and black boards and desks for those struggling to obtain admission to desperately overcrowded schools. They were entitled to permit the claims of such school children and the poor and the homeless to be preferred.

[45] The election made by the makers of the Constitution was to permit Parliament to favour "the reconstruction of society" involving in the process a wider concept of "reparation", which would allow the state to take into account the competing claims on its resources but, at the same time, to have regard to the "untold suffering" of individuals and families whose fundamental human rights had been invaded during the conflict of the past. In some cases such a family may best be assisted by a reparation which allows the young in this family to maximise their potential through bursaries and scholarships; in other cases the most effective reparation might take the form of occupational training and rehabilitation; in still other cases complex surgical interventions and medical help may be facilitated; still others might need subsidies to prevent eviction from homes they can no longer maintain and in suitable cases the deep grief of the traumatised may most effectively be assuaged by facilitating the erection of a tombstone on the grave of a departed one with a public acknowledgement of his or her valour and nobility. There might have to be differentiation between the form and quality of the reparations made to two persons who have suffered exactly the same damage in consequence of the same unlawful act but where one person now enjoys lucrative employment from the state and the other lives in penury.

[46] All these examples illustrate, in my view, that it is much too simplistic to say that the objectives of the Constitution could only properly be achieved by saddling the state with the formal liability to pay, in full, the provable delictual claims of those who have suffered patrimonial loss in consequence of the delicts perpetrated with political objectives by servants of the state during the conflicts of the past. There was a permissible alternative, perhaps even a more imaginative and more fundamental route to the "reconstruction of society", which could legitimately have been followed. This is the route which appears to have been chosen by Parliament through the mechanism of amnesty and nuanced and individualised reparations in the Act. I am quite unpersuaded that this is not a route authorised by the epilogue to the Constitution.

[47] The epilogue required that a law be adopted by Parliament which would provide for "amnesty" and it appreciated the "need for reparation", but it left it to Parliament to decide upon the ambit of the amnesty, the permissible form and extent of such reparations and the procedures to be followed in the determination thereof, by taking into account all the relevant circumstances to which I have made reference. Parliament was therefore entitled to decide that, having regard to the resources of the state, proper reparations for those victimised by the unjust laws and practices of the past justified formulae which did not compel any irrational differentiation between the claims of those who were able to pursue enforceable delictual claims against the state and the claims of those who were not in that position but nevertheless deserved reparations.

[48] It was submitted by Mr Soggot that the reference to the "need for reparation" in the epilogue is contained only in the fourth paragraph of the epilogue and does not appear in the directive to Parliament to adopt a law "providing for the mechanisms, criteria and procedures, including tribunals, if any, through which ... amnesty shall be dealt with ...". He argued from this that what the makers of the Constitution must have contemplated was that the ordinary liability of the state, in respect of damages sustained by others in consequence of the acts of the servants of the state, remained intact, and was protected by section 22 of the Constitution. In my view, this is a fragmentary and impermissible approach to the structure of the epilogue. It must be read holistically. It expresses an integrated philosophical and jurisprudential approach. The very first paragraph defines the commitment to the "historic bridge" and the second paragraph expands on the theme of this bridge by elevating "the pursuit of national unity, ... reconciliation between the people of South Africa and the reconstruction of society." It then goes on in the third paragraph, in very moving and generous language, to "secure" the "foundation" of the nation by transcending "the divisions and strife of the past, which generated gross violations of human rights" and elects, in eloquent terms in the next paragraph, to make the historic choice in favour of understanding above vengeance, ubuntu over victimisation and "a need for reparation but not for retaliation." This philosophy then informs the fifth paragraph which directs Parliament to adopt a law providing for amnesty and is introduced by the words "[i]n order to advance such reconciliation and reconstruction, amnesty shall be granted ...". The reference to "such reconciliation and reconstruction" embraces the continuing radiating influence of the preceding paragraphs including the reference to "the need for reparation". Approached in this way, the reparations authorised in the Act are not alien to the legislation contemplated by the epilogue. Indeed, they are perfectly consistent with, and give expression to, the extraordinarily generous and imaginative commitment of the Constitution to a philosophy which has brought unprecedented international acclaim for the people of our country. It ends with the deep spirituality and dignity of the last line:

"Nkosi sikelel' iAfrika - God seNn Suid-Afrika"

The indemnity of organisations and persons in respect of claims based on vicarious liability

[49] It was not contended by Mr Soggot that even if the state was properly rendered immune against claims for damages in consequence of delicts perpetrated by its servants, acting within the scope and in the course of their employment, individuals and organisations should not enjoy any similar protection in respect of any vicarious liability arising from any unlawful acts committed by their servants or members. He was correct in that attitude. Apart from the fact that the wrongdoers concerned might be discouraged from revealing the truth which implicated their employers or organisations on whose support they might still directly or indirectly depend, the Constitution itself could not successfully have been transacted if those responsible for the negotiations which preceded it and the political organisations to which they belonged, were going to remain vulnerable to potentially massive claims for damages arising from their vicarious liability in respect of such wrongful acts perpetrated by their agents or members. The erection of the "historic bridge" would never have begun.

Conclusion

[50] In the result, I am satisfied that the epilogue to the Constitution authorised and contemplated an "amnesty" in its most comprehensive and generous meaning so as to enhance and optimise the prospects of facilitating the constitutional journey from the shame of the past to the promise of the future. Parliament was, therefore, entitled to enact the Act in the terms which it did. This involved more choices apart from the choices I have previously identified. They could have chosen to insist that a comprehensive amnesty manifestly involved an inequality of sacrifice between the victims and the perpetrators of invasions into the fundamental rights of such victims and their families, and that, for this reason, the terms of the amnesty should leave intact the claims which some of these victims might have been able to pursue against those responsible for authorising, permitting or colluding in such acts, or they could have decided that this course would impede the pace, effectiveness and objectives of the transition with consequences substantially prejudicial for the people of a country facing, for the first time, the real prospect of enjoying, in the future, some of the human rights so unfairly denied to the generations which preceded them. They were entitled to choose the second course. They could conceivably have chosen to differentiate between the wrongful acts committed in defence of the old order and those committed in the resistance of it, or they could have chosen a comprehensive form of amnesty which did not make this distinction. Again they were entitled to make the latter choice. The choice of alternatives legitimately fell within the judgment of the lawmakers. The exercise of that choice does not, in my view, impact on its constitutionality. It follows from these reasons that section 20(7) of the Act is authorised by the Constitution itself and it is unnecessary to consider the relevance and effect of section 33(1) of the Constitution.

Order

[51] In the result, the attack on the constitutionality of section 20(7) of the Promotion of National Unity and Reconciliation Act 34 of 1995 must fail. That was the only attack which was pursued on behalf of the applicants in this Court. It accordingly follows that the application must be, and is, refused.

Chaskalson P, Ackermann, Kriegler, Langa, Madala, Mokgoro, O'Regan and Sachs JJ concur in the judgment of Mahomed DP.

DIDCOTT J:

[52] I concur in the order that Mahomed DP proposes to make. I also agree in general with, and wish to add nothing to, the comprehensive and lucid reasons given by him for the conclusions to which he has come that the Promotion of National Unity and Reconciliation Act (34 of 1995) is not unconstitutional in absolving:

(a) all those to whom amnesties have been granted from personal liability, either criminal or civil, for their unlawful activities that are covered;

(b) everyone else and all bodies and organisations besides the state from civil liability, incurred vicariously or otherwise, for such activities on the part of persons who have obtained their own amnesties in respect of those.

After much hesitation, and without managing to shed altogether some doubts that linger in my mind even now, I feel persuaded on balance that the same must go for the civil liability of the state. Both my approach to that troublesome issue and the line I take in endeavouring to resolve it are narrower than and, in their emphasis, different from the ones preferred by Mahomed DP. I shall therefore explain separately why, at the end of that particular journey, I nevertheless find myself arriving rather reluctantly at the same destination as his. The considerations which account largely for those qualms of mine will emerge too from the explanation.

[53] That the discharges from civil liability are all incompatible with section 22 of the interim Constitution (Act 200 of 1993) is clear beyond question. For they deny to a class of persons the right bestowed by it on everyone -

"... to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum".

Both the Committee on Amnesty and the Committee on Reparation and Rehabilitation which the statute establishes appear to be rateable for those purposes as independent and impartial tribunals, and I shall assume that they fit that bill. But the determination of justiciable disputes is hardly a function of either. That leaves the courts of law as the only avenue that would have been open to those asserting the right had they still enjoyed it. Subject to an obvious qualification, the class to whom it has instead been denied consists of people pursuing or wishing to pursue contested claims against any of the parties now protected which are based on a liability alleged for some unlawful activity of the kind encompassed. The qualification is this. Such claims are confined, firstly, to those intrinsically cognizable by a court according to the laws in force at the time when the causes of action arose and, secondly, to the ones not yet extinguished or barred by prescription or the like in terms of a scheme consistent with the Constitution. The rider must be added because, once a claim is unenforceable for the want of either attribute, it can never generate a justiciable dispute over its substantiation and the right does not then enter the reckoning. The relevance to my thinking of that consequence will become apparent in a moment or two.

[54] Whenever the right arises but is denied, on the other hand, the validity of the denial depends on the permissibility of that under section 33 of the Constitution. Its familiar sub-section (1) is not the sole

component that counts in the context of this case. So does sub-section (2). The combined effect of the two sub-sections is that the denial will pass constitutional muster if we find it to be reasonable, justifiable in an open and democratic society based on freedom and equality, and not a negation of the essential content of the right or, should we make no complete finding along those lines, if we are satisfied that some other provision of the Constitution allows it independently.¹ The only further provisions which may have such an import, as far as I can see, are the ones contained in the postscript to the Constitution or its epilogue, as Mahomed DP has called that, which under section 232(4) forms part of the Constitution and ranks equally with the rest of it.²

[55] In investigating the tolerability of the denial I do not set the store that Mahomed DP does by the impossibility of compensating all the countless victims of apartheid in any adequate measure or form for the incalculable damage done to them during that era, and by the unavailability of legal redress to a large majority of the victims either because the harm suffered was not in the first place the type for which the law could offer some remedy or because, though it fell within that restricted field, their claims had lapsed with the passage of time. Such harm, the scale and horror of which Mahomed DP has described so vividly, is highly pertinent to the political and social policy animating the statute, indeed of crucial importance there. It has scant bearing that I can see, however, on the constitutional issue now under discussion, since the lack of a right by the many can scarcely provide a sound excuse for its denial to others, be they relatively but few, whose title to it is clear. Nor do I attach great weight to the cost that the state would inevitably incur in meeting not some obligations foisted freshly on it, but ones endured all along from which the legislature has now seen fit to release it. We have no means of assessing that cost, even approximately. But, unless perhaps its amount unbeknown to us is prohibitively high in relation to our national revenue and expenditure, it does not strike me as a strong reason for depriving the persons to whom the obligations are owed of their normal and legal due.

[56] Much the same may be said no doubt about the civil amnesties tendered to parties other than the state. A major factor in each of those distinguishes it sharply, however, from the immunity that the state has been granted.

[57] The amnesties made available to individuals are indispensable if an essential object of the legislation is to be achieved, the object of eliciting the truth at last about atrocities committed in the past and the responsibility borne for them. The primary sources of information concerning those infamies, the perpetrators themselves, would hardly be willing to divulge it voluntarily, honestly and candidly without the protection of exemptions from personal liability, civil no less than criminal. The emergence of the truth, or a good deal of that at any rate, depends after all on no fear of the consequences continuing to daunt them from telling it, on their encouragement by the prospect of amnesties to reveal it instead. The shroud of silence that has enveloped their activities for too long would otherwise go on doing so. And that would have put paid effectively to the bulk of legal claims against them, I mention in parenthesis, had their escapes from liability not disposed of the lot in any event. For enough evidence to substantiate the claims would then have seldom come to light. The immunity awarded to the state does not serve the same cardinal

purpose. Having made a clean breast of their own misbehaviour and obtained personal amnesties in respect of it, the wrongdoers are unlikely to feel inhibited in disclosing such role as the state may have played in their activities. To absolve them but not it from liability would have furnished the people then suing it, what is more, with an additional advantage. They would have been helped to prove the unlawful conduct alleged, and its vicarious responsibility for that, by calling as witnesses and relying on the testimony of those very wrongdoers.

[58] The amnesties that shield bodies and organisations besides the state and persons apart from the actual offenders, to turn next to that category, appear to have had a different though equally cogent explanation. We all know that the agreement reached ultimately on the Constitution was the culmination of protracted and intense negotiations over its tenor and details alike, in which the main protagonists were organisations, bodies and individuals with a history of participation in the bitter political struggle that had preceded the process. It seems highly improbable that, when the postscript to the Constitution came up for discussion, the negotiators would ever have entertained the idea of amnesties which did not cover both their own organisations or bodies and persons found within their political ranks, including themselves. Any such suggestion, if pressed with vigour on a point so delicate, might well have jeopardised the entire negotiations. One has no reason to suppose and can scarcely imagine, however, that a comparable protectiveness or loyalty towards an entity as impersonal as the state would have been sentiments cherished by any significant number of negotiators.

[59] The cluster of amnesties share, on the other hand, a common denominator. I refer to one of the basic objects promoted by the statute, as seen from its provisions, and the effect to that which the amnesties are meant collectively to give. The object that I have in mind is this. Once the truth about the iniquities of the past has been established and made known, the book should be closed on them so that the catharsis thus engendered may divert the energies of the nation from a preoccupation with anguish and rancour to a future directed towards the goal which both the postscript to the Constitution and the preamble to the statute have set by declaring in turn that -

"... the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society".

The book would not be closed while litigation against the state proceeded throughout the land, accompanied by a constant fanfare of publicity and lasting much longer in all probability than the strictly limited period which, in the interests of putting an early end to unfruitful recriminations, the statute fixes for the work that it requires.

[60] All the considerations canvassed in the three preceding paragraphs of this judgment have a bearing, to

a greater or lesser extent, on both of the alternative enquiries that arise under section 33. They thus introduce the particular one to which I now turn, the question whether the postscript to the Constitution, rightly construed, encompasses the notion of an immunity operating in favour of the state.

[61] The postscript does not differentiate between the various beneficiaries of the amnesties that it envisages. Indeed it identifies none. Any number of dictionaries, lay and legal, define the word "amnesty". But no definition has come to my attention which throws light on that specific question. We must therefore deduce the answer, as best we can, from the postscript read as a whole. Friedman JP and Farlam J decided in *Azanian Peoples Organisation and Others v Truth and Reconciliation Commission and Others*³ that the "broadest possible" meaning should be given to the word where it appeared within the setting of the postscript thus read. They said so, to be sure, in the context of an argument which had been addressed to them about the applicability of the word to civil wrongs in addition to crimes, and when their minds were not attuned to the narrower issue of state immunity. No stricter construction seems to be warranted once that issue confronts us, however, in the absence at any rate of some recognised usage attributing to the word a sense which suggests that the state may be intrinsically ineligible for such protection. The circumstances that I discussed a moment ago in ascribing a common denominator to all the amnesties tend on the contrary to call for an interpretation equally wide, and no less so in themselves on account of the separate factors distinguishing those granted to the state from the ones dispensed elsewhere. Liabilities incurred by the state would otherwise fall outside the ambit of the "integrated philosophical and jurisprudential approach" to the treatment of liability in general which Mahomed DP sees, and I too accept, as significant characteristic of the postscript.⁴ Such a construction and the reasons for it which I have mentioned tell in favour of amnesties embracing all bearers of liability, amnesties that consequently include the state among their beneficiaries.

[62] The scales are tipped further that way, in my final estimation, by an aspect of the matter which I have not yet touched. It concerns the homage that the postscript pays to the "need for reparation". Reparations are usually payable by states, and there is no reason to doubt that the postscript envisages our own state shouldering the national responsibility for those. It therefore does not contemplate that the state will go scot free. On the contrary, I believe, an actual commitment on the point is implicit in its terms, a commitment in principle to the assumption by the state of the burden.

[63] What remains to be examined is the extent to which the statute gives effect to the acknowledgment of that responsibility. The question arises because it was said in argument to have done so insufficiently.

[64] The long title of the statute declares one of the objects which it promotes to be -

"... the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration

of the human and civil dignity of, victims of violations of human rights".

Section 1 defines "reparation" in terms that include -

"... any form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition".

The word "victims" is said in the same section to cover -

"... persons who ... suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights ... as a result of a gross violation of human rights or ... as a result of an act associated with a political objective for which amnesty has been granted".

The section continues by adding to the "victims" thus described a further class consisting of "such relatives or dependants" of the ones already listed "as may be prescribed" by regulation. Sections 26 and 27 provide for the process of awarding reparations. Everyone professing to be a "victim" may apply for an award to the Committee on Reparation and Rehabilitation after the matter has been referred there. It must decide in the first place whether the applicant is truly a "victim". Its next task, having accepted him or her as one if it does so, is to consider the application and recommend to the President what should be done "in an endeavour to restore the human and civil dignity of such victim". The President is required in turn to submit to Parliament his own recommendations on the case and all others like it. A joint committee of both houses has to consider those. Its decision, should Parliament approve of that, must then be implemented by regulations emanating from the President that "determine the basis and conditions upon which reparation shall be granted". All reparations are payable ultimately, in terms of section 42, from a special fund stocked mainly with money allocated by Parliament to that purpose.

[65] The statute does not, it is true, grant any legally enforceable rights in lieu of those lost by claimants whom the amnesties hit. It nevertheless offers some *quid pro quo* for the loss and establishes the machinery for determining such alternative redress. I cannot see what else it might have achieved immediately once, in the light of the painful choices described by Mahomed DP⁵ and in the exercise of the legislative judgment brought to bear on them, the basic decision had been taken to substitute the indeterminate prospect of reparations for the concrete reality of legal claims wherever those were enjoyed. For nothing more definite, detailed and efficacious could feasibly have been promised at that stage, and with no prior investigations, recommendations and decisions of the very sort for which provision is now made.

[66] Such are the reasons for my eventual agreement with the full range of the order dismissing the present application. But for one problem posed by section 33(1), which strikes me as wellnigh intractable, I would probably have come to the same conclusion, and could no doubt have reached it more easily, by treading the path indicated there. Negating the essential content of a constitutional right is, however, a concept that I have never understood. Nor can I fathom how one applies it to a host of imaginable situations. Baffled as I am by both conundrums, I would have been at a loss to hold that the denial of the right in question either had or had not negated its essential content. It is therefore with a sigh of relief that I find myself free to say, as I end this judgment, that my reliance on sub-section (2) of section 33 dispenses altogether with the need for me to bother about sub-section (1).

For the applicants: D Soggot SC and M Khoza instructed by
CO Morolo and Partners

For the respondents: GJ Marcus and DG Leibowitz instructed
by the State Attorney

Amicus curiae: Centre for Applied Legal Studies, University
of the Witwatersrand

EXPLANATORY MEMORANDUM TO THE PARLIAMENTARY BILL

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated by the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu but not for victimization;

AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with;

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION BILL, 1995

The purpose of the Promotion of National Unity and Reconciliation Bill, 1995, is to bring about unity and reconciliation by providing for the investigation and full disclosure of gross violations of human rights committed in the past.

It is based on the principle that reconciliation depends on forgiveness and that forgiveness can only take place if gross violations of human rights are fully disclosed. What is, therefore, envisaged is reconciliation through a process of national healing.

The Promotion of National Unity and Reconciliation Bill, 1995, seeks to find a balance between the process of national

healing and forgiveness, as well as the granting of amnesty as required by the interim Constitution.

WHAT THE CONSTITUTION REQUIRES

In order to advance national unity and the reconstruction of society the interim Constitution provides that “amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past”. It, furthermore, provides that Parliament must adopt a law providing for the mechanisms, criteria and procedures for the granting of amnesty. To this end that law must also provide for a cut-off date after which amnesty cannot be granted for any act, omission or offence.

WHAT INTERNATIONAL EXPERIENCE SHOWS

International experience shows that, if we are to achieve unity and morally acceptable reconciliation, it is necessary that the truth about gross violations of human rights must be:-

- established by an official investigation unit using fair procedures;
- fully and unreservedly acknowledged by the perpetrators;
- made known to the public, together with the identity of the planners, perpetrators and victims.

International human rights norms demand that any newly established government should deal with past gross violations of human rights in a way that ensures that the abovementioned requirements are met.

THE CONTEXT OF THE TRUTH AND RECONCILIATION COMMISSION

The Promotion of National Unity and Reconciliation Bill, 1995, combines the requirements of the interim Constitution with those of international human rights norms and provides for the establishment of a Truth and Reconciliation Commission (“the Commission”). The objective of the Commission will be to achieve national unity and reconciliation through the work it is mandated to do, which work will include investigations into gross violations of human rights, the granting of amnesty for acts, omissions and offences associated with political objectives and the recommendation of measures for the restoration of the human and civil dignity of the victims.

A gross violation of human rights is defined as the killing, abduction, torture or severe ill-treatment of any person by someone acting with a political objective. It includes, among others, the planning of such acts and attempts to commit them.

Amnesty may be given for acts, omissions or offences described as “acts associated with a political objective” and which is defined in the Bill. The definition also requires that such conduct must comply with the internationally accepted Norgaard principles (clause 20). Only acts associated with a political objective which were committed during the period from 1 March 1960 (the month of the Sharpeville massacre) to the last possible date specified in the interim Constitution (at present 5 December 1993) shall be considered for amnesty.

In view of the broad agreement that the Commission should complete its work as speedily as possible, the Commission will focus on gross violations of human rights committed since 1960.

Since it has been agreed that we must come to terms with the past and put it behind us, the Commission shall complete its work within a period of 18 months, which period may be extended by six months.

The structure of the Commission

The Commission will consist of 11 to 17 impartial and fit and proper persons to be known as commissioners. People with a high political profile will not be allowed to serve on the Commission as it is important that decisions are seen to be fair and unbiased.

The work of the Commission will mainly be done by three Committees, each with its own function. The Commission

will have the power to establish subcommittees in order to enable it to work in different areas at the same time and so finish its work within the required time period.

The three Committees will be known as:-

- the Committee on Human Rights Violations;
- the Committee on Amnesty; and
- the Committee on Reparation and Rehabilitation.

THE COMMITTEE ON HUMAN RIGHTS VIOLATIONS

The task of this Committee will be to investigate gross violations of human rights in or outside South Africa and to record all allegations made by victims or others with personal knowledge or reliable information.

The Committee must establish:-

- how and why such violations were committed, and who was responsible;
- the identity of the victims, their fate or present whereabouts and the nature and extent of the injuries and harm they have suffered;
- whether violations were the result of deliberate planning by the State or any other organisation; group or individual.

On completion of its investigations the Committee must prepare a full report of its activities, findings and make recommendations to the President on measures to prevent the commission of gross violations of human rights in the future.

THE COMMITTEE ON AMNESTY

This Committee will do the work required in terms of the Unity and Reconciliation clause of the interim Constitution. The task of the Committee will be to consider applications for amnesty for acts associated with a political objective and to grant amnesty where the Norgaard principles are met.

Because its function will include the weighing and judging of evidence, the Committee on Amnesty will be chaired by a judge.

Persons who wish to apply for amnesty for any act, omission or offence must satisfy the Committee that:-

- the act, omission or offence was associated with a political objective;
- the act, omission or offence took place between the period 1 March 1960 and the cut-off date contemplated in the interim Constitution; and
- full disclosure has been made.

Full disclosure is required in terms of the interim Constitution and demands an inquiry into the state of mind of the person responsible for the act, omission or offence in respect of which amnesty has been granted. The President must be informed of any decision to grant amnesty. In addition, the full names of the persons to whom amnesty has been granted must be published in the *Government Gazette*, together with information identifying the acts for which amnesty has been granted.

COMMITTEE ON REPARATION AND REHABILITATION

The task of this Committee is to deal with applications for reparation and rehabilitation by victims of gross violations of human rights. The Committee will have the duty of considering all the matters referred to it by the Commission, the Committee on Human Rights Violations and the Committee on Amnesty and must then make recommendations to the government.

While doing its work, the Committee must, among others:-

- observe certain principles designed to protect the dignity and personal values, beliefs and convictions of victims;
- deal with applications in a way that is speedy, inexpensive, fair and accessible; and
- have regard to the privacy, safety and convenience of victims, their families and witnesses.

The Bill authorises the President to draw up regulations governing the policy to be followed with regard to the granting of reparations. A President's Fund, funded by Parliament and private contribution, may be established in order to pay amounts as reparation to victims in terms of the regulations prescribed by the President.

THE POWERS OF THE COMMISSION

The Commission will be given certain powers to carry out its work. These powers will include, among others, the carrying out of investigations and local inspections, the holding of hearings, the appointment of researchers, the right to subpoena any person to give evidence or produce documents or other items required and to inquire into any matter with a view to promote national unity and reconciliation.

Persons appearing before or subpoenaed by the Commission or any of its Committees are obliged to answer any questions put to them, whether or not the answer may be incriminating or expose them to liability. However, in view thereof, any answer, document or other object supplied by a person, which may incriminate him or her, shall not be admissible as evidence against him or her in a court of law.

PUBLIC HEARINGS AND THE QUESTION OF TRANSPARENCY

The proceedings of the Commission and all the Committees will be open to the public. If, however, the Commission or a Committee believes that a person testifying may be harmed by a public hearing or it would be in the interest of justice, it may hear his or her evidence behind closed doors and protect the identity of that person.

Any person subpoenaed or called upon to appear before the Commission or any of its Committees is entitled to legal representation.

COMPLETING THE WORK OF THE COMMISSION

The Commission must complete its work within 18 months after its constitution. If need be, the President may extend the period for a further period not exceeding six months. The Commission must within three months after it has completed its work, submit a final report to the President.

When it has completed its activities, a Committee must submit a report to the Commission. This report will form part of the final report to be submitted to the President by the Commission and will eventually be brought to the notice and knowledge of the entire South African Nation. It will, among others, be Tabled in Parliament, published in the *Gazette* and distributed throughout the country.

REPEAL OF PREVIOUS INDEMNITY LEGISLATION

Previous indemnity legislation will be repealed when the Promotion of National Unity and Reconciliation Act, 1995, comes into operation.

Indemnities granted under previous legislation will, however, remain in force and temporary immunity or indemnity granted in terms of such legislation shall remain in force for a period of 12 months after the constitution of the Commission.

Introduction by

the Minister of Justice,

Mr Dullah Omar

After a long process of discussion and debate, inside and outside of Parliament, the scene is finally set for the appointment of the Truth and Reconciliation Commission. It is important to understand the context in which the Truth and Reconciliation Commission will take place. The Commission is based on the final clause of the Interim Constitution which reads as follows:

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future rounded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

I could have gone to Parliament and produced an amnesty law - but this would have been to ignore the victims of violence entirely. We recognised that we could not forgive perpetrators unless we attempt also to restore the honour and dignity of the victims and give effect to reparation.

The question of amnesty must be located in a broader context and the wounds of our people must be recognised. I do not distinguish between ANC wounds, PAC wounds and other wounds - many people are in need of healing, and we need to heal our country if we are to build a nation which will guarantee peace and stability.

A critical question which involves all of us in how do South Africans come to terms with the past. In trying to answer this important question honestly and openly, we are fortunate in having a President who is committed to genuine reconciliation in our country and to the transformation of South Africa into a non-racial, non-sexist democracy based on a recognition of universally accepted human rights.

The President believes - and many of us support him in this belief - that the truth concerning human rights violations in our country cannot be suppressed or simply forgotten. They ought to be investigated, recorded and made known. Therefore the President supports the setting up of a Commission of Truth and Reconciliation. The democratic government is committed to the building up of a human rights culture in our land.

There is a commitment to break from the past, to heal the wounds of the past, to forgive but not to forget and to build a future based on respect for human rights. This new reality in the human rights situation in South Africa places a great

responsibility upon all of us. Human rights is not a gift handed down as a favour by government or state to loyal citizens. It is the right of each and every citizen. Part of our joint responsibility is to help to illuminate the way, chart the road forward and provide South Africa with beacons or guidelines based on international experiences as we traverse the transition. We must guard against dangers and pitfalls! We must involve our citizens in the debate so as to ensure that human rights is not the preserve of the few but the birthright of every citizen! We must embark upon the journey from the past, through our transition and into a new future.

I wish to stress that the objective of the exercise is not to conduct a witch hunt or to drag violators of human rights before court to face charges. However, it must be stressed that a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation. I invite you to join in the search for truth without which there can be no genuine reconciliation.

Objectives

of the Commission

The objectives of the Commission will be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by:

- establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for committing such violations, by conducting investigations and holding hearings;
- facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and which comply with the requirements of the Act (Promotion of National Unity and Reconciliation Act);
- establishing and making known the fate or whereabouts of victims and restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and recommending reparation measures in respect of them;
- compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission and containing recommendations of measures to prevent the future violations of human rights.

Functions

of the Commission

The function of the Commission will be to achieve its objectives and to that end the Commission shall:

- facilitate, and where necessary initiate or coordinate, inquiries into:
 - gross violations of human rights, including violations which were part of a systematic pattern of abuse;
 - the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;
 - the identity of all persons, authorities, institutions and organisations involved in such violations;
 - the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual;

- accountability, political or otherwise, for any such violation;
- facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;
- facilitate and promote the granting of amnesty in respect of acts associated with' political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty in the Government Gazette;
- determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;
- prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;
- make recommendations to the President with regard to:
 - the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
 - measures which should be taken to grant urgent interim reparation to victims;
- make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of the Act;
- make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of human rights violations.

Constitution

of the Commission

- The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.
- The President shall appoint the commissioners in consultation with the Cabinet.
- The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile, provided that not more than two persons who are not South African citizens may be appointed as commissioners.
- The President shall make the appointment of the commissioners known by proclamation in the Government Gazette.
- The President shall designate one of the commissioners as the Chairperson and another as the Vice-Chairman of the Commission.
- A commissioner appointed in terms of the Act shall hold office for the duration of the Commission.
- A commissioner may at any time resign as commissioner by tendering his or her resignation in writing to the

President.

- The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate.
- If any commissioner tenders his or her resignation or is removed from office, or dies, the President, in consultation with his Cabinet, may fill the vacancy by appointing a person for the remainder of the term of office or may allow the seat vacated to remain vacant.

Structure

of the Commission

Committee on Human Rights Violations

Apart from the powers and duties referred to under Functions of the Commission, this Committee shall take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and 9 May 1995, or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period.

The Committee may record allegations and complaints of gross human rights violations.

The Committee may also:

- collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;
- make recommendations to the Commission as outlined under Functions of the Commission;
- make information which is in its possession available to either of the other two committees, a subcommittee or the investigating unit;
- submit interim reports to the Commission indicating the progress made by the Committee with its activities or with regard to any other particular matter.

The Committee will exercise the powers of investigation granted to the Commission in Chapter Six and Chapter Seven of the Act. This entails the establishment of an Investigating Unit which will investigate any matter falling within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of the Committee investigate any matter falling within the scope of the powers, functions and duties of that Committee, subject to the direction of the Committee.

Committee on Amnesty

This Committee will facilitate and promote the granting of amnesty in respect of acts associated with political objectives by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts applications for the granting of amnesty in respect of such acts and by publishing decisions granting amnesty in the *Government Gazette*.

Any person who wishes to apply for amnesty shall within 12 months from the date of the proclamation make such application to the Commission in the prescribed form. The hearings of the Amnesty Committee, which will have a Judge of the Supreme Court as its chairperson, will be held in public unless, in the judgement of the chairperson and the

committee, this may jeopardise life or limb, or contradict a process of fundamental human rights. The procedure can take different forms. Once the application form has been received by the Committee the Committee can, if it is satisfied that the requirements have been complied with, that there is no need for a hearing and that the act or omission or offence to which the application relates does not constitute a gross violation of human rights, in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.

If, however, in the view of the Committee, a hearing is necessary the Committee will inform the person of the place and time when the application will be heard and considered. The Committee then will deal with the application by granting or refusing amnesty. One of the provisions laid down is that the applicant must make a full disclosure of all relevant facts. The Committee shall be guided by the consideration of certain laid-down criteria:

- the motive of the person who committed the act, omission or offence;
- the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;
- the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;
- the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;
- whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and
- the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality), of the act, omission or offence to the objective pursued.

However, this does not include any act, omission or offence committed by any person referred to in subsection (2) of the Act who acted:

- for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or
- out of personal malice, ill-will or spite, directed against the victim of the acts committed.

Committee on Reparation and Rehabilitation of Victims

This Committee will:

- consider matters referred to it by the Commission, the Committee on Human Rights Violations and the Committee on Amnesty;
- gather evidence relating to the identity, fate and whereabouts of victims and the nature and extent of the harm suffered by them;

The Committee may:

- make recommendations which may include urgent interim measures as to appropriate measures of reparation to victims;
- make recommendations relating to the creation of institutions conducive to a stable and fair society and the

measures which need to be taken to prevent the commission of human rights violations;

- prepare and submit to the Commission interim reports in connection with its activities;

The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

The Committee will establish and make known the fate or whereabouts of victims and restore the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims and by recommending reparation measures in respect of them.

Applications for Reparation

Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation. The Committee shall consider any such application and may exercise any of the powers conferred on it, as outlined above.

In any matter referred to the Committee and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations.

If, upon consideration of any matter or application submitted to it and any evidence received or obtained by it, the Committee is of the opinion that the applicant is a victim, it shall, having due regard to the prescribed criteria, make recommendations in an endeavour to restore the human and civil dignity of the victim.

Over and above making recommendations which may include urgent interim measures, the Committee will report to the Commission with its findings and make recommendations which will be considered by the President with a view to making recommendations to Parliament and making regulations.

President's Fund

The President may, in such manner as he may deem fit, in consultation with the Minister of Justice and the Minister of Finance, establish a Fund into which shall be paid all money appropriated by Parliament for the purposes of the Fund and all money donated or contributed to the Fund or accruing to the Fund from any source.

There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President.

Victims of Human Rights Violations

When dealing with victims, the actions of the Commission shall be guided by the following principles:

- Victims shall be treated with compassion and respect for their dignity;
- Victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- Procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;
- Victims shall be informed through the press and any other medium of their rights in seeking redress through the

Commission, including information on the role of the Commission and the scope of its activities and the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry;

- Appropriate measures shall be taken in order to minimise inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf and to protect them from intimidation;
- Appropriate measures shall be taken to allow victims to communicate in the language of their choice;
- informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims.

Support Structures

Although the commission will be independent and will have a full-time staff drawn from many different categories, it will not be able to achieve its objectives without the fullest cooperation from voluntary organisations.

There are many non-governmental organisations (NGOs) which have an outstanding track record of service to the community. Some of these are human rights organisations, some are psychological and/or social support service organisations whilst others are religious bodies. All of these have the potential to complement the work of the Commission.

Many of these organisations have already been involved in the preparation leading up to the appointment of the Commission. If you are a member of one of these organisations or belong to a church, mosque or synagogue, please encourage your organisation to play an active role in assisting the Commission.

If you have been a victim of political violence and are not sure how to contact the Commission or what your rights are, get in touch with an NGO or religious organisation closest to you and ask for their help. They will be able to put you in touch with the Commission.

Once the Commission is appointed it will advertise very widely on radio, TV and in newspapers and this also will assist you both in linking up with the work of the Commission and being in a better position to make direct contact with the Commission, should you wish to do so.

Whatever else is true, South Africa needs to be transformed and needs to move towards the consolidation of democracy and the development of a culture of human rights. The Truth and Reconciliation Commission can make a contribution in this direction but its work will be enhanced, broadened and strengthened with your assistance.

Questions and Answers

1. Why should there be a Truth and Reconciliation Commission?

The Interim Constitution states that in order to advance reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflict of the past. But concern for perpetrators is not enough. There are many individuals, families and communities who have suffered deeply as a result of human rights violations. They deserve to know the truth as

part of the healing process. It is the search for truth which can create the moral climate in which reconciliation and peace will flourish.

2. When will the Commission start its work?

The Act governing the Commission is in place and the process leading to the appointment of the Commission by the President is well under way. It is hoped that the Commission will be in place before the end of 1995.

3. What will the Commission do?

It will enable people who have violated human rights to apply for amnesty. In order to do this they must disclose fully the nature of the offence. It will enable victims and/or their relatives to "tell their story" and it will investigate human rights violations which are brought before it. It will provide a measure of rehabilitation to those who request it and limited reparation. It will also record the truth as fully as possible and publish this, together with recommendations at the end of its term of office.

4. How long will the Commission be operational and where will it be based?

The Commission is appointed for a period of 18 months and, if required, can apply to sit for a further six months. In addition, a further three months is allocated for the Commission to complete its report. The President will decide where the Commission will be based. However, it is probable that the Commission's work will be decentralised and the Commission itself and some of its committees will travel widely throughout South Africa.
