

OFFICE OF THE PRESIDENT

No. 1324 - 22 July 1994

NO. 13 OF 1994: CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

GENERAL EXPLANATORY NOTE:

Words in bold indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Constitution of the Republic of South Africa, 1993, so as to further regulate the remuneration, allowances, pension and pension benefits of certain political office-bearers; to further regulate the courts' jurisdiction in relation to constitutional matters; to provide for the appointment of acting judges of the Supreme Court in accordance with an Act of Parliament; to make further provision in connection with the constitutional transition of the judiciary; and to rectify certain textual inconsistencies; and to provide for matters incidental thereto.

(English text signed by the President.) (Assented to 14 July 1994.)

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

Amendment of section 55 of Act 200 of 1993

1. Section 55 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) There shall, *subject to section 207(2)*, 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 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 *or determined under* an Act of Parliament."

Amendment of section 88 of Act 200 of 1993

2. Section 88 of the Constitution is hereby amended by the substitution for subsection (10) of the following subsection:

"(10) There shall, *subject to section 207(2)*, be paid out of and as a charge on the National Revenue Fund to an Executive Deputy President **or and to 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 *or determined under* an Act of Parliament."

Amendment of section 98 of Act 200 of 1993

3. Section 98 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

"(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** *sections* 101(3) and (6) *and 103(1) and in an Act of Parliament.* ".

Amendment of section 101 of Act 200 of 1993

4. Section 101 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There shall, subject to sections 241 and 242, 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."

Amendment of section 103 of Act 200 of 1993

5. Section 103 of the Constitution is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) The establishment, jurisdiction, composition and functioning of all other courts shall, *subject to sections 241 and 242*, be as prescribed by or under a law."; and

(b) by the substitution for subsection (2) of the following subsection:

"(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 *and the court does not have the competency to enquire into the validity of such a law or provision*, the court shall, subject to the other provisions of this section, decide the matter on the assumption that the law or provision is valid."

Amendment of section 104 of Act 200 of 1993

6. Section 104 of the Constitution is hereby amended by the addition to subsection (1) of the following proviso:

"Provided that the appointment of acting judges shall be as may be provided for in an Act of Parliament."

Amendment of section 110 of Act 200 of 1993

7. Section 110 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The first appointment of a person as the Public Protector after the commencement of this Constitution shall be made within **60** *120* days of the first sitting of the Senate under this Constitution."

Amendment of section 115 of Act 200 of 1993

8. Section 115 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The first members of the Commission after the commencement of this Constitution, shall be appointed within **60 120** days of the first sitting of the Senate under this Constitution."

Amendment of section 120 of Act 200 of 1993

9. Section 120 of the Constitution is hereby amended by the substitution for the expression "Commission on Gender Issues" of the expression "Commission on Gender Equality".

Amendment of section 135 of Act 200 of 1993

10. Section 135 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) There shall, subject to section 207(2)0, 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 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 *or determined under* a law of the provincial legislature."

Amendment of section 149 of Act 200 of 1993

11. Section 149 of the Constitution is hereby amended by the substitution for subsection (10) of the following subsection:

"(10) There shall, *subject to section 207(2)*, be paid out of and as a charge on the Provincial Revenue Fund of a province to the Premier **or and to** a member of the Executive Council of such province such **salary 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 *or determined under* a law of the provincial legislature. ".

Amendment of section 185 of Act 200 of 1993

12. Section 185 of the Constitution is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:

"Provided that revenue to which a province is entitled in terms of section 155(2)(a) **and**, (b), (c) and (d) shall form a direct charge against the National Revenue Fund to be credited to the respective Provincial Revenue Funds. ".

Insertion of section 190A in Act 200 of 1993

13. (1) The following section is hereby inserted in the Constitution after section 190:

"Pensions of political office-bearers

190A. (1) There shall be paid out of and as a charge on the pension fund referred to in

subsection (2) to a political office-bearer upon his or her retirement as a political office-bearer, or to his or her widow or widower or dependent or any other category of persons as may be determined in the rules of such pension fund upon his or her death, such pension and pension benefits as may be determined in terms of the said rules.

(2) A pension fund shall be established for the purposes of this section after consultation with a committee appointed by Parliament, and such a fund shall be registered in terms of and be subject to the laws governing the registration and control of pension funds in the Republic.

(3) All political office-bearers shall be members of the said pension fund.

(4) Contributions to the said fund by members of the fund shall be made at a rate to be determined in the rules of the fund, and such contributions shall be deducted monthly from the remuneration payable to members as political office-bearers.

(5) Contributions to the said fund by the State shall be made at a rate to be determined by the President, and such contributions shall be paid monthly from the National Revenue Fund and the respective Provincial Revenue Funds, according to whether a member serves at national or provincial level of government.

(6) In this section "political office-bearer" means-

- a. an Executive Deputy President;*
- b. a Minister or Deputy Minister;*
- c. a member of the National Assembly or the Senate;*
- d. the Premier or a member of the Executive Council of a province;*
- e. a member of a provincial legislature;*
- f. a diplomatic representative of the Republic who is not a member of the public service;*
or
- g. any other political office-bearer recognised for purposes of this section by an Act of Parliament."*

(2) Until the pension fund referred to in section 190A of the Constitution, as inserted by subsection (1) of this section, is established and registered as required by the said section 190A, the President may determine the rate of deductions contemplated in subsections (4) and (5) of the said section 190A, and the Minister of Finance shall recover such deductions and hold them in trust pending the establishment and registration of the said pension fund.

(3) As from the date on which the fund is registered-

- a. a person who before the date of registration of the fund became a political office-bearer as defined in subsection (6) of the said section 190A, shall be deemed to have been a member of the fund as from the date on which he or she became such a political office-bearer; and
- b. the fund shall for the purposes of paragraph (a) be deemed to have been established and registered on 27 April 1994 and to have existed at any relevant time in respect of any liability it would have incurred had the fund been in existence at that time.

Amendment of section 200 of Act 200 of 1993

14. Section 200 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The first appointment of members of the Commission shall be effected within **60 5120** days from the date of commencement of this Constitution. ".

Amendment of section 241 of Act 200 of 1993

15. Section 241 of the Constitution is hereby amended-

(a) by the addition to subsection (1) of the following proviso:

"Provided-

(a) that an appellate division of a supreme court which immediately before the commencement of this Constitution exercised jurisdiction in respect of an area which forms part of the national territory, other than the Appellate Division of the Supreme Court of South Africa, shall cease to exist with effect from the date of commencement of the Constitution of the Republic of South Africa Third Amendment Act, 1994;

(b) that any case pending before any such appellate division immediately before the said date shall be disposed of by such appellate division and the judges of appeal serving in such appellate division as if such division had not ceased to exist; and

(c) that any person who immediately before the said date was the chief justice in respect of any such appellate division, shall continue in office without any change in the terms and conditions of his or her service and shall be deemed to be the Judge President of the supreme court of which that appellate division previously formed part until the existing court structures have been rationalised as contemplated in section 242(1).";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) Until the court structures contemplated in Chapter 7 have been established as required by section 242(1), the jurisdiction of courts of law which existed immediately before the commencement of this Constitution and which continued to exist by virtue of subsection (1) of this section, shall be as follows:

(a) The Appellate Division of the Supreme Court of South Africa shall have the same jurisdiction as that which is vested in terms of this Constitution in the Appellate Division contemplated in section 101(1), and shall exercise such jurisdiction in respect of the whole of the national territory;

(b) a provincial or local division of the said Supreme Court of South Africa, and any other supreme court or general division thereof, shall have the same jurisdiction as that which is vested in terms of this Constitution in a provincial or local division contemplated in section 101(1), and shall exercise such jurisdiction in respect of the area of jurisdiction for which it was established; and

(c) any other court shall, in addition to the jurisdiction vested in it immediately before the commencement of this Constitution, have the same jurisdiction as that which is vested in terms of section 103 in a court of similar status contemplated therein, and shall exercise such jurisdiction in respect of the area of jurisdiction for which it was established.

(1B) For the purposes of the application of this Constitution while the existing court structures referred to in subsection (1) continue, any reference in this Constitution to any of the court

structures contemplated in Chapter 7 shall, unless inconsistent with the context or clearly inappropriate, be deemed to be a reference to the corresponding existing court structure, and in such application a reference to a provincial division shall be construed also to refer to any of the other supreme courts, or general division of any such court, referred to in subsection (1A)(b).";

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

"(2A) The chief justice of a supreme court referred to in the proviso to subsection (1) who in terms of that proviso continues in office as the Judge President of such supreme court, and the other judges of such supreme court, including the judges of any other supreme court which did not have an appellate division, 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 in office in accordance with the applicable laws."; and

(d) by the substitution for subsection (7) of the following subsection:

"(7) (a) Persons referred to in subsections (2), (2A), (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.

(b) For the purposes of paragraph (a) a reference in the relevant oath of office or solemn affirmation set out in Schedule 3 to a Judge of the Supreme Court shall, in the case of a judicial officer referred to in subsection (3), be construed as a reference to the office of such judicial officer.".

Amendment of section 242 of Act 200 of 1993

16. Section 242 of the Constitution is hereby amended by the substitution in the Afrikaans text of subsection (2) for the expression "Geregtelike" of the expression "Regterlike".

Short title and commencement

17. (1) This Act shall be called the Constitution of the Republic of South Africa Third Amendment Act, 1994.

(2) Except where clearly inappropriate sections 101, 103 and 241 of the Constitution shall be deemed at all relevant times before the commencement of this Act to have been amended as set out in this Act.