

GENERAL NOTICE

INVITATION OF PUBLIC COMMENT ON BILLS

The Minister of Justice and Constitutional Development, Mr J T Radebe, MP, intends introducing the Constitution Amendment Bill, 2010, and the Superior Courts Bill, 2010, in the National Assembly. Any person wishing to comment on the proposed legislation may submit such comment by not later than 30 June 2010 to Mr J A de Lange by electronic-mail, at the following address: jdelange@justice.gov.za

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.

B I L L

To amend the Constitution of the Republic of South Africa, 1996, so as to further define the role of the Chief Justice as the leader of the Judiciary; to change references to "Magistrates' Courts" to "Lower Courts"; to provide for a single High Court of South Africa; to provide that the Constitutional Court is the highest court in all matters; to further regulate the jurisdiction of the Constitutional Court and the Supreme Court of Appeal; to provide for the appointment of an Acting Deputy Chief Justice; to further regulate the terms of office of judges of the Constitutional Court; to further regulate the composition and the functions of the Judicial Service Commission; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa, enacts as follows:—

Amendment of section 165 of Constitution

1. Section 165 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the addition of the following subsection:

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

Amendment of section 166 of Constitution

2. Section 166 of the Constitution is hereby amended—
(a) by the substitution for paragraph (c) of the following paragraph:

"(c) the **[High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts]** High Court of South Africa;";

- (b) by the substitution for paragraph (d) of the following paragraph:
 "(d) the **[Magistrates'] Lower Courts**; and
- (c) by the substitution for paragraph (e) of the following paragraph:
 "(e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the **[High Courts] High Court of South Africa** or the **[Magistrates'] Lower Courts**".

Amendment of section 167 of Constitution, as amended by section 11 of Constitution Sixth Amendment Act of 2001

- 3.** Section 167 of the Constitution is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:
 "(3) The Constitutional Court—
- (a) is the highest court **[in all constitutional matters]** of the Republic; and
- (b) may decide **[only]**—
- (i) constitutional matters—**[, and issues connected with decisions on constitutional matters;]**
- (aa) on appeal;
- (bb) directly, in accordance with subsection (6); or
- (cc) referred to it in terms of legislation contemplated in section 172(2)(c) or in terms of any other Act of Parliament;
- (ii) any other matter, if the Constitutional Court grants leave to appeal that matter on the grounds that the interests of justice require that the matter be decided by the Constitutional Court;
and
- (c) makes the final decision whether a matter is a constitutional matter **[or whether an issue is connected with a decision on a constitutional matter]**.";
- (b) by the substitution for subsection (5) of the following subsection:
 "(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, **[a]** the High Court of South Africa, or a court of similar status, before that order has any force.";
- (c) by the substitution in subsection (6) for paragraph (a) of the following paragraph:
 "(a) to bring a constitutional matter directly to the Constitutional Court;
 or".

Amendment of section 168 of Constitution, as amended by section 12 of Constitution Sixth Amendment Act of 2001

- 4.** Section 168 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) If the Constitutional Court refuses leave to appeal in a matter referred to in section 167(3)(b)(ii), the Supreme Court of Appeal is the final Court of appeal in that matter.

(b) The Supreme Court of Appeal may decide appeals in any matter arising from the High Court of South Africa or a court of a status similar to the High Court of South Africa.

(c) The Supreme Court of Appeal may decide only—

(i) appeals;

(ii) issues connected with appeals; and

(iii) any other matter that may be referred to it in circumstances defined by an Act of Parliament."

Substitution of section 169 of Constitution

5. The following section is hereby substituted for section 169 of the Constitution:

"High [Courts] Court of South Africa

- 169.** (1) [A] The High Court of South Africa may decide—
- (a) any constitutional matter except a matter that—
- (i) **[only]** the Constitutional Court [may decide] has agreed to hear directly in terms of section 167(6)(a); or
- (ii) is assigned by an Act of Parliament to another court of a status similar to [a] the High Court of South Africa; and
- (b) any other matter not assigned to another court by an Act of Parliament.

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

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

- (3) Each Division of the High Court of South Africa—
- (a) has a Judge President;
- (b) may have one or more Deputy Judges President; and
- (c) has the number of other judges determined in terms of national legislation."

Substitution of section 170 of Constitution

6. The following section is hereby substituted for section 170 of the Constitution:

"[Magistrates' Courts and other] Other courts

170. [Magistrates' Courts and all] All other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than [a] the High

Court of South Africa may not enquire into or rule on the constitutionality of any legislation or any conduct of the President."

Amendment of section 172 of Constitution

7. Section 172 of the Constitution is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- "(a) The Supreme Court of Appeal, [a] the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court."

Substitution of section 173 of Constitution

8. The following section is hereby substituted for section 173 of the Constitution:

"Inherent power

173. The Constitutional Court, the Supreme Court of Appeal and the High [Courts] Court of South Africa each have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."

Substitution of section 175 of Constitution, as amended by section 14 of Constitution Sixth Amendment Act of 2001

9. The following section is hereby substituted for section 175 of the Constitution:

"Appointment of acting judges

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

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

Amendment of section 176 of Constitution, as amended by section 15 of Constitution Sixth Amendment Act of 2001

10. Section 176 of the Constitution is hereby amended—

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

"(1) A judge of the Constitutional Court [judge] , the Supreme Court of Appeal or the High Court of South Africa holds office [**for a non-renewable term of 12 years, or**] until he or she attains the age of 70, [**whichever occurs first, except where**] or until he or she is discharged from active service in terms of an Act of Parliament [extends the term of office of a Constitutional Court judge]."; and

(b) by the deletion of subsection (2).

Amendment of section 178 of Constitution, as amended by section 2 of Constitution Second Amendment Act of 1998 and section 16 of Constitution Sixth Amendment Act of 2001

11. Section 178 of the Constitution is hereby amended—

(a) by the addition in subsection (1) of the following paragraph:

"(cA) the chairperson and deputy chairperson of the committee responsible for the appointment, promotion and transfer of judicial officers of the Lower Courts contemplated under subsection 4(b):";

(b) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

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

(c) by the substitution for subsection (4) of the following subsection:

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

(b) National legislation referred to in paragraph (a) must make provision for the Commission to be involved in the appointment, promotion and transfer of judicial officers of the Lower Courts, and for the establishment of a committee and sub committees comprising members designated by the Commission and other co-opted members in order to facilitate that involvement."

Short title and commencement

12. This Act is called the Constitution Nineteenth Amendment Act of 2010, and comes into effect on a date determined by the President by proclamation in the *Gazette*.

(Published in terms of Rule 258(3) of the Rules of the National Assembly)

1. SUMMARY

1.1 The Bill aims to amend the Constitution of the Republic of South Africa, 1996, in order to further define the role of the Chief Justice as the head of the judiciary; to change references to the "Magistrates' Courts" to "Lower Courts"; to provide for a single "High Court of South Africa", comprising of various Divisions; to provide that the Constitutional Court is the highest (apex) Court in all matters and to regulate the jurisdiction of the Constitutional Court and the Supreme Court of Appeal accordingly; to provide for the appointment of an acting Deputy Chief Justice if there is a vacancy in that office; and to further regulate the composition and functions of the Judicial Service Commission, by allowing for national legislation to extend the role of the Commission to matters pertaining to judicial officers of the Lower Courts.

1.2 The changes envisaged in respect of the role of the Chief Justice as the head of the judiciary, and the establishment of a single "High Court of South Africa" as opposed to the existing various High Courts, would lay the constitutional basis for the provisions of the Superior Courts Bill that are aimed at giving effect to those changes.

2. PROVISIONS OF THE BILL

The provisions of the Bill are summarised below:

2.1 **Clause 1:** Section 165 of the Constitution is amended in order to provide that the Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts. In this way a Constitutional foundation would be laid for establishing an integrated system of court governance within a single judiciary.

2.2 **Clauses 2, 5, 7 and 8:** Sections 166, 169, 172 and 173 of the Constitution are amended so as to convert the various High Courts into a single "High Court of South Africa", comprising of Divisions, seats and jurisdiction as determined in terms of an Act of Parliament (the Superior Courts Bill). The present High Courts would thus be rationalised into a single High Court, with each province having, at least, a Division of the High Court. In section 166 (clause 2) the reference to "Magistrates' Courts" is also substituted by a reference to "Lower Courts". This would make it possible, when developing new legislation regarding the establishment and structures of the lower courts, to move away from the denomination of "magistrates' courts", which is a relic from a bygone era (the Magistrates' Courts Act dates back to 1944).

2.3 **Clause 3:** Section 167 of the Constitution is amended so as to confirm the status of the Constitutional Court as the apex court, with jurisdiction in all constitutional matters and any other matter in which it may grant leave to appeal. The Constitutional Court would therefore be the highest court for all matters, constitutional and non-constitutional, with the Supreme Court of Appeal as an intermediate court of appeal.

2.4 **Clause 4:** Section 168 of the Constitution is amended in order to provide that decisions of the Supreme Court of Appeal would be final if the Constitutional Court does not grant leave to appeal in a matter. During the consultations with the Judiciary on the Bill, it was pointed out by the latter that there might possibly be an argument that the names of the Constitutional Court and the Supreme Court of Appeal should also be changed, since the former would now be the apex and, effectively, the "Supreme" Court, whilst the latter would not necessarily be a final Court. However, the view is held that the name "Constitutional Court" has already gained historic significance and internationally renowned jurisprudence, and that it would not be appropriate, at this stage, to tamper with the names of the Courts involved.

2.5 **Clause 6:** Section 170 of the Constitution is amended by deleting the reference to "Magistrates' Courts". This amendment is consequential to the amendment of section 166 in clause 2 (par 2.2 above).

2.6 **Clause 9:** Section 167 of the Constitution establishes the offices of Chief Justice and a Deputy Chief Justice and section 174(3) provides for appointments to be made to those offices. It is envisaged in the Superior Courts Bill, 2010, to authorise the Deputy Chief Justice to perform the functions of the Chief Justice whenever the Chief Justice is absent or during a vacancy in that office. The amendment of section 175 of the Constitution provides that the President may appoint an acting Deputy Chief Justice from the ranks of the judges of the Constitutional Court, if there is a vacancy in that office. As in the case of the appointment of acting judges of the Constitutional Court, such an appointment must be made on the recommendation of the Minister (of Justice) acting with the concurrence of the Chief Justice. The amendment would ensure that a person is in office to perform the functions of the Chief Justice should both the Chief Justice and the Deputy Chief Justice be absent or their offices vacant.

2.7 **Clause 10:** Section 176 of the Constitution is amended in order to align the term of office of a judge of the Constitutional Court with that of other Superior Court judges. The effect of this amendment will be that the present non-renewable 12-year term of office of Constitutional Court judges would be replaced by the conventional dispensation in terms of which a judge continues in active service until he or she attains the age of 70 years or, if he or she, on attaining that age, has not yet served for 15 years, until he or she attains the age of 75 years or has completed 15 years' active service, whichever occurs first.

2.8 **Clause 11:** Section 178 of the Constitution is amended in order to allow for national legislation to make provision for the Judicial Service Commission to be involved in the appointment, promotion and transfer of judicial officers of the Lower Courts, and for the establishment of a committee and subcommittees comprising members designated by the Commission and other co-opted members in order to facilitate that involvement. For this purpose, the chairperson and deputy chairperson of the committee in question will also be members of the Judicial Service Commission.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 During August 2003, a forerunner of this Bill (namely the Constitution of the Republic of South Africa Amendment Bill, 2003) together with the Superior Courts Bill, 2003, were introduced into Parliament and referred to the Portfolio Committee on Justice and Constitutional Development (National Assembly) for consideration. The Portfolio Committee embarked on extensive public hearings regarding the draft legislation and received substantial inputs from a wide range of interested parties.

3.2 Following the elections in 2004, the Constitution Amendment Bill in question was allowed to lapse but the development of the legislation continued and earlier versions of both Bills were extensively discussed at a Judicial Colloquium hosted by former Minister Mabandla during April 2005. In December 2005, a draft Constitution (Fourteenth) Amendment Bill was subsequently published in the *Gazette* with the view to the introduction and consideration thereof along with the revised Superior Courts Bill of 2003. The Portfolio Committee in question held public hearings on the Bills early in 2006, during the course of which it became clear that more consensus needed to be developed between role-players on certain aspects of the draft legislation. As a result, the Constitution (Fourteenth) Amendment Bill was not introduced and the processing of the Superior Courts Bill was put on hold pending the further development of broad policy guidelines on the transformation of the judiciary and the courts.

3.3 Following the elections in 2009, the Superior Courts Bill, 2003, was allowed to lapse, paving the way for the introduction of the new, revised Constitution Amendment Bill, 2010, and a new Superior Courts Bill, 2010, into Parliament. Both Bills result from further consultation with, particularly, the Judiciary. The draft Constitution Amendment Bill, 2010, is further being published in the *Gazette* for public comment in accordance with section 74(5)(a) of the Constitution and, since the Bill is closely linked to the transformation envisaged by the Superior Courts Bill, 2010, the latter draft Bill is simultaneously published for public comment.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3)(a) of the Constitution, since—

- a) it amends provisions of the Constitution other than section 1, section 74(1) or Chapter 2; and
- b) the amendments do not—
 - (i) relate to a matter that affects the National Council of Provinces;
 - (ii) alter provincial boundaries, powers, functions or institutions; or
 - (iii) amend a provision that deals specifically with a provincial matter.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional

Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

GENERAL NOTICE

NOTICE OF 2010

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE OF PENDING INTRODUCTION OF SUPERIOR COURTS BILL, 2010 *(Published in accordance with Rule 241 of the Rules of the National Assembly)*

The Minister of Justice and Constitutional Development, Mr J T Radebe, MP, intends introducing the Superior Courts Bill, 2010, in the National Assembly shortly. Any person wishing to comment on the Bill is invited to submit written comments to the Minister of Justice and Constitutional Development. Comments should kindly be directed to the attention of Mr J A de Lange, Private Bag X 81, Pretoria 0001, by not later than 30 June 2010. (Electronic mail address: jdelange@justice.gov.za) Comments may also, in accordance with Rule 241(2) of the Rules of the National Assembly, be directed to the Secretary to Parliament, P O Box 15, CAPE TOWN, 8000.

SUPERIOR COURTS BILL, 2010

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.

B I L L

To rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa; to incorporate certain specialist courts into the High Court of South Africa; to make provision for the administration of the judicial functions of all courts; to make provision for administrative and budgetary matters relating to the Superior Courts; and to provide for matters incidental to the functioning of the Superior Courts.

PREAMBLE

WHEREAS section 1 of the Constitution of the Republic of South Africa, 1996, provides that the supremacy of the Constitution and the rule of law form part of the founding values of the Republic;

AND WHEREAS section 165 of the Constitution provides that—

- 1) the judicial authority of the Republic is vested in the courts;
- 2) the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice;
- 3) no person or organ of state may interfere with the functioning of the courts;
- 4) organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts;
- 5) an order or decision by a court binds all persons to whom and all organs of state to which it applies; and
- 6) the Chief Justice is the head of the judicial authority and exercises responsibility over the development and implementation of norms and standards for the exercise of the judicial functions of all courts;

AND WHEREAS section 166 of the Constitution provides that the courts are—

- 1) the Constitutional Court;
- 2) the Supreme Court of Appeal;
- 3) the High Court of South Africa;
- 4) the magistrates courts; and
- 5) any other court established or recognised in terms of an Act of Parliament;

AND WHEREAS section 171 of the Constitution provides that all courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation;

AND WHEREAS section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution;

AND WHEREAS item 16(6)(a) of Schedule 6 to the Constitution provides that as soon as practical after the Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution;

AND NOTING that, with the advent of the democratic constitutional dispensation in 1994, the Republic inherited a fragmented court structure and infrastructure, which were largely derived from our colonial history and were subsequently further structured to serve the segregation objectives of the apartheid dispensation;

AND NOTING that, before the advent of the democratic constitutional dispensation in 1994, the lower courts were not constitutionally recognised as part of the judicial authority and were largely dealt with as an extension of the public service;

AND NOTING that, since the Constitution provides that the judicial authority is vested in all the courts, it is desirable to provide for a uniform framework for judicial management, by the judiciary, of the judicial functions of all courts;

AND RECOGNISING that the rationalisation envisaged by item 16(6)(a) of Schedule 6 to the Constitution is an on-going process that is likely to result in further legislative and other measures in order to establish a judicial system suited to the requirements of the Constitution,

PARLIAMENT of the Republic of South Africa, enacts as follows:—

CHAPTER 1

Introductory Provisions

Definitions

- 1.** In this Act, unless the context otherwise indicates—
- "business day" means a day that is not a public holiday, Saturday, or Sunday;
- "civil case" includes any matter falling within the jurisdiction of a Special Division, and
- "civil proceeding" has a corresponding meaning;
- "Commissioner" means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- "Constitution" means the Constitution of the Republic of South Africa, 1996;
- "Department" means the Department responsible for the administration of justice;
- "Director-General" means the Director-General of the Department;
- "Division" means any General or Special Division of the High Court;
- "full court", in relation to any Division, means a Court consisting of three judges;
- "General Division" means a General Division of the High Court referred to in section 7(1);
- "head of the Court" in relation to—
- (i) the Constitutional Court, means the Chief Justice;
 - (ii) the Supreme Court of Appeal, means the President of that Court;
 - (iii) any General Division of the High Court, means the Judge President of that Division; and
 - (iv) any Special Division of the High Court, the President of that Division;
- "High Court" means the High Court of South Africa referred to in section 6(1);
- "Judicial Service Commission" means the Judicial Service Commission referred to in section 178 of the Constitution;
- "judicial officer" means any person referred to in section 174(1) of the Constitution;
- "labour matter" means any justiciable matter, excluding any criminal proceedings, arising out of the application of—
- (a) the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (b) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
 - (c) the Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
 - (d) the Skills Development Act, 1998 (Act No. 97 of 1998);
 - (e) the Employment Equity Act, 1998 (Act No. 55 of 1998);

- (f) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (g) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and
- (h) any other Act the administration of which has been assigned to the Cabinet member responsible for labour;

"lower court" means any court which is lower in status than the High Court and which is required to keep a record of its proceedings;

"Minister" means the Cabinet member responsible for the administration of justice;

"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No 35 of 1994);

"plaintiff" includes any applicant or other party who seeks relief in civil proceedings;

"prescribed" means determined by regulation in terms of this Act;

"President" means the President of the Republic of South Africa;

"registrar" means the registrar of the Constitutional Court, the Supreme Court of Appeal or any Division of the High Court, as the case may be, and includes an assistant registrar;

"rules" means the applicable rules of court;

"Rules Board" means the Rules Board for Courts of Law, established by the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);

"Special Division" means a Special Division of the High Court referred to in section 8(2);

"special member" means a special member of a Special Division referred to in section 8(3);

"Superior Court" means the Constitutional Court, the Supreme Court of Appeal and the High Court;

"tax matter" means any justiciable matter, excluding any criminal proceedings, arising out of the application of legislation administered by the Commissioner.

Objects and interpretation of Act

2. (1) The objects of this Act are—

- (a) to consolidate and rationalise the laws pertaining to Superior Courts as contemplated in item 16(6) of Schedule 6 to the Constitution;
- (b) to bring the structure of the Superior Courts into line with the provisions of Chapter 8 and the transformation imperatives of the Constitution;
- (c) to make provision for the adjudication of matters relating to competition appeals, electoral disputes, tax matters, labour disputes and land claims by the Superior Courts; and
- (d) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises responsibility.

(2) This Act must be read in conjunction with Chapter 8 of the Constitution, which contains the founding provisions for the structure and jurisdiction of the Superior Courts, the appointment of judges of the Superior Courts and matters related to the Superior Courts.

Introduction of legislation dealing with court structures

3. The Minister must be consulted prior to the introduction into Parliament, by a person other than the Minister, of any bill—
- (a) providing for the establishment of any court of law;
 - (b) providing for the establishment of any tribunal contemplated in section 34 of the Constitution; or
 - (c) that amends the structure or functions of any court of law or tribunal referred to in paragraph (a) or (b).

CHAPTER 2

Structure of Superior Courts

Constitution and seat of Constitutional Court

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

(b) The seat of the Constitutional Court is in Johannesburg, but whenever it appears to the Chief Justice that it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.

- (2) The Deputy Chief Justice must—
- (a) exercise such powers or perform such functions of the Chief Justice in terms of this or any other law as the Chief Justice may assign to him or her; and
 - (b) in the absence of the Chief Justice, or if the office of Chief Justice is vacant, perform the functions of the Chief Justice, as Acting Chief Justice.

Constitution and seat of Supreme Court of Appeal

5. (1) (a) The Supreme Court of Appeal consists of—
- (i) the President of the Supreme Court of Appeal;
 - (ii) the Deputy President of the Supreme Court of Appeal; and
 - (iii) so many other judges as may from time to time be determined in accordance with the prescribed criteria, and approved by the President.

(b) Subject to section 9(1), the seat of the Supreme Court of Appeal is in Bloemfontein, but whenever it appears to the President of the Supreme Court of Appeal that it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.

- (2) The Deputy President of the Supreme Court of Appeal must—
- (a) exercise such powers or perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as the latter may assign to him or her; and
 - (b) in the absence of the President of the Supreme Court of Appeal, or if the office of President of the Supreme Court of Appeal is vacant, perform the functions of the President of the Supreme Court of Appeal, as Acting President of the Supreme Court of Appeal.

Constitution of High Court of South Africa

6. The High Court of South Africa consists of the General and Special Divisions referred to in sections 7 and 8.

Constitution and seats of General Divisions

7. (1) The High Court has the following General Divisions:
- (a) Eastern Cape General Division, seated in Bhisho.
 - (b) Free State General Division, seated in Bloemfontein.
 - (c) KwaZulu Natal General Division, seated in Pietermaritzburg.
 - (d) Limpopo General Division, seated in Polokwane.
 - (e) Mpumalanga General Division, seated in Nelspruit.
 - (f) Northern Cape General Division, seated in Kimberley.
 - (g) North Gauteng General Division, seated in Pretoria.
 - (h) North West General Division, seated in Mafikeng.
 - (i) South Gauteng General Division, seated in Johannesburg.
 - (j) Western Cape General Division, seated in Cape Town.
- (2) Each General Division of the High Court consists of—
- (a) a Judge President and one or more Deputy Judges President, as determined by the President, each with specified headquarters within the area under the jurisdiction of that Division; and
 - (b) so many other judges as may from time to time be determined in accordance with the prescribed criteria, and approved by the President.
- (3) (a) The Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette*, determine the area under the jurisdiction of a General Division, and may in the same manner amend or withdraw such a notice.
- (b) The area under the jurisdiction of a General Division may comprise more than one province or any part of more than one province.
- (c) The Minister may, after consultation with the Judicial Service Commission, by notice in the *Gazette* establish one or more local seats for a General Division, in addition to the seats referred to in subsection (1), and determine the area under the jurisdiction of such a local seat, and may in the same manner amend or withdraw such a notice.
- (d) The publication of a notice referred to in paragraph (a) or (c) does not affect any proceedings which are pending at the time of such publication.
- (4) (a) If a General Division has one or more local seats—
- (i) the main seat of that Division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that Division;
 - (ii) the Judge President of that Division must compile a single court roll for that Division; and
 - (iii) the Judge President of that Division may deploy all the judges of that Division within the Division as he or she deems fit.
- (5) If a judge of one General Division is to be temporarily deployed in another General Division, such deployment must take place by way of an acting appointment in terms of section 175(2) of the Constitution.
- (6) (a) Subject to paragraph (b), a Deputy Judge President of a Division must—

- (i) exercise such powers or perform such functions of the Judge President in terms of this or any other law as the latter may assign to him or her; and
- (ii) in the absence of the Judge President of that Division, or if the office of the Judge President is vacant, exercise the powers or perform the functions of the Judge President, as the Acting Judge President of that Division.

(b) If more than one Deputy Judge President is appointed in respect of a Division, the President must, after consultation with the Minister and the Chief Justice, designate one Deputy Judge President as Acting Judge President of that Division, who must perform the functions of the Judge President in the circumstances referred to in paragraph (a)(ii).

(7) Whenever it appears to the Judge President of a General Division that it is expedient to hold a sitting for the hearing of any matter at a place elsewhere than at the seat or a local seat of the Division, he or she may, after consultation with the Minister, hold such sitting at that place.

Constitution and seats of Special Divisions

8. (1) The Special Divisions of the High Court are the—

- (a) Competition Appeals Special Division;
- (b) Electoral Matters Special Division;
- (c) Tax Matters Special Division;
- (d) Labour Matters Special Division; and
- (e) Land Claims Special Division.

(2) A Special Division—

- (a) has jurisdiction throughout the territory of the Republic;
- (b) is seated at the place or places determined by the Minister by notice in the *Gazette*, after consultation with the Chief Justice and the President of the Special Division in question; and
- (c) may, whenever it appears to the President concerned that it is expedient to hold sittings for the hearing of any matter at a place elsewhere than a seat of the Division, after consultation with the Minister, hold such sitting at that place.

(3) (a) The Competition Appeals Special Division consists of three or more judges of General Divisions, as the President of the Republic may from time to time determine, designated by the latter after consultation with the Chief Justice and the Minister, one of whom must be designated as the President of the Division.

(b) The Electoral Matters Special Division consists of—

- (i) a judge of the Supreme Court of Appeal, designated by the President of the Republic after consultation with the Chief Justice and the Minister, as the President of the Division;
- (ii) two or more judges of General Divisions, as the President of the Republic may from time to time determine, designated by the latter after consultation with the Chief Justice and the Minister; and
- (iii) two or more special members appointed by the President of the Republic on the advice of the Judicial Service Commission and in accordance with the criteria and the procedure set out in Schedule 1.

(c) The Tax Matters Special Division consists of—

- (i) six or more judges of General Divisions, designated by the President of the Republic after consultation with the Chief Justice and the Minister, one of whom must be designated as the President of the Division; and
 - (ii) two or more special members, appointed by the President of the Republic on the advice of the Judicial Service Commission in accordance with the criteria and the procedure set out in Schedule 1.
 - (d) The Labour Matters Special Division consists of—
 - (i) a judge of the High Court, designated by the President of the Republic after consultation with the Judicial Service Commission and NEDLAC, as the President of the Division;
 - (ii) judges of General Divisions whose names appear on the list referred to in subsection (4); and
 - (iii) judges, if any, referred to in section 61(2)(a).
 - (e) The Land Claims Special Division consists of three or more judges of General Divisions, designated by the President of the Republic after consultation with the Chief Justice and the Minister, one of whom must be designated as the President of the Division.
- (4) (a) The Chief Justice must from time to time enter the names of judges of the Supreme Court of Appeal and the High Court on a list of judges for the hearing of labour matters.
- (b) Any judge of the Supreme Court of Appeal or a General Division of the High Court may submit a written request to the Chief Justice to be placed on the list referred to in paragraph (a).
- (c) The name of a judge may be entered on the list referred to in paragraph (a) if, after consultation with the Head of Court of the judge concerned (if applicable) and NEDLAC, the Chief Justice is satisfied that—
- (i) the judge has successfully completed an appropriate training course in labour matters at the South African Judicial Education Institute; or
 - (ii) the judge, on account of—
 - (aa) previous experience as a judge or acting judge of any court dedicated to the adjudication of labour matters; or
 - (bb) proven expertise in the field of labour law matters, has suitable knowledge of, and expertise in, labour matters, to preside over the adjudication of labour matters.
 - (d) The Minister must cause the list referred to in paragraph (a), as well as any changes thereto, to be published in the *Gazette*.

Circuit Courts

9. (1) The President of the Supreme Court of Appeal may by notice in the *Gazette* establish circuit districts for the Supreme Court of Appeal, for the hearing of appeals emanating from the areas of jurisdiction of those districts, and may from time to time by like notice add to or alter such districts.
- (2) The Supreme Court of Appeal must at least twice a year and at such times and places as may be determined by the President of the Supreme Court of Appeal, hear appeals in each district referred to in subsection (1).

(3) The Judge President of a General Division may by notice in the *Gazette* within the area under the jurisdiction of that Division establish circuit districts for the adjudication of civil or criminal matters, and may from time to time by like notice alter the boundaries of any such district.

(4) In each circuit district of a General Division there must be held at least twice a year and at such times and places as may be determined by the Judge President concerned, a court which must be presided over by a judge of that Division.

(5) A court referred to—

- (a) in subsection (1), is called a circuit court of the Supreme Court of Appeal; and
- (b) in subsection (4), is called a circuit court of the Division in question.

Appointment, remuneration and tenure of office of judges, acting judges and special members

10. (1) Judges and acting judges of the Superior Courts are appointed in accordance with the provisions of the Constitution, and receive such remuneration as determined under the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(2) Any—

- (a) Judge President of a Special Division; and
- (b) judge of a Special Division,

may be designated by the President for the fixed period that the President, after consultation with the Chief Justice and the Minister, determines at the time of the appointment or designation.

(3) Any person who has been appointed as an acting judge of a Superior Court, shall be deemed to have been so appointed also in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

- (a) in which he or she has participated as such a judge, including an application for leave to appeal in respect of such proceedings; and
- (b) that has not yet been disposed of at the expiry of the period for which he or she was appointed.

(4) Any special member—

- (a) must be appointed for a fixed term, determined by the President at the time of the appointment;
- (b) must be paid such remuneration and allowances as the Minister may determine after consultation with the Judge President of the Special Division in question and with the concurrence of the Cabinet member responsible for finance;
- (c) may resign from office by tendering written notice of resignation to the President; and
- (d) may on good cause shown be removed from office by the President after consultation with the Judge President of the Special Division in question and the Minister.

CHAPTER 3

Judicial administration of judicial functions of Superior Courts and lower courts, including governance issues and administration of administrative functions of Superior Courts, including finances

Part 1

Judicial management of judicial functions of Superior Courts and lower courts

Judicial management of judicial functions

11. (1) For the purpose of any consultation regarding any matter referred to in this section, the Chief Justice may convene any forum of judicial officers that he or she deems appropriate, but when considering matters relating to the lower courts, those courts must also be represented on the forum in question.

(2) The Chief Justice, as the head of the judiciary as contemplated in section 165(6) of the Constitution, exercises responsibility over the development and implementation of norms and standards for the exercise of the judicial functions of all courts.

(3) The Chief Justice may, subject to subsection (5), issue written protocols or directives, or give guidance or advice, to judicial officers—

- (a) in respect of norms and standards for the performance of the judicial functions as contemplated in subsection (6); and
- (b) regarding any matter affecting the—
 - (i) dignity;
 - (ii) accessibility; or
 - (iii) effectiveness, efficiency or functioning,

of the courts.

(4) (a) Any function or any power in terms of this section, vesting in the Chief Justice or any other head of court, may be delegated as many times as is deemed necessary, to any other judicial officer.

(b) The management of the judicial functions of each court is the responsibility of the head of that court, including the head of each lower court.

(c) Subject to subsections (2) and (3), the Judge President of a General Division is also responsible for the co-ordination of the judicial functions of all lower courts falling within the jurisdiction of that Division.

(5) Any written protocol or directive in terms of subsection (3)—

(a) may only be issued by the Chief Justice, if it enjoys the majority support of a forum convened in terms of subsection (1), which forum must include all the heads of Superior Courts; and

(b) must be published in the *Gazette*.

(6) The judicial functions referred to in subsection (2) and subsection 4(b) include, without limiting the generality of that term, the—

(a) determination of sittings of the specific courts;

(b) assignment of judicial officers to sittings;

(c) assignment of cases and other judicial duties to judicial officers;

(d) determination of the sitting schedules and places of sittings for judicial officers;

(e) determination of standards applicable, and procedures to be adhered to in respect of—

- (i) case flow management;

- (ii) the finalisation of any matter before a judicial officer, including any outstanding judgment, decision or order; and
- (iii) recesses of Superior Courts.

Establishment and composition of Office of Chief Justice

12. (1) There is an Office of the Chief Justice comprising an Executive Director and the number of other personnel as determined from time to time by the Chief Justice after consultation with the Minister.

(2) (a) The Executive Director is appointed by the Chief Justice with the concurrence of the Minister and at a post level determined by the Minister after consultation with the Minister of Finance and approved by the Cabinet.

(b) The other personnel are appointed by the Executive Director after consultation with the Director-General and with the concurrence with the Chief Justice or any person designated by the Chief Justice for that purpose.

(3) The Executive Director is subject to the conclusion of a written performance agreement entered into between the person who occupies the position of Executive Director and the Chief Justice.

Functions of Office of the Chief Justice

13. (1) The Executive Director under the control and direction of the Chief Justice or any judge designated by the Chief Justice must—

- (a) develop and maintain, in the Office of the Chief Justice the capacity to administer the responsibilities of the Chief Justice in terms of this Act and any other law; and
- (b) exercises responsibility over the Secretariat of the Judicial Service Commission; and
- (c) generally, perform such administrative tasks related to the functions of the Chief Justice under this Act or any other law as assigned by the Chief Justice from time to time.

(2) The other personnel of the Office of the Chief Justice must, under the control and direction of the Executive Director assist the Executive Director in the performance of the functions referred to in subsection (1).

Access to courts, recess periods and attendance at courts

14. (1) All Superior Courts—

- (a) must be open to the public every business day; and
- (b) may conduct business on any Saturday, Sunday or any public holiday as may be required from time to time.

(2) Each Superior Court will have recess periods as may be determined by the Chief Justice in consultation with the Heads of Court and the Minister.

(3) The purpose of recess periods is to enable a judge of a Superior Court to do research and to attend to outstanding or prospective judicial functions as may be assigned to him or her by the head of court.

(4) During each recess period, the head of each Court must ensure that an adequate number of judges are available in that Court to deal with any judicial functions that may be required, in the interests of justice, to be dealt with during that recess period.

(5) Subject to subsections (1) to (4), the head of each Superior Court is responsible to—

(a) ensure that sufficient judges of that Court are available to conduct the business of the court at all times that the Court is open for business;

(b) issue directions to the judges of that Court with respect to their attendance at the court and absences from the Court during recess periods; and

(c) approve any extraordinary absence of a judge from the Court, in accordance with the regulations; and

keep a register, in the prescribed manner and form, of vacation periods allocated to, or extraordinary absence approved for, a judge of that Court.

Part 2

Administration of administrative functions of Superior Courts, including finances

Finances and accountability

15. (1) Expenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The Minister must address requests for the funds needed for the administration and functioning of the Superior Courts, as determined by the Chief Justice after consultation with the other heads of Court, in the manner prescribed for the budgetary processes of departments of state.

(3) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General of the Department—

(a) is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Superior Courts; and

(b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

Appointment of officers and staff of Superior Courts

16. (1) (a) The Executive Director must, after consultation with the Director-General and subject to the laws governing the public service, on the request of and in consultation with the head of the Court concerned, appoint for the Constitutional Court, the Supreme Court of Appeal and each Division a court manager, one or more assistant court managers, a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the said Court.

(b) Any person appointed in terms of paragraph (a) is in the employ of the Department and is subject to the laws governing the public service.

(c) A court manager is the senior executive officer of the court where he or she has been appointed, and exercises administrative control over the other persons referred to in paragraph (a), and, under the control and direction of the head of the Court concerned, perform such other functions determined by the Executive Director and the Chief Justice.

(2) Whenever by reason of absence or incapacity any court manager, registrar or assistant registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the Executive Director may after consultation with the head of the court concerned, authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(3) Any person appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

CHAPTER 4

Manner of arriving at decisions in Superior Courts

Manner of arriving at decisions by Constitutional Court

17. (1) In accordance with section 167(2) of the Constitution, any matter before the Constitutional Court must be heard by at least eight judges.

(2) If, at any stage after a hearing has commenced, any judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and—

- (a) the remaining members of the court are not less than eight in number—
 - (i) such hearing must continue before the remaining judges of the court; and
 - (ii) the decision of the majority of the remaining judges of the court shall, if that majority is also a majority of the judges of the court before whom the hearing commenced, be the decision of the court; or
- (b) the remaining members of the court are fewer than eight in number, the proceedings must be stopped and commenced *de novo*.

(3) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions by Supreme Court of Appeal

18. (1) Proceedings of the Supreme Court of Appeal must ordinarily be presided over by five judges, but the President of the Supreme Court of Appeal may—

- (a) direct that an appeal in a criminal or civil matter be heard before a court consisting of three judges; or
- (b) whenever it appears to him or her that any matter should in view of its importance be heard before a court consisting of a larger number of judges, direct that the matter be heard before a court consisting of so many judges as he or she may determine.

(2) (a) The majority of judges hearing any labour matter in the Supreme Court of Appeal must, for the purpose of that hearing, be judges whose names appear on the list of judges referred to in section 8(4).

(b) The court roll of the Supreme Court of Appeal must contain a separate portion dealing with all labour matters to be heard.¹

(c) If, during the course of the hearing of any matter which was not dealt with as referred to in paragraph (a), it becomes apparent that the matter concerned is or may be a labour matter and the names of the majority of judges hearing that matter do not appear on the list of judges referred to in section 8(4), the validity of the hearing or any ensuing judgment is not affected.

(3) The judgment of the majority of the judges presiding at proceedings before the Supreme Court of Appeal shall be the judgment of the court and where there is no judgment to which a majority of such judges agree, the hearing must be adjourned and commenced *de novo* before a new court constituted in such manner as the President of the Supreme Court of Appeal may determine.

(4) If at any stage after the hearing of an appeal has commenced a judge of the Supreme Court of Appeal is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises—

(a) the hearing must, where the remaining judges constitute a majority of the judges before whom the hearing was commenced, proceed before the remaining judges, and the decision of a majority of the remaining judges who are in agreement shall, if that majority is also a majority of the judges before whom the hearing was commenced, be the decision of the court; or

(b) in any other case, the appeal must be heard *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(5) Two or more judges of the Supreme Court of Appeal, designated by the President of the Supreme Court of Appeal, have jurisdiction to hear and determine applications for interlocutory relief, including applications for condonation and for leave to proceed *in forma pauperis*, in chambers.

(6) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions by General Divisions

19. (1) (a) Save as provided for in this Act or any other law, a General Division must be constituted before a single judge when sitting as a court of first instance for the hearing of any civil matter, but the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may at any time direct that any matter be heard by a full court consisting of not more than three judges, as he or she may determine.

¹ It may be considered to amplify the notion of a dedicated labour chamber in the SCA by designating a SCA judge to be specifically responsible for managing the court roll for labour appeals and ensuring prompt adjudication of such appeals.

(b) If, during the course of the hearing of any civil matter by a General Division, it becomes apparent that the matter concerned is or may be a labour matter and—

(i) the name of the judge hearing that matter does not appear; or

(ii) the names of the majority of judges hearing that matter do not appear, on the list referred to in section 8(4), the validity of the hearing or any ensuing judgment is not affected, but, on the application of any of the parties, the court may order the removal of the proceedings to the Labour Matters Special Division in accordance with section 38.

(c) A single judge of a General Division may, in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a).

(2) For the hearing of any criminal case as a court of first instance, a court of a General Division must be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters.

(3) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a General Division must be constituted before two judges for the hearing of any civil or criminal appeal: Provided that the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may in the event of the judges hearing such appeal not being in agreement, at any time before a judgment is handed down in such appeal, direct that a third judge be added to hear that appeal.

(4) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of a full court of a General Division is the decision of the court, and where the majority of the judges of any such court are not in agreement, the hearing must be adjourned and commenced *de novo* before a court consisting of three other judges.

(5) If at any stage during the hearing of any matter by a full court, any judge of such court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, that hearing must—

(a) if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges; or

(b) if the remaining judges do not constitute such a majority, or if only one judge remains, be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(6) The provisions of subsection (4) apply, with the changes required by the context, whenever in the circumstances set out in subsection (5) a hearing proceeds before two or more judges.

(7) During any recess period, one judge designated by the Judge President shall, notwithstanding anything contained in this Act or any other law, but subject to subsection (3), exercise all the powers, jurisdiction and authority of a General Division.

(8) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions in Competition Appeals Special Division

20. (1) The President of the Competition Appeals Special Division must preside at proceedings of the Division or designate another judge of the Division to preside at particular proceedings of the Division.

(2) Subject to subsection (3), the President must assign each matter before the Division to a court composed of three judges of the Division.

(3) The President, or any other judge of the Division designated by the President, may sit alone to consider an—

- (a) appeal against a decision of an interlocutory nature, as prescribed by the rules;
- (b) application concerning the determination or use of confidential information;
- (c) application for leave to appeal, as prescribed by the rules;
- (d) application to suspend the operation and execution of an order that is the subject of a review or appeal; or
- (e) application for procedural directions.

(4) The decision of a judge sitting alone in terms of subsection (3), or of the majority of the judges hearing a particular matter, is the decision of the court.

(5) If a judge or any of the judges hearing a matter assigned in terms of subsection (2) is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, the President must—

- (a) direct that the hearing of that matter proceed before the remaining judge or judges to whom that matter was assigned; or
- (b) terminate the proceedings before that court and constitute another court, which may include a judge to whom the matter was originally assigned, to hear the matter *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

Manner of arriving at decisions in Electoral Matters Special Division

21. (1) Subject to subsection (2), any matter before the Electoral Matters Special Division must be heard by a court composed of three judges and two special members of the Division.

(2) The President, or any other judge of the Division designated by the President, may sit alone to consider an appeal against a decision of an interlocutory nature, as prescribed by the rules.

(3) If, at any stage after a hearing before a court of the Division has commenced, any member of that court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and—

- (a) the remaining members of the court are not less than three in number—
 - (i) such hearing must continue before the remaining members of the court; and
 - (ii) the decision of the majority of the remaining members of the court shall, if that majority is also a majority of the members before whom the hearing commenced, be the decision of the court; or
- (b) the remaining members of the court are fewer than three in number, the proceedings must be stopped and commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining members or of the one remaining member as the decision of the Court.

Manner of arriving at decisions in Tax Matters Special Division

22. (1) Subject to subsections (2) and (4), the President of the Tax Matters Special Division must assign each matter before the Division to a court composed of a judge as presiding officer, a special member who is an accountant and a special member who is a representative of the commercial community: Provided that—

- (a) in all cases relating to the business of mining such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer;
- (b) where any such appeal relates to the valuation of immovable property, or of both movable and immovable property, such third member must, if the President, the Commissioner or the appellant so desires, be a sworn appraiser who has skills or knowledge relating to the purpose for which the property is utilised; and
- (c) when an appeal before the court involves a matter of law only or constitutes an application for condonation, the court consists of the President or a judge of the Division assigned by the President, sitting alone.

(2) Any question as to whether a matter for decision involves a matter of fact or a matter of law, as contemplated in subsection (1)(c), shall be decided by the President or judge of the court sitting alone.

(3) The decision of—

- (a) a judge sitting alone in terms of subsection (1)(c); or
- (b) the majority of the members hearing a particular matter,

is the decision of the Court: Provided that a decision referred to in paragraph (b) must in all cases be supported by the judge in question.

(4) The President of the Division may, where—

- (a) the amount which is the subject of a dispute exceeds R50 million; or
- (b) the Commissioner and the appellant agree thereto and have jointly applied to that President,

direct that the court hearing that appeal consist of three judges of the Division and the special members contemplated in subsection (1).

(5) (a) If a special member of a court hearing a matter in terms of subsections (1) or (4) is unable to complete the proceedings in that matter, the matter must proceed before the judge or judges and the remaining special member.

(b) If the judge or both special members of a court hearing a matter in terms of subsection (1) is unable to complete the proceedings in that matter, the President must terminate the proceedings before that court and constitute another court, which may include a judge or special member to whom the matter was originally assigned, to hear the matter *de novo*.

(c) If at any stage during the hearing of a matter in terms of subsection (4), one of the judges becomes unavailable to complete the proceedings in that matter, the hearing must proceed before the remaining judges and special members.

Manner of arriving at decisions in Land Claims Special Division

23. (1) (a) Save as otherwise provided for in this Act or the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), a court of the Land Claims Special Division must be presided over by a single judge of the Division for the hearing of any matter, but the President or, in the absence of the President, the most senior available judge, may at any time direct that any matter be heard by a full court consisting of three judges.

(b) A single judge of the Division may, in consultation with the President or, in the absence of the President, the most senior available judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of the Division as contemplated in paragraph (a).

(2) Judges of the Land Claims Special Division must be assisted at a hearing before any court of the Division by assessors in the circumstances prescribed by, and in accordance with, the provisions of section 28 of the Restitution of Land Rights Act, 1994.

(3) In the event of an equality of votes—

(a) at a hearing where one or more members of a court of the Division are assessors, the vote of the judge, or, if there is more than one judge, the vote of the majority of the judges, shall prevail; and

(b) at any other hearing, the hearing must be adjourned and commenced before a new court constituted in such manner as the President may determine.

(4) If at any stage during the hearing of any matter where three judges are presiding, any judge of the court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, the hearing must proceed before the remaining members of the court: Provided that such members must include at least one judge.

(5) If at any stage during the hearing of any matter an assessor who is a member of a court is unavailable to complete the hearing, the presiding judge may direct—

(a) that the hearing proceed before the remaining member or members of the court; or

(b) that the hearing shall commence *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the remaining member or members as the decision of the court.

Manner of arriving at decisions in Labour Matters Special Division

24. (1) (a) Save as provided for in this Act or any other law, the Labour Matters Special Division must be constituted before a single judge for the hearing of any labour matter, but the President or, in the absence of the President, the senior available judge, may at any time direct that any matter be heard by a full court consisting of not more than three judges, as he or she may determine.

(b) A single judge of the Labour Matters Special Division may, after consultation with the President or, in the absence of the President, the senior available judge, at any time discontinue the hearing of any matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a).

(2) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of a full court of the Labour Matters Special Division is the decision of the court, and where the majority of the judges of any such court are not in agreement, the hearing must be adjourned and commenced *de novo* before a court consisting of three other judges.

(3) If at any stage during the hearing of any matter by a full court, any judge of such court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, that hearing must—

- (a) if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges; or
- (b) if the remaining judges do not constitute such a majority, or if only one judge remains, be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(4) The provisions of subsection (2) apply, with the changes required by the context, whenever in the circumstances set out in subsection (3) a hearing proceeds before two or more judges.

(5) During any recess period, one judge designated by the President shall, notwithstanding anything contained in this Act or any other law, exercise all the powers, jurisdiction and authority of the Labour Matters Special Division.

(6) In any proceedings before the Labour Matters Special Division, a party to the proceedings may appear in person or be represented only by –

- (a) a legal practitioner;
- (b) a director or employee of the party; or
- (c) any member, office bearer or official of that party's trade union or registered employer's organisation.

CHAPTER 5

Orders of constitutional invalidity, appeals and settlement of conflicting decisions

Referral of order of constitutional invalidity to Constitutional Court

25. (1) (a) Whenever the Supreme Court of Appeal, a Division of the High Court or any competent court declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172(2)(a) of the Constitution, that court must, in accordance with the applicable rules of court, refer the order of constitutional invalidity to the Constitutional Court for confirmation.

(b) Whenever any person or organ of state with a sufficient interest appeals or applies directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court, as contemplated in section 172(2)(d) of the Constitution, the court must deal with the matter in accordance with the rules.

(2) If requested by the Chief Justice to do so, the Minister must appoint counsel to present argument to the Constitutional Court in respect of any matter referred to in subsection (1).

Appeals generally

26. (1) Subject to section 25(1), the Constitution and any other law—

- (a) an appeal against any decision of a General Division or the Labour Matters Special Division as a court of first instance lies, upon leave having been granted—

- (i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full Court of that Division, depending on the direction issued in terms of section 27(6); or
- (ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;
- (b) an appeal against any decision of a court of a Special Division, other than the Labour Matters Special Division, lies upon leave having been granted to the Supreme Court of Appeal;
- (c) an appeal against any decision of a General Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal; and
- (d) an appeal against any decision of a court of a status similar to the High Court, lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal, and the provisions of section 27 apply with the necessary changes.
 - (2) (a) (i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
 - (ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.
 - (b) If at any time prior to the hearing of an appeal the President of the Supreme Court of Appeal or the Judge President or the judge presiding, as the case may be, is *prima facie* of the view that it would be appropriate to dismiss the appeal on the ground set out in paragraph (a), he or she must call for written representations from the respective parties as to why the appeal should not be so dismissed.
 - (c) Upon receipt of the representations or, failing which, at the expiry of the time determined for their lodging, the President of the Supreme Court of Appeal or the Judge President, as the case may be, must refer the matter to three judges for their consideration.
 - (d) The judges considering the matter may order that the question whether the appeal should be dismissed on the ground set out in paragraph (a) be argued before them at a place and time appointed, and may, whether or not they have so ordered—
 - (i) order that the appeal be dismissed, with or without an order as to the costs incurred in any of the courts below or in respect of the costs of appeal, including the costs in respect of the preparation and lodging of the written representations; or
 - (ii) order that the appeal proceed in the ordinary course.
- (3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application—
 - (a) by one spouse against the other for maintenance *pendente lite*;
 - (b) for contribution towards the costs of a pending matrimonial action;
 - (c) for the interim custody of a child when a matrimonial action between his or her parents is pending or is about to be instituted; or
 - (d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or about to be instituted.

Leave to appeal

27. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 26(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

(2) (a) Leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division.

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.

(c) An application referred to in paragraph (b) must be considered by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal and, in the case of a difference of opinion, also by the President of the Supreme Court of Appeal or any other judge of the Supreme Court of Appeal likewise designated.

(d) (i) The judges considering the application may order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration.

(ii) Where an application has been so referred to the court, the court may thereupon grant or refuse it.

(e) The decision of the majority of the judges considering the application, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.

(3) An application for special leave to appeal under section 26(1)(c) may be granted by the Supreme Court of Appeal on application filed with the registrar of that Court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(c) to (e) shall apply with the necessary changes.

(4) The power to grant leave to appeal—

- (a) is not limited by reason only of the fact that the matter in dispute is incapable of being valued in money; and
- (b) is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal.

(5) Any leave to appeal may be granted subject to such conditions as the court concerned may determine, including a condition—

- (a) limiting the issues on appeal; or
- (b) that the appellant pay the costs of the appeal.

(6) (a) If leave is granted under subsection (2)(a) or (b) to appeal against a decision of a General Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full Court of that Division, unless they consider—

- (i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or
- (ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision,

in which case they must direct that the appeal be heard by the Supreme Court of Appeal.

(b) Any direction by the court of a General Division in terms of paragraph (a), may be set aside by the Supreme Court of Appeal of its own accord, or on application by any interested party filed with the registrar within one month after the direction was given, or such longer period as may on good cause be allowed, and may be replaced by another direction in terms of paragraph (a).

(7) Subsection (2)(c), (d) and (e) apply with the necessary changes to any application to the Supreme Court of Appeal relating to an issue connected with an appeal.

Suspension of decision pending appeal

28. (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise as contemplated in subsection (1)—

- (i) the court must immediately record its reasons for doing so;
- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.

Powers of court on hearing of appeals

- 29.** The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law—
- (a) dispose of an appeal without the hearing of oral argument;
 - (b) receive further evidence;
 - (c) remit the case to the court of first instance, or the court whose decision is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the Division deems necessary; or
 - (d) confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require.

Settlement of conflicting decisions in civil cases

30. Whenever a decision on a question of law is given by a court of a Division which is in conflict with a decision on the same question of law given by a court of any other Division, the Minister may submit such conflicting decisions to the Chief Justice, who must cause the matter to be argued before the Constitutional Court or the Supreme Court of Appeal, as the case may be, in order to determine the said question of law for guidance.

CHAPTER 6

Provisions applicable to High Court only

Persons over whom and matters in relation to which General Divisions have jurisdiction

31. (1) A General Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and has the power—

- (a) to hear and determine appeals from all lower courts within its area of jurisdiction;
- (b) to review the proceedings of all such courts;
- (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) A General Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other General Division.

(3) Subject to section 39 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any General Division may—

- (a) issue an order for attachment of property to confirm jurisdiction; and
- (b) where the plaintiff is resident or domiciled within its area of jurisdiction but the cause of action arose outside its area of jurisdiction, issue an order for the attachment of property to found jurisdiction regardless of where in the Republic the property or person is situated.

(4) Notwithstanding any provision in this or any other law, any contractual obligation, term or provision which is in conflict with this section is null and void and is not enforceable.

Jurisdiction of Special Divisions

- 32.** Subject to this Act and the Constitution—
- (a) the Competition Appeals Special Division—
 - (i) has jurisdiction over the matters referred to in section 37 of the Competition Act, 1998 (Act No. 89 of 1998); and
 - (ii) is subject to such provisions as may specifically be applicable to the Division under that Act;
 - (b) the Electoral Matters Special Division—
 - (i) has jurisdiction over the matters referred to in section 20 of the Electoral Commission Act, 1996 (Act No. 51 of 1996); and
 - (ii) is subject to such provisions as may specifically be applicable to the Division under that Act;
 - (c) the Tax Matters Special Division—
 - (i) has jurisdiction over tax matters; and
 - (ii) is subject to such provisions as may specifically be applicable to the Division under the legislation administered by the Commissioner;
 - (d) the Labour Matters Special Division—
 - (i) has jurisdiction over labour matters; and
 - (ii) is subject to such provisions as may specifically be applicable to the Division under the Labour Relations Act, 1995 (Act No. 66 of 1995); and
 - (e) the Land Claims Special Division—
 - (i) has jurisdiction over the matters referred to in section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); and
 - (ii) is subject to such provisions as may specifically be applicable to the Division under that Act.

Grounds for review by General Division of proceedings of lower court

33. (1) The grounds upon which the proceedings of any lower court may be brought under review before a court of a General Division are—

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; and
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in lower courts.

Judgment by default

34. A judgment by default may be granted and entered by the registrar of a Division in the manner and in the circumstances prescribed in the rules, and a judgment so entered is deemed to be a judgment of a court of the Division.

Time allowed for appearance

35. The time allowed for entering an appearance to a civil summons served outside the area of jurisdiction of the General Division in which it was issued shall be not less than—

- (a) one month if the summons is to be served at a place more than 150 kilometres from the court out of which it was issued; and
- (b) two weeks in any other case.

Circumstances in which security for costs shall not be required

36. If a plaintiff in civil proceedings in a General Division resides within the Republic, but outside the area of jurisdiction of that Division, he or she shall not by reason only of that fact be required to give security for costs in those proceedings.

Disposal of records and execution of judgments of Circuit Courts

37. (1) Within one month after the termination of the sittings of any Circuit Court, the registrar thereof must, subject to any directions of the presiding judge or judges, transmit all records in connection with the proceedings in that court to the registrar of the Supreme Court of Appeal or the General Division concerned, as the case may be, to be filed as records of that Court or Division.

(2) Any judgment, order or sentence of a Circuit Court may, subject to any applicable rules for the time being in force, be carried into execution by means of process of the Supreme Court of Appeal or the General Division concerned, as the case may be.

Removal of proceedings from one Division to another or from one seat to another in the same Division

38. (1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings—

- (a) should have been instituted in another Division or at another seat of that Division; or
- (b) would be more conveniently or more appropriately heard or determined—
 - (i) at another seat of that Division; or
 - (ii) by another Division,

that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.

(2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon the receipt of such order that court may hear and determine the proceedings in question.

Prohibition on attachment to found jurisdiction within the Republic

39. No attachment of person or property to found jurisdiction shall be ordered by a Division against a person who is resident in the Republic.

CHAPTER 7 *Rules of court*

Rules of the Constitutional Court

40. (1) The Chief Justice, after consultation with the Minister, makes rules relating to the manner in which the Constitutional Court may be engaged in any matter, including the matters referred to in section 172 of the Constitution, and all matters relating to the proceedings of and before the Court.

(2) Every rule and every amendment or repeal thereof must be submitted to Parliament by the Minister before the promulgation thereof and tabled as soon as possible.

(3) The rules must, when it is in the interest of justice and with the leave of the Court, allow a person—

(a) to bring a matter directly to the Court ; or

(b) to appeal directly to the Court from any other court.

Rules of the Supreme Court of Appeal and the High Court

41. (1) Rules for the Supreme Court of Appeal, the High Court and the lower courts are made in accordance with the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(2) Every rule and every amendment or repeal thereof must be submitted to Parliament by the Minister before the promulgation thereof and tabled as soon as possible..

CHAPTER 8 *General provisions*

Part 1 **Nature of courts**

Nature of courts and seals

42. (1) Every Superior Court is a court of record.

(2) Every Superior Court must have for use as occasion may require, a seal of such design as may be prescribed by the President by proclamation in the Gazette.

(3) The seal of a Superior Court must be kept in the custody of the Registrar.

Proceedings to be carried on in open court

43. Save as is otherwise provided for in this Act or any other law, all proceedings in any Superior Court must, except in so far as any such court may in special cases otherwise direct, be carried on in open court.

More than one court may sit at the same time

44. The Supreme Court of Appeal and any Division may at any time sit in so many courts constituted in the manner provided for in this Act or any other applicable law as the available judges may allow.

Part 2

Adducing of evidence and procedural matters

Certified copies of court records admissible as evidence

45. Whenever a judgment, order or other record of any Superior Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, order or other record duly certified as such by the registrar of that court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such registrar's signature.

Manner of securing attendance of witnesses or production of any document or thing in proceedings and penalties for failure

46. (1) A party to proceedings before any Superior Court in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court.

(2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing—

(a) fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that—

(i) the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff framed under section 48(1) have been paid or offered to him or her; or

(ii) he or she is evading service; or

(b) without leave of the court fails to remain in attendance,

the court concerned may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder in any prison or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her presence as a witness or production of any document or thing at the proceedings concerned: Provided that any judge of the court concerned may release him or her on a recognisance with or without sureties to attend as a witness or to produce any document or thing as required.

(4) Any person subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty

of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

(5) If a person who has entered into any recognisance in terms of subsection (3) to attend such proceedings as a witness or to produce any document or thing fails without reasonable excuse so to attend or to produce such document or thing, he or she forfeits his or her recognisance and is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

Manner in which witness may be dealt with on refusal to give evidence or produce documents

47. (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 46 or who is present and is verbally required by the Superior Court concerned to give evidence in any proceedings—

- (a) refuses to take an oath or to make an affirmation;
- (b) having taken an oath or having made an affirmation, refuses to answer such questions as are put to him or her; or
- (c) refuses or fails to produce any document or thing which he or she is required to produce,

without any just excuse for such refusal or failure, the Court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he or she sooner consents to do what is required of him or her.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the Court may again adjourn the proceedings and commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her.

(3) Nothing contained in this section prevents the Court from giving judgment in any matter or otherwise disposing of the proceedings according to any other sufficient evidence taken.

(4) No person is bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in Court.

(5) When a subpoena is issued to procure the attendance of any person as a witness or to produce any book, paper or document in any proceedings, and it appears that—

- (a) he or she is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or
- (b) such book, paper or document could properly be produced by some other person; or
- (c) to compel him or her to attend would be an abuse of the process of the court,

any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena.

Witness fees

48. (1) The Minister may, in consultation with the Minister of Finance, from time to time by notice in the *Gazette* prescribe a tariff of allowances which must be paid to a

witness in civil proceedings or to any person who is to accompany any such witness on account of the youth or infirmity due to old age or any other infirmity of such witness.

(2) Such notice may differentiate between persons according to—

- (a) the distances which they have to travel to attend the court to which they are summoned or subpoenaed; or
- (b) their professions, callings or occupations,

and may empower such officers in the service of the State as may be specified therein to order payment of allowances in accordance with a higher tariff than the tariff so prescribed in cases where payment of allowances in accordance with the prescribed tariff may cause undue hardship.

(3) Notwithstanding any other law, a Superior Court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.

Reference of particular matters for investigation by referee

49. (1) The Constitutional Court and, in any civil proceedings, any Division may, with the consent of the parties, refer—

- (a) any matter which requires extensive examination of documents or a scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or
- (b) any matter which relates wholly or in part to accounts; or
- (c) any other matter arising in such proceedings,

for enquiry and report to a referee appointed by the parties, and the court may adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable.

(2) Any such report or any part thereof which is adopted by the court, whether with or without modifications, shall have effect as if it were a finding by the court in the proceedings in question.

(3) Any such referee shall for the purpose of such enquiry have such powers and must conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of the court.

(4) For the purpose of procuring the attendance of any witness (including any witness detained in custody under any law) and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be civil proceedings.

(5) (a) Any person summoned to attend as a witness or to produce any document or thing before a referee and who, without sufficient cause—

- (i) fails to attend at the time and place specified;
- (ii) fails to remain in attendance until the conclusion of the enquiry or until he or she is excused by the referee from further attendance;
- (iii) refuses to take an oath or to make an affirmation as a witness; or
- (iv) having taken an oath or made an affirmation, fails to—
 - (aa) answer fully and satisfactorily any question put to him or her; or
 - (bb) produce any document or thing in his or her possession or custody, or under his or her control, which he or she was summoned to produce,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(b) Any person who, after having taken an oath or having made an affirmation, gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(6) Any referee is entitled to such remuneration as may be prescribed by the rules or, if no such remuneration has been so prescribed, as the court may determine and to any reasonable expenditure incurred by him or her for the purposes of the enquiry, and any such remuneration and expenditure must be taxed by the taxing master of the court and shall be costs in the cause.

Examination by interrogatories

50. (1) The Constitutional Court and, in connection with any civil proceedings pending before it, any Division may order that the evidence of a person be taken by means of interrogatories if—

- (a) in the case of the Constitutional Court, the court deems it in the interests of the administration of justice; or
- (b) in the case of a Division, that person resides or is for the time being outside the area of jurisdiction of the court.

(2) Whenever an order is made under subsection (1), the registrar of the court must certify that fact and transmit a copy of his or her certificate to a commissioner of the court, together with any interrogatories duly and lawfully framed which it is desired to put to the said person and the fees and the amount of the expenses payable to the said person for his or her appearance as hereinafter provided.

(3) Upon receipt of the certificate, the interrogatories and the amounts contemplated in subsection (2), the commissioner must, in respect of the person concerned—

- (a) summon that person to appear before him or her;
- (b) upon his or her appearance, take that person's evidence as if he or she was a witness in a civil case in the said court;
- (c) put to him or her the said interrogatories, with any other questions calculated to obtain full and true answers to the said interrogatories;
- (d) take down or cause to be taken down the evidence so obtained; and
- (e) transmit the evidence, certified as correct, to the registrar of the court wherein the proceedings in question are pending.

(4) The commissioner must further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his or her appearance, and the cost of the issue and service of the process for summoning such person before him or her.

(5) Any person summoned to appear in terms of subsection (3) who without reasonable excuse fails to appear at the time and place mentioned in the summons is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(6) Any interrogatories taken and certified under the provisions of this section shall, subject to all lawful exceptions, be received as evidence in the proceedings concerned.

Manner of dealing with commissions *rogatoire*, letters of request and documents for service originating from foreign countries

51. (1) Whenever a commission *rogatoire* or letter of request in connection with any civil proceedings received from any State or territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to such court by the agents, if any, of the parties to the action or matter, the registrar must submit the same to a judge in chambers in order to give effect to such commission *rogatoire* or letter of request.

(2) Whenever a request for the service on a person in the Republic of any civil process or citation received from a state, territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar must cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff or any person specially appointed thereto by a judge of the court concerned.

(3) The registrar concerned must, after effect has been given to any such commission *rogatoire*, letter of request, process or citation, return all relevant documents, duly verified in accordance with the rules of court, to the Director-General of the Department for transmission.

(4) Except where the Minister directs otherwise, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service referred to in this section has been performed.

Court may order removal of certain persons

52. (1) Any person who, during the sitting of any Superior Court—

- (a) wilfully insults any member of the court or any officer of the court present at the sitting, or who wilfully hinders or obstructs any member of any Superior Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties;
- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the place where the sitting of the court is held; or
- (c) does anything calculated improperly to influence any court in respect of any matter being or to be considered by the court,

may, by order of the court, be removed and detained in custody until the rising of the court.

(2) Removal and detention in terms of subsection (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

Part 3

Process of Superior Courts

Scope and execution of process

53. (1) The process of the Constitutional Court, the Supreme Court of Appeal and any Special Division runs throughout the Republic, and their judgments and orders must, subject to any applicable rules of court, be executed in any area in like manner as if they were judgments or orders of the General Division or the lower court having jurisdiction in such area.

(2) The civil process of a General Division runs throughout the Republic and may be served or executed within the jurisdiction of any General Division.

(3) Any warrant or other process for the execution of a judgment given or order issued against any juristic person, partnership or firm may be executed by attachment of the property or assets of such juristic person, partnership or firm.

Execution of process by sheriff

54. (1) The sheriff must, subject to the applicable rules, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court directed to the sheriff and must make return of the manner of execution thereof to the court and to the party at whose instance they were issued.

(2) The return of the sheriff or a deputy-sheriff of what has been done upon any process of a court, shall be *prima facie* evidence of the matters therein stated.

(3) The sheriff must receive and cause to be detained all persons arrested by order of the court or committed to his or her custody by any competent authority.

(4) A refusal by the sheriff or a deputy-sheriff to do any act which he or she is by law required to do, is subject to review by the court concerned on application *ex parte* or on notice as the circumstances may require.

Transmission of summonses, writs and other process and of notice of issue thereof

55. (1) (a) In any civil proceedings before a Superior Court, any summons, writ, warrant, rule, order, notice, document or other process of a Superior Court, or any other communication which by any law, rule or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by fax or by means of any other electronic medium as provided by the rules.

(b) The document received or printed as a result of the transmission contemplated in paragraph (a) is of the same force and effect as if the original had been shown to or a copy thereof served or executed upon the person concerned, or left as aforesaid, as the case may be.

(2) A notice sent by fax, or any other electronic medium authorised by the rules—
(a) from any judicial or police officer, registrar, assistant registrar, sheriff, deputy-sheriff or clerk of the court; and

- (b) stating that a warrant or writ has been issued for the arrest or apprehension of any person required to appear in or to answer any civil suit, action or proceeding,

is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person.

(3) (a) A person arrested as contemplated in subsection (2) may be detained for the shortest period reasonably necessary, but not exceeding 48 hours, in order to bring the person before a judge of a Superior Court.

(b) The judge referred to in paragraph (a) must make an order regarding the attendance by the person in question of any further court proceedings and warn the person that any failure to abide by the order is an offence punishable by a fine or by imprisonment not exceeding one year.

(c) Any person who fails to abide by an order referred to in paragraph (b) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year.

Property not liable to be seized in execution

- 56.** The sheriff or a deputy-sheriff may not seize in execution of any process—
- (a) the necessary beds and bedding and wearing apparel of the person against whom execution is levied or any member of his or her family;
 - (b) the necessary furniture, other than beds, and household utensils in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
 - (c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
 - (d) any food or drink sufficient to meet the needs of such person and the members of his or her family for one month;
 - (e) tools and implements of trade in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
 - (f) professional books, documents or instruments necessarily used by the debtor in his profession in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
 - (g) such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his or her possession as part of his or her equipment:

Provided that the Court concerned may in exceptional circumstances and on such conditions as it may determine, in its discretion increase the amount specified in paragraph (b), (c), (e) or (f).

Offences relating to execution

- 57.** Any person who—
- (a) obstructs a sheriff or deputy-sheriff in the execution of his or her duty;
 - (b) being aware that goods are under arrest, interdict or attachment by a Superior Court, destroys or disposes of those goods in a manner not authorized by law, or knowingly

- permits those goods, if in his or her possession or under his or her control, to be destroyed or disposed of in such a manner;
- (c) being a judgment debtor and being required by a sheriff or deputy-sheriff to point out property to satisfy a warrant issued in execution of judgment against that person—
- (i) falsely declares to the sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or
 - (ii) although knowing of such property, neglects or refuses to point out that property or to deliver it to the sheriff or deputy-sheriff when requested to do so; or
- (d) being a judgment debtor, refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of immovable property under execution,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Issuing of summons or subpoena in civil proceedings against judge

58. (1) Notwithstanding any other law, no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the Chief Justice or, in the case of the Chief Justice, with the consent of the President of the Supreme Court of Appeal.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the relevant head of court.

Regulations

59. (1) The Minister may, after consultation with the Chief Justice, make regulations regarding—

- (a) any matter that may be necessary or expedient to prescribe regarding the administrative functions of courts and the efficient and effective functioning and administration of the courts, including the furnishing of periodical returns of statistics relating to any aspect of the functioning and administration of courts and the performance of judicial functions;
- (b) the criteria to be applied for determining the number of judges to be appointed to the Supreme Court of Appeal and to any specific General Division;
- (c) any protocol to be observed in respect of any process of consultation required in terms of this Act;
- (d) any matter that may be necessary or expedient to prescribe regarding the functioning of the Office of the Chief Justice;
- (e) the determination of recess periods of the Superior Courts;
- (f) any other matter that may be necessary or expedient to prescribe in order to promote the efficient implementation of this Act.

(2) Any regulation made under subsection (1) must be submitted to Parliament before publication thereof in the *Gazette*.

CHAPTER 9

Transitional provisions, amendment and repeal of laws, and commencement

Existing High Courts

60. (1) On the date of the commencement of this Act, but subject to the issuing of any notice referred to in section 7(3) or (4), the—

- (a) Eastern Cape High Court, Bhisho, becomes the Eastern Cape General Division;
- (b) Eastern Cape High Court, Grahamstown, becomes a local seat of the Eastern Cape General Division;
- (c) Eastern Cape High Court, Mthatha, becomes a local seat of the Eastern Cape General Division;
- (d) Eastern Cape High Court, Port Elizabeth, becomes a local seat of the Eastern Cape General Division;
- (e) Free State High Court, Bloemfontein, becomes the Free State General Division;
- (f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu-Natal General Division;
- (g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the KwaZulu-Natal General Division;
- (h) Limpopo High Court, Thohoyandou, subject to subsection (2)(a), becomes a local seat of the Limpopo General Division;
- (i) Northern Cape High Court, Kimberley, becomes the Northern Cape General Division;
- (j) North Gauteng High Court, Pretoria, becomes the North Gauteng General Division;
- (k) North West High Court, Mafikeng, becomes the North West General Division;
- (l) South Gauteng High Court, Johannesburg, becomes the South Gauteng General Division; and
- (m) Western Cape High Court, Cape Town, becomes the Western Cape General Division,

of the High Court of South Africa, and the area of jurisdiction of each of those Courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the General Division in question.

(2) (a) Notwithstanding section 7(1), the North Gauteng General Division shall also function as the Limpopo and Mpumalanga General Divisions, respectively, until a notice published in terms of section 7(3) in respect of those Divisions comes into operation.

(b) Notwithstanding section 7(1) and subsection (1)(a) and (b), the Eastern Cape High Court, Grahamstown continues to function as the seat of the Eastern Cape General Division until a date determined by the Minister after consultation with the Judge President of that Division.

(3) Any circuit court established under any law repealed by this Act and in existence immediately before the commencement of this Act, shall be deemed to have been duly established in terms of this Act as a Circuit Court of the General Division concerned.

(4) Anyone holding office as the Judge President, a Deputy Judge President or a judge of a High Court referred to in subsection (1) when this Act takes effect, becomes the Judge President, a Deputy Judge President or a judge of the General Division in question.

(5) The President may, with the view to facilitate and promote the effective and efficient administration of justice in the General Divisions established in terms of this Act, after consultation with the Chief Justice, the Minister, and the judge concerned, transfer any judge of a General Division to the Limpopo, Mpumalanga or North West General Division.

Labour Matters Special Division

61. (1) On the date of the commencement of this section, any judge of a Superior Court who, immediately before that date, held concurrent tenure of office as—

(a) Judge President of the Labour Court and the Labour Appeal Court;

(b) Deputy Judge President of the Labour Court and the Labour Appeal Court; or

(c) judge of the Labour Court or the Labour Appeal Court,

becomes the President or Deputy President or a judge, as the case may be, of the Labour Matters Special Division of the High Court, and his or her name must be entered on the list referred to in section 8(4)(a).

(2) (a) On the date of the commencement of this section, any person who, immediately before that date, held office as a judge of the Labour Court, but not as a judge of a Superior Court, becomes a judge of the Labour Matters Special Division and his or her name must be entered on the list referred to in section 8(4)(a).

(b) In respect of each judge referred to in paragraph (a), a vacancy of the office of a judge must be deemed to have arisen in the General Division having jurisdiction where that judge is ordinarily stationed.

(c) A judge referred to in paragraph (a) must be given the first opportunity to apply for a vacancy referred to in paragraph (b) and, should he or she be found to be a fit and proper person for appointment as a judge of the General Division in question, the Judicial Service Commission must advise the President that he or she be so appointed.

(3) If a judge referred to in subsection (2) is not appointed as a judge of a General Division or chooses not to apply for such appointment in terms of subsection (2)(c), he or she continues to hold office as a judge of the Labour Matters Special Division for the remainder of the term for which he or she had been appointed as a judge of the Labour Court.

(4) If a judge referred to in subsection (2) is appointed as a judge of a Superior Court, the period of service of that judge as a judge of the Labour Court is, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), deemed to be active service as defined in that Act.

(5) Any person who, immediately before the date of the commencement of this section, is an officer of the Labour Court or the Labour Appeal Court must, subject to the laws governing the public service, be transferred to an equivalent post as an officer of the Labour Matters Special Division by the Minister after consultation with the President of that Division.

Transitional arrangement: Special Divisions other than Labour Matters

- 62.** On the date of the commencement of this section—
- (a) any court established in terms of—
- (i) section 36 of the Competition Act, 1998 (Act No. 89 of 1998), becomes the Competition Appeals Special Division of the High Court;
 - (ii) section 18 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), becomes the Electoral Matters Special Division of the High Court;
 - (iii) section 83(3) of the Income Tax Act, 1962 (Act No. 58 of 1962), becomes a court of the Tax Matters Special Division of the High Court; and
 - (iv) section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), becomes the Land Claims Special Division of the High Court;
- (b) any judge holding office—
- (i) as the Judge President or a judge of the court referred to in section 36 of the Competition Act, 1998, becomes the President or a judge of the Competition Appeals Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;
 - (ii) as the Chairperson or a judge of the court referred to in section 18 of the Electoral Commission Act, 1996, becomes the President or a judge of the Electoral Matters Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;
 - (iii) as the president of a court referred to in section 83(3) of the Income Tax Act, 1962, becomes a judge of the Tax Matters Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and
 - (iv) as the President or a judge of the court referred to in section 22 of the Restitution of Land Rights Act, 1994, becomes the President or a judge of the Land Claims Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;
- (c) any person, not being a judge, holding office—
- (i) as a member of the court referred to in section 18 of the Electoral Commission Act, 1996, becomes a special member of the Electoral Matters Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and
 - (ii) as a member of a court referred to in section 83(3) of the Income Tax Act, 1962, becomes a special member of the Tax Matters Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and
- (d) any person holding office as the registrar or a member of the staff of any court referred to in paragraph (a), becomes a registrar or a member of the staff of the Special Division contemplated in that paragraph, for the remainder of the term, if applicable, for which he or she had been appointed to that office.

Existing rules

63. (1) The rules applicable to the Constitutional Court, Supreme Court of Appeal, various High Courts, Labour Court, Labour Appeal Court, Competition Appeal Court, Electoral Court, Tax Court and the Land Claims Court immediately before the commencement of this Act remain in force to the extent that they are not inconsistent with this Act, until repealed or amended.

(2) (a) Any person who, immediately before the date of the commencement of item 15 of Schedule 2, holds office in terms of section 159(2)(c) of the Labour Relations Act, 1995 (Act No. 66 of 1995) as a member of the Rules Board for Labour Courts established in terms of section 159(1) of that Act, is deemed to have been appointed under the corresponding provision of section 5B of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985, as inserted by item 2 of Schedule 3, as a member of the Subcommittee on Rules for Labour Matters referred to in that section.

(b) A person referred to in paragraph (a) holds the office referred to in that paragraph for the remainder of the term for which he or she had been appointed originally.

Pending proceedings

64. (1) Subject to section 38, proceedings pending in any court, including any court referred to in sections 61 and 62, at the commencement of this Act, must be continued and concluded as if this Act had not been passed.

(2) Proceedings must, for the purposes of this section, be deemed to be pending if, at the commencement of this Act a summons had been issued but judgment had not been passed.

(3) Subsections (1) and (2) are also applicable, with the changes required by the context, in respect of proceedings pending on the date determined in a notice contemplated in section 60(2).

References in other laws

- 65.** Any reference in any law—
- (a) to the Supreme Court Act, 1959, or a provision of the said Act, must be construed as a reference to this Act or a corresponding provision of this Act; and
 - (b) to a Supreme Court, a High Court, or a provincial or local division of a Supreme Court, must be construed as a reference to the High Court of South Africa or a Division referred to in this Act, as the context may require; and
 - (c) to the Appellate Division of a Supreme Court, must be construed as a reference to the Supreme Court of Appeal;
 - (d) to the Labour Court or the Labour Appeal Court, must be construed as a reference to the Labour Matters Special Division or the Supreme Court of Appeal, as the context may require; and
 - (e) to a court referred to in—
 - (i) section 36 of the Competition Act, 1998 (Act No. 89 of 1998), must be construed as a reference to the Competition Appeals Special Division of the High Court;

- (ii) section 18 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), must be construed as a reference to the Electoral Matters Special Division of the High Court;
- (iii) section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962), must be construed as a reference to a court of the Tax Matters Special Division of the High Court; and
- (iv) section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), must be construed as a reference to the Land Claims Special Division of the High Court.

Repeal and amendment of laws

- 66.** (1) The laws mentioned—
- (a) in Schedule 2 are hereby repealed to the extent set out in the fourth column of that Schedule;
 - (b) in Schedule 3 are hereby amended to the extent set out in the fourth column of that Schedule.

(2) Anything done under any provision of a law repealed or amended by subsection (1), shall be deemed to have been done under the corresponding provision of this Act.

Short title and commencement

67. This Act is called the Superior Courts Act, 2010, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

Appointment of special members (Section 8(3)(b)(iii) and (c)(ii))

Part 1

Special members of Electoral Matters Special Division

1. The President must, on the advice of the Judicial Service Commission, appoint two or more fit and proper persons, who must be South African citizens, as special members of the Electoral Matters Special Division.
2. Any special member referred to in item 1 must be appointed for a fixed term determined by the President at the time of the appointment, and may, upon the expiry of that term, be re-appointed.
3. The need for the Electoral Matters Special Division to reflect broadly the racial and gender composition of the Republic must be taken into account when appointing special members of that Division.
4. Any appointment made in terms of item 1 must be announced in the *Gazette*.

Part 2

Special members of Tax Matters Special Division

1. The President must, in respect of each of the categories listed in item 2, on the advice of the Minister acting after consultation with the President of the Tax Matters Special Division and the Cabinet member responsible for finance, appoint two or more persons of good standing and with appropriate experience as special members of the Tax Matters Special Division.
2. Special members of the Division must be appointed in respect of the following categories:
 - 2.1 Accountants;
 - 2.2 Representatives of the commercial community in general;
 - 2.3 Representatives of the commercial community, who must be qualified mining engineers; and
 - 2.4 Representatives of the commercial community, who must be sworn appraisers of property.
3. Any special member referred to in item 1 must be appointed for a fixed term determined by the President at the time of the appointment, and may, upon the expiry of that term, be re-appointed.
4. The need for the Tax Matters Special Division to reflect broadly the racial and gender composition of the Republic must be taken into account when appointing special members of that Division.

5. Any appointment made in terms of item 1 must be announced in the *Gazette*.

SCHEDULE 2
Laws repealed (Section 67(1)(a))

| Item No. | No. and year of law | Short title | Extent of repeal |
|-----------------|--|--|--|
| 1 | Act No. 59 of 1959 | Supreme Court Act, 1959 | The whole |
| 2 | Act No. 59 of 1959 (Venda) | Supreme Court Act, 1959 | The whole |
| 3 | Act No. 58 of 1962 | Income Tax Act, 1962 | Sections 84, 85 and 107A. |
| 4 | Act No. 15 of 1969 | Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969 | The whole |
| 5 | Act No. 15 of 1976 (Transkei) | Republic of Transkei Constitution Act, 1976 | Sections 44 up to and including 53 |
| 6 | Act No. 18 of 1977 (Bophuthatswana) | Republic of Bophuthatswana Constitution Act, 1977 | Sections 8(2), (3) and (4); 22(1)(b); 53(2); 59 up to and including 67; 78; 89(1), (2) and (3); 90(1) and (2); 91(1)(b), (c)(iii) and (d); and 93(1)(f). |
| 7 | Act No. 9 of 1979 (Venda) | Republic of Venda Constitution Act, 1979 | Sections 42 up to and including section 52; and section 72. |
| 8 | Act No. 32 of 1982 (Bophuthatswana) | Supreme Court of Bophuthatswana Act, 1982 | The whole |
| 9 | Act No. 5 of 1983 (Transkei) | Supreme Court Act, 1983 | The whole |
| 11 | Decree No. 43 of 1990 (Ciskei) | Supreme Court Decree, 1990 | The whole |
| 12 | Decree No. 45 of 1990 (Ciskei) | Republic of Ciskei Constitution Decree, 1990 | Sections 27 and 28 |
| 13. | Act No. 22 of 1994 | Restitution of Land Rights Act, 1994 | The repeal of sections 23, 26, 26A, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J, 28K, 28L, 28M, 28N, 28O, 32, 37 and 38 |

| | | | |
|-----|--------------------|--|---|
| 14 | Act No. 13 of 1995 | Constitutional Court Complementary Act, 1995 | The whole |
| 15 | Act No. 66 of 1995 | Labour Relations Act, 1995 | Sections 151; 152; 153; 154; 155; 156; 159, 160; 163; 164; 165; 166; 167; 168; 169; 170; 171; 172; 173; 174; 175; 176; 177; 178; 179; 180; 181; 182; 183 and 184. |
| 16. | Act No. 51 of 1996 | Electoral Commission Act, 1996 | Sections 18 and 19 |
| 17 | Act No. 75 of 1997 | Basic Conditions of Employment Act, 1997 | Section 77 |
| 18. | Act No. 89 of 1998 | Competition Act, 1998 | Sections 36, 38 and 39 |
| 19. | Act No. 41 of 2001 | Interim Rationalisation of Jurisdiction of High Courts Act, 2001 | The whole |

SCHEDULE 4

Laws amended (Section 74(1)(b))

| Item No. | No. and year of law | Short title | Extent of amendment |
|----------|---------------------|----------------------|---|
| 1 | Act No. 58 of 1962 | Income Tax Act, 1962 | <p>1. Amendment of section 1 by the insertion, after the definition of "taxable capital gain" of the following definition: "<u>'tax court' means the Tax Matters Special Division of the High Court of South Africa;</u>".</p> <p>2. Amendment of section 81—</p> <p>(a) by the substitution for subsection (1) of the following subsection: "(1) Objections to any assessment made under this Act shall be made in the manner and under the terms and within the period prescribed by this Act and the rules [promulgated in terms of section 107A] of the tax court by any taxpayer who is aggrieved by any assessment in which that taxpayer has an interest."; and</p> <p>(b) by the substitution for subsection (6) of the following subsection: "(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been resolved in accordance with the alternative dispute resolution procedures prescribed in the rules [contemplated in section 107A (2)] of the tax court, the Commissioner must alter that assessment for purposes of giving effect to that resolution.".</p> <p>3. Amendment of section 83—</p> <p>(a) by the substitution for subsection (1) of the following subsection: "(1) Any person entitled to object to an assessment, may, subject to the provisions of section 83A, appeal against such assessment to the tax court [established in terms of the provisions of this section] in the manner and under the terms and within the period prescribed by this Act and the rules [promulgated in terms of section 107A] of the tax court.";</p> <p>(b) by the substitution for paragraph (a) of subsection</p> |

| | | | |
|--|--|--|--|
| | | | <p>(1C) of the following paragraph: "(a) the matter is heard by the tax board contemplated in section 83A, or the tax court [contemplated in subsection (2)]; or";</p> <p>(c) by the deletion of subsections (2), (3), (4), (4A), (4B), (4C), (4D), (5) and (6);</p> <p>(d) by the substitution for subsection (7) of the following subsection: "(7) [Any court established under the provisions of this Act] <u>The tax court</u> may hear and determine any appeal lodged under the provisions of this Act, or any other Act administered by the Commissioner which provides that the objection and appeal procedures contained in this Part shall apply[, whether or not the appellant is resident or carries on business within the area for which that court is established and whether or not the dispute arose within that area].";</p> <p>(e) by the substitution for paragraph (d) of subsection (13) of the following paragraph: "(d) hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court [contemplated in section 107A].";</p> <p>(f) by the substitution for subsection (14) of the following subsection: "(14) Any altered assessment made by the Commissioner as a result of a referral of an assessment back to the Commissioner, as contemplated in subsection (13)(a)(iii), shall be subject to objection and appeal as provided in this Part and the rules [promulgated in terms of section 107A] <u>of the tax court</u>.";</p> <p>(g) by the substitution for subsection (19) of the following subsection: "(19) The <u>Judge</u> President of the court may indicate which judgments or decisions of the court must be published for general information, in such form as does not reveal the identity of the appellant.";</p> <p>(h) by the repeal of subsections (20), (21) and (22).</p> <p>4. Amendment of section 83A—</p> |
|--|--|--|--|

| | | | |
|--|--|--|---|
| | | | <p>(a) by the substitution for the proviso in subsection (1) of the following proviso:</p> <p>"Provided that where the Commissioner, at any time prior to the hearing of such appeal, or the Chairperson of the board, at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the tax court, such appeal shall be set down for hearing <i>de novo</i> before the tax court [referred to in section 83].";</p> <p>(b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:</p> <p>"(a) The Minister of Finance shall in consultation with the Judge-President of the [Provincial Division] General Division of the High Court within whose area of jurisdiction the board is to sit, appoint, by notice in the <i>Gazette</i>, advocates and attorneys to a panel, from which a Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister for any reason which he <u>or she</u> considers good and sufficient."; and</p> <p>(c) the substitution in paragraph (b) of subsection (7) for the words preceding subparagraph (i) of the following words:</p> <p>"within the period prescribed in the rules [contemplated in section 107A] of <u>the tax court</u>, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—".</p> <p>5. Amendment of section 86A—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) The appellant in a tax court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court <u>to the Supreme Court of Appeal (in this section referred to as the appeal court)</u>.</p> <p>(b) by the deletion of subsection (2);</p> |
|--|--|--|---|

| | | | |
|--|--|--|---|
| | | | <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>"(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a tax court and intends to lodge an appeal against such decision under this section shall, within 21 days after the date of the notice issued by the registrar of the tax court notifying such decision or within such further period as the <u>Judge</u> President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his <u>or her</u> attorney or agent a notice of his <u>or her</u> intention to appeal against such decision.";</p> <p>(d) by the substitution for subsection (4) of the following subsection:</p> <p>"(4) Any such notice of an intention to appeal shall state—</p> <p>(a) [in which division of the High Court the intending appellant wishes the appeal to be heard;]</p> <p>(b) [if the intending appellant wishes the appeal to be heard by the Supreme Court of Appeal,] whether the whole or part only of the judgment is to be appealed against and if part only what part, and the contemplated grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and</p> <p>(c) whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence at the hearing of the case by the tax court or, if only a part of such evidence is required, what part is required.";</p> <p>(e) by the substitution for subsection (5) of the following subsection:</p> <p>"(5) If an intending appellant wishes [his] to appeal against a decision of the tax court [to be heard by the Supreme Court of Appeal], the registrar of the tax court shall submit the notice or notices of intention to appeal lodged under subsection (3) to the <u>Judge</u> President of the tax court who shall, having regard to the contemplated grounds of the intended appeal or appeals as indicated in the said notice or notices, make an order granting or refusing, as he <u>or she</u> sees fit, leave to appeal against such decision [to the said Court], and the order so made shall be final.";</p> <p>(f) by the deletion of subsections (6), (7), (8), and (9); and</p> |
|--|--|--|---|

| | | | |
|---|----------------------|---|--|
| | | | (g) by the substitution in subsection (10) for the word "President", wherever it appears, of the word "Judge President". |
| 2 | Act No. 107 of 19985 | Rules Board for Courts of Law Act, 1985 | <p>1. Insertion of the following section, after section 5A:</p> <p>"Standing Labour Matters Rules Committee</p> <p>5B. (1) <u>The Minister must establish a Standing Labour Matters Rules Committee to make recommendations to the Board on rules of court for the Supreme Court of Appeal and the Labour Matters Special Division of the High Court when they deal with labour matters as defined in section 1 of the Superior Courts Act, 2009.</u></p> <p>(2) <u>The Committee referred to in subsection (1) comprises—</u></p> <p>(a) <u>the Judge President of the Labour Matters Special Division, who is the chairperson of the Committee;</u></p> <p>(b) <u>a judge of the Supreme Court of Appeal, nominated by the President of that Court;</u></p> <p>(c) <u>a Judge President of a Division of the High Court nominated by the Judges President of the various Divisions of the High Court;</u></p> <p>(d) <u>the following persons, to be appointed by the Minister for a period of three years, acting on the advice of the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No 35 of 1994):</u></p> <p>(i) <u>a practising advocate with knowledge, experience and expertise in labour law;</u></p> <p>(ii) <u>a practising attorney with knowledge, experience and expertise in labour law;</u></p> <p>(iii) <u>a person who represents the interests of employees;</u></p> <p>(iv) <u>a person who represents the interests of employers; and</u></p> <p>(v) <u>a person who represents the interests of the State.</u></p> <p>(3) <u>The Committee must, when necessary, submit recommendations to the Board in the form of draft rules, that is either new rules, rules amending existing rules or measures repealing existing rules, in order to regulate the conduct of proceedings in</u></p> |

| | | | |
|--|--|--|--|
| | | | <p><u>the Supreme Court of Appeal and the Labour Matters Special Division Court when they deal with labour matters as defined in section 1 of the Superior Courts Act, 2009, including—</u></p> <p>(a) <u>the process by which proceedings are brought before those Courts, and the form and content of that process;</u></p> <p>(b) <u>the period and process for noting appeals;</u></p> <p>(c) <u>the taxation of bills of costs;</u></p> <p>(d) <u>after consulting with the Cabinet member responsible for finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of those Courts, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and</u></p> <p>(e) <u>all other matters incidental to performing the functions of the Courts in question, including any matters not expressly mentioned in this subsection that are similar to matters in respect of which the Board may make rules in terms of section 6.</u></p> <p>(4) <u>The provisions of section 4 shall apply with the necessary changes to meetings of this Committee."</u></p> <p>2. Amendment of section 6—</p> <p>(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:</p> <p style="padding-left: 40px;">"The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the [High Courts] <u>High Court of South Africa</u> and the lower courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the [High Courts] <u>High Court of South Africa</u> and the lower courts regulating—";</p> <p>(b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">"(e) the practice and procedure in connection with the reference of any matter to a referee under [section 19</p> |
|--|--|--|--|

| | | | |
|---|--------------------|--------------------------------------|---|
| | | | <p>of the Supreme Court Act, 1959 (Act No. 59 of 1959)] section 50 of the Superior Courts Act, 2009, and the remuneration payable to any such referee;";</p> <p>(c) by the substitution for paragraph (p) of subsection (1) of the following paragraph: "(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the [High Courts] High Court of South Africa;"</p> <p>(d) by the substitution for paragraph (t) of subsection (1) of the following paragraph: "(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the [High Courts] High Court of South Africa and the lower courts in civil as well as in criminal proceedings.";</p> <p>(e) by the substitution for paragraph (a) of subsection (2) of the following paragraph: "(a) Different rules may be made in respect of the Supreme Court of Appeal, the [High Courts] High Court of South Africa and the lower courts and in respect of different kinds of proceedings.";</p> <p>(f) by the deletion of subparagraph (i) of subsection (2)(b); and</p> <p>(g) by the substitution for subparagraph (ii) of subsection (2)(b) of the following subparagraph: "(ii) the different Divisions of the High Court of South Africa; or".</p> |
| 2 | Act No. 22 of 1994 | Restitution of Land Rights Act, 1994 | <p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of "Court" of the following definition: "'Court' means the Land Claims [Court established by section 22] Special Division of the High Court of South Africa;"</p> <p>(b) by the substitution for the definition of "High Court" of the following definition: "'High Court' means any <u>General Division of the High</u></p> |

| | | | |
|--|--|--|---|
| | | | <p>Court of South Africa referred to in section 166(c) of the Constitution [, excluding a high court of appeal];" and</p> <p>(c) by the substitution for the definition of "presiding judge" of the following definition: " 'presiding judge' , in relation to a hearing before more than one judge, means the judge designated as such by the <u>Judge President of the Court</u>";".</p> <p>2. Substitution for section 22 of the following section:</p> <p>"Jurisdiction of Land Claims Special Division of High Court</p> <p>22. <u>The Land Claims Special Division of the High Court of South Africa has the power, to the exclusion of any other court contemplated in section 166(c), (d) or (e) of the Constitution—</u></p> <p><u>(a) to determine a right to restitution of any right in land in accordance with this Act;</u></p> <p><u>(b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person upon expropriation or acquisition of such land in terms of this Act;</u></p> <p><u>(c) to determine the person entitled to title to land contemplated in section 3;</u></p> <p><u>(d) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to section 25(7) of the Constitution or to this Act or to any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be able to claim any relief consequential upon the granting of such order;</u></p> <p><u>(e) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land was just and equitable;</u></p> <p><u>(f) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of "occupier" in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);</u></p> <p><u>(g) to decide any constitutional matter in relation to this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).</u></p> <p><u>(h) to determine any matter involving the validity,</u></p> |
|--|--|--|---|

| | | | |
|---|--------------------|--|---|
| | | | <p><u>enforceability, interpretation or implementation of an agreement contemplated in section 14 (3), unless the agreement provides otherwise;</u> <u>(i) to determine all other matters which require to be determined in terms of this Act."</u></p> <p>3. Amendment of section 25, by the deletion of subsection (1).</p> <p>4. Amendment of section 28, by the deletion of subsections (1), (2), (3), (7), (8), (9) and (10).</p> |
| 3 | Act No. 66 of 1995 | Labour Relations Act, 1995 | <p>1. Amendment of section 157 by the deletion of subsections (1) and (2).</p> <p>2. Amendment of section 213 by the insertion after the definition of "issue in dispute" of the following definitions: <u>"Labour Appeal Court' means the Supreme Court of Appeal when dealing with a matter arising from the application of this Act;</u> <u>'Labour Court' means the Labour Matters Special Division of the High Court of South Africa dealing with a matter arising from the application of this Act;"</u>.</p> |
| 4 | Act No. 51 of 1996 | Electoral Commission Act, 1996 | <p>1. Amendment of section 1 by the substitution for the definition of "Electoral Court" of the following definition: <u>" 'Electoral Court' means the Electoral [Court established by section 18] Matters Special Division of the High Court of South Africa;"</u>.</p> <p>2. Amendment of section 20—</p> <p>(a) by the deletion of subsection (3);</p> <p>(b) by the deletion of paragraph (a) of subsection (4); and</p> <p>(c) by the deletion of subsection (8).</p> |
| 5 | Act No. 75 of 1997 | Basic Conditions of Employment Act, 1997 | <p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of "Labour Appeal Court" of the following definition: <u>"Labour Appeal Court' means the [Labour Appeal Court] Supreme Court of Appeal established by [section 167 of the Labour Relations Act, 1995] section 166 of the Constitution;"</u>; and</p> <p>(b) by the substitution for the definition of "Labour Court" of the following definition: <u>"Labour Court' means the Labour [Court established by section 151 of the Labour Relations Act, 1995] Matters</u></p> |

| | | | |
|---|--------------------|-----------------------|---|
| | | | <u>Special Division of the High Court of South Africa;</u> ". |
| 6 | Act No. 89 of 1998 | Competition Act, 1998 | 1. Amendment of section 37 by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: "The <u>Competition Appeals Special Division of the High Court of South Africa (hereinafter referred to as the Competition Appeal Court)</u> , may—". |

MEMORANDUM ON THE OBJECTS OF THE SUPERIOR COURTS BILL, 2010

1. SUMMARY

1.1 The Superior Courts Bill, 2010 (the Bill), aims to rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Courts in a single Act of Parliament; to unite the various High Courts into a single "High Court of South Africa"; to incorporate existing specialist courts that are similar in status to the High Court (namely the Competition Appeals Court, Electoral Court, Tax Court, Labour Court and Land Claims Court), into the High Court of South Africa as Special Divisions of the Court; to make provision for the administration of the judicial functions of all courts; to make provision for administrative and budgetary matters relating to the Superior Courts; and to provide for matters incidental to the functioning of the courts.

1.2 The establishment of a single "High Court of South Africa" as envisaged by the Bill, as well as the provisions relating to the role of the Chief Justice, as the head of the judiciary, require amendments to the Constitution, and the processing (and constitutionality) of the Bill is therefore dependant on the promulgation of the amendments contained in the Constitution Amendment Bill, 2010.

1.3 The Bill will largely be giving effect to item 16(6) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, in terms of which all courts must be rationalised with the view to establishing a judicial system suited to the requirements of the Constitution. It is also aimed at promoting the achievement of a single, integrated, accessible and affordable court system, as well as establishing an integrated system of court governance, within a single judiciary, with the Chief Justice as the head of the judiciary.

2. PROVISIONS OF THE BILL

The provisions of the Bill are summarised below:

2.1 The objects of the Bill are—

(a) to consolidate and rationalise the laws pertaining to Superior Courts, as contemplated in item 16(6) of Schedule 6 to the Constitution;

- (b) to bring the structure of the Superior Courts into line with the provisions of Chapter 8 of the Constitution (as amended by the Constitution Amendment Bill, 2010) and the transformation imperatives of the Constitution;
- (c) to make provision for the adjudication of matters relating to competition appeals, electoral disputes, income tax appeals, labour disputes and land claims by the Superior Courts; and
- (d) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises responsibility. (Clause 2)

2.2 Draft legislation dealing with the establishment or functioning of courts may only be introduced into Parliament after consultation with the Minister of Justice and Constitutional Development. This would contribute towards the realisation of a single, integrated, accessible and streamlined court system. (Clause 3)

2.3 All laws dealing with the structure and functioning of the Superior Courts (that is, the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa) are consolidated into a single Act of Parliament. Presently the provisions relating to the Constitutional Court and the Supreme Court of Appeal are, apart from the founding provisions contained Chapter 8 of the Constitution, contained in the Constitutional Court Complementary Act, 1995, and the Supreme Court Act, 1959, respectively. The various High Courts are subject to the legislative regimes contained in the Supreme Court Act, 1959, of the pre-1994 Republic and the various Constitutions, Supreme Courts Acts and Decrees that applied in the former territories of Bophuthatswana, Ciskei, Transkei and Venda. (See Schedule 2 to the Bill.)

2.4 The various existing High Courts and the existing specialist courts at the level of the High Courts (Competition Appeals, Electoral, Tax, Labour and Land Claims Courts) are converted into a single High Court of South Africa, comprising General and Special Divisions. Each province would have a General Division of the High Court, with the exception of Gauteng, with two General Divisions. The existing specialist courts would be converted into Special Divisions with jurisdiction throughout South Africa. (Clauses 6, 7, 8, 19 to 24 and 60 to 64)

2.5 The Chief Justice is the head of the judiciary as contemplated in section 165(6) of the Constitution (in accordance with the amendment sought to be effected by the Constitution Amendment Bill, 2010) and exercises responsibility over the development and implementation of norms and standards for the exercise of the judicial functions of all courts. (Clauses 11, 12 and 13)

2.6 The Bill also seeks to rationalise and strengthen the rule-making mechanism to improve the efficiency of the courts. The envisaged provisions seek to enhance the role of the judiciary in making the rules for all courts and provide for a meaningful role by the Minister and Parliament in the processing and approval thereof which are legislative measures geared to enhance access to justice. (Clauses 41 and 42)

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 During August 2003, a forerunner of this Bill (namely the Superior Courts Bill, 2003) together with the Constitution of the Republic of South Africa Amendment Bill, 2003, were introduced into Parliament and referred to the Portfolio Committee on Justice and Constitutional Development (National Assembly) for consideration. The Portfolio Committee embarked on extensive public hearings regarding the draft legislation and received substantial inputs from a wide range of interested parties.

3.2 After the elections in 2004, the Constitution Amendment Bill in question was allowed to lapse but the development of the legislation continued and earlier versions of both Bills were extensively discussed at a Judicial Colloquium hosted by former Minister Mabandla during April 2005. In December 2005, a draft Constitution (Fourteenth) Amendment Bill was subsequently published in the *Gazette* with the view to the introduction and consideration thereof along with a comprehensively revised version of the Superior Courts Bill of 2003. The Portfolio Committee in question held public hearings on the Bills early in 2006, during the course of which it became clear that more consensus needed to be developed between role-players on certain aspects of the draft legislation. As a result, the Constitution (Fourteenth) Amendment Bill was not introduced and the processing of the Superior Courts Bill, 2003, was put on hold pending the further development of broad policy guidelines on the transformation of the judiciary and the courts.

3.3 Following the elections in 2009, the Superior Courts Bill, 2003, was allowed to lapse, paving the way for the introduction of the new, revised Constitution Amendment Bill, 2010, and a new Superior Courts Bill, 2010, into Parliament. Both Bills result from further consultation with, particularly, the Judiciary. Both Bills have also been published in the *Gazette* for public comment.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill will have significant organisational and personnel implications, especially concerning the establishment of new General Divisions of the High Court in Limpopo and Mpumalanga. However, Bill allows for an incremental approach to be followed in these matters, since it provides that the Northern Gauteng General Division (Pretoria) will continue to function as the Limpopo and Mpumalanga Divisions respectively until seats for those Divisions have been formally established. The budget for the establishment of those General Divisions is included in the Department's MTEF budget.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

