

OFFICE OF THE PRESIDENT

No. 2003

23 November 1994

NO. 29 OF 1994: CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA FIFTH AMENDMENT ACT, 1994.

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

GENERAL EXPLANATORY NOTE:

** ** Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Constitution of the Republic of South Africa, 1993, so as to further regulate the pension and pension benefits of the President; to make further provision in relation to the oath of office or solemn affirmation by an Acting President; to make provision for the appointment of acting judges of the Constitutional Court; to extend the periods within which the first Public Protector and the first members of the Human Rights Commission are to be appointed; to facilitate the rationalisation of the various police forces into a single police service; to make provision for the appointment of the National and Provincial Commissioners of the South African Police Service and the Board of Commissioners prior to the commencement of the rationalisation process; and to rectify certain textual inconsistencies; and to provide for matters incidental thereto.

(English text signed by the President.)

(Assented to 17 November 1994.)

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

Substitution of section 79 of Act 200 of 1993

1. The following section is hereby substituted for section 79 of the Constitution of the Republic of South Africa, 1993 (hereafter referred to as the Constitution):

"Remuneration and pension of President

79. There shall be paid to the President out of and as a charge on the National Revenue Fund and apart from any privilege which he or she may enjoy, such remuneration and allowances, and upon his or her retirement, or to his or her widow or widower <<or dependent or nominee (including his or her estate) as-he or she may elect,>> on his or her death, such pension and pension benefits, as may be determined from time to time by resolution of Parliament."

Amendment of section 86 of Act 200 of 1993

2. Section 86 of the Constitution is hereby amended by the insertion after subsection (3) of the following subsection:

<<"(3A) (a) The person appointed as Acting President shall, subject to paragraph (b), before formally assuming office make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose.

(b) An oath or solemn affirmation made and subscribed by a person appointed as Acting President shall for purposes of any subsequent appointment of that person as Acting President during the term of office of a particular President, be deemed to be an oath or solemn declaration made and subscribed by that person also in respect of such subsequent appointment. ".>>

3. Section 99 of the Constitution is hereby amended by the addition of the following subsections:

<< "(8) Whenever the President of the Constitutional Court is absent or unable to perform his or her functions, or if the office of President of the Constitutional Court becomes vacant, the President may in consultation with the Cabinet and after consultation with the Chief Justice and, if he or she is available, the President of the Constitutional Court, appoint a judge of the Constitutional Court as Acting President of the Constitutional Court for the period of absence or inability of the President of the Constitutional Court or until the vacancy is filled.

(9) Whenever a judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the judges of the Constitutional Court arises, the President may, on the recommendation of the Minister responsible for the administration of justice made in consultation with the President of the Constitutional Court and the Chief Justice,

appoint any person qualified in terms of subsection (2), as an acting judge of the Constitutional Court for the period of absence or inability of the judge concerned or until the vacancy is filled: Provided that at all times at least four judges of the Constitutional Court, including acting judges, shall be judges who have been appointed from among the judges of the Supreme Court.

(10) A person may be appointed as Acting President or acting judge of the Constitutional Court irrespective of whether he or she was appointed on a previous occasion as Acting President or acting judge of the Constitutional Court: Provided that no person shall act as an acting judge for a period exceeding six months.

(11) Any appointment made under this section shall be deemed to have been made also in respect of any period during which the person appointed is necessarily engaged in connection with the disposal of any proceedings in which he or she has participated as a judge of the Constitutional Court and which have not yet been disposed of at the expiry of the period for

which he or she was appointed.".>>

Amendment of section 110 of Act 200 of 1993, as amended by section 7 of Act 13 of 1994

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

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

Amendment of section 115 of Act 200 of 1993, as amended by section 8 of Act 13 of 1993

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

"(4) The first members of the Commission after the commencement of this Constitution shall be appointed **[within 120 days of]** << as soon as possible after>> the first sitting of the Senate under this Constitution.".

Amendment of section 218 of Act 200 of 1993

6. Section 218 of the Constitution is hereby amended by the substitution for subparagraph (i) of paragraph (n) of subsection (1) of the following subparagraph:

are necessary to achieve the objectives referred to in section **[217]** 215; and".

Amendment of section 219 of Act 200 of 1993

7. Section 219 of the Constitution is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) the recruitment of members of the Service responsible for the

functions set out in subsection (1) **[, and the promotion of any such members to the rank of colonel or above];".**

Amendment of section 237 of Act 200 of 1993

8. Section 237 of the Constitution is hereby amended by the insertion after paragraph (a) of subsection (2) of the following paragraph:

<<"(aA) In anticipation of the adoption of the Act of Parliament contemplated in section 214-

(i) the National Commissioner and Provincial Commissioners of the South African Police Service contemplated in section 214(2)(a) may be appointed;

(ii) a meeting of the National Commissioner and the Provincial Commissioners or their nominees shall be deemed to be a meeting of the Board of Commissioners contemplated in section 220(2) and any decision taken at such a meeting shall be deemed to be a decision of the Board;

(iii) the existing police forces, deemed in terms of section 236(7) to constitute the South African Police Service contemplated in section 214, may be rationalised in accordance with this section; and

(iv) proclamations to regulate such rationalisation may be issued in terms of subsection (3).".>>

Amendment of section 245 of Act 200 of 1993

9. Section 245 of the Constitution is hereby amended by the substitution in paragraph (b) of subsection (3) for the expression "paragraph (b)" of the expression "paragraph (a)".

Short title

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

(2) Sections 4 and 5 shall be deemed to have come into operation on 16 September 1994.