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THE PRESIDENCY

No. 1234 21 November 2001

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

**No. 34 of 2001: Constitution of the
Republic of South Africa
Amendment Act, 2001**



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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.

(English text signed by the President.)
(Assented to 20 November 2001.)

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to change the title of the President of the Constitutional Court to that of Chief Justice; to provide for the offices of Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal; to provide for the extension of the term of office of a Constitutional Court judge; to further regulate the appointment of Deputy Ministers; to make provision for municipal borrowing powers and to enable a Municipal Council to bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality; and to provide for matters connected therewith.

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

Amendment of section 51 of Act 108 of 1996

1. Section 51 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the substitution for subsection (1) 5 of the following subsection:

“(1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the **[President of the Constitutional Court]** Chief Justice, but not more than 14 days after the election result has been declared. The Assembly may determine the time and duration of its other sittings and its recess periods.”. 10

Amendment of section 52 of Act 108 of 1996

2. Section 52 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The **[President of the Constitutional Court]** Chief Justice must preside 15 over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.”.

Substitution of section 54 of Act 108 of 1996

3. The following section is hereby substituted for section 54 of the Constitution:

“Rights of certain Cabinet members and Deputy Ministers in the National Assembly

54. The President, and any member of the Cabinet or any Deputy Minister who is not a member of the National Assembly, may, subject to the rules and orders of the Assembly, attend and **[may]** speak in the Assembly, but may not vote.”. 5

Amendment of section 58 of Act 108 of 1996

4. Section 58 of the Constitution is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“Cabinet members, Deputy Ministers and members of the National Assembly—”. 10

Amendment of section 64 of Act 108 of 1996

5. Section 64 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The **[President of the Constitutional Court]** Chief Justice must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.”. 15

Amendment of section 86 of Act 108 of 1996

6. Section 86 of the Constitution is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) The **[President of the Constitutional Court]** Chief Justice must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President. 20

(3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the **[President of the Constitutional Court]** Chief Justice, but not more than 30 days after the vacancy occurs.”. 25

Substitution of section 93 of Act 108 of 1996

7. The following section is hereby substituted for section 93 of the Constitution:

“Deputy Ministers

93. (1) The President may appoint—

(a) any number of Deputy Ministers from among the members of the National Assembly; and 30

(b) no more than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet, and may dismiss them.

(2) Deputy Ministers appointed in terms of subsection (1)(b) are accountable to Parliament for the exercise of their powers and the performance of their functions.”. 35

Amendment of section 110 of Act 108 of 1996

8. Section 110 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the **[President of the Constitutional Court]** Chief Justice, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.”. 40

Amendment of section 111 of Act 108 of 1996

9. Section 111 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A judge designated by the **[President of the Constitutional Court]** Chief Justice must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.”. 5

Amendment of section 128 of Act 108 of 1996

10. Section 128 of the Constitution is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) A judge designated by the **[President of the Constitutional Court]** Chief Justice must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier. 10

(3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the **[President of the Constitutional Court]** Chief Justice, but not later than 30 days after the vacancy occurs.”. 15

Amendment of section 167 of Act 108 of 1996

11. Section 167 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Constitutional Court consists of **[a President, a Deputy President]** the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.” 20

Amendment of section 168 of Act 108 of 1996

12. Section 168 of the Constitution is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Supreme Court of Appeal consists of a **[Chief Justice, a Deputy Chief Justice]** President, a Deputy President and the number of judges of appeal determined **[by]** in terms of an Act of Parliament. 25

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

Amendment of section 174 of Act 108 of 1996

13. Section 174 of the Constitution is hereby amended by the substitution for subsections (3) and (4) of the following subsections: 30

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the **[President and Deputy President of the Constitutional Court]** Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the **[Chief Justice and Deputy Chief Justice]** President and Deputy President of the Supreme Court of Appeal. 35

(4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the **[President of the Constitutional Court]** Chief Justice and the leaders of parties represented in the National Assembly, in accordance with the following procedure: 40

- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
- (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made. 45
- (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.”. 50