

The Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 001 of 2005)

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Preamble

Whereas We the People of the Kingdom of Swaziland do hereby undertake in humble submission to Almighty God to start afresh under a new framework of constitutional dispensation;

Whereas as a Nation it has always been our desire to achieve full freedom and independence under a constitution created by ourselves for ourselves in complete liberty;

Whereas various vusela consultations, economic and constitutional commissions, political experiments and Sibaya meetings have been established and undertaken in the last thirty years in search of a sustainable home-grown political order;

Whereas it has become necessary to review the various constitutional documents, decrees, laws, customs and practices so as to promote good governance, the rule of law, respect for our institutions and the progressive development of the Swazi society;

Whereas it is necessary to blend the good institutions of traditional Law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation;

Whereas it is necessary to protect and promote the fundamental rights and freedoms of ALL in our Kingdom in terms of a constitution which binds the Legislature, the Executive, the Judiciary and the other Organs and Agencies of the Government;

Whereas all the branches of government are the Guardians of the Constitution, it is necessary that the Courts be the ultimate Interpreters of the Constitution;

Whereas as a Nation we desire to march forward progressively under our own constitution guaranteeing peace, order and good government, and the happiness and welfare of ALL our people;

Whereas the Constitution in draft form was circulated to the nation in both official languages, was vetted by the people at tinkhundla and Sibaya meetings;

Now, THEREFORE, WE, iNgwenyama-in-Council, acting together with and on the Approval of the Swazi Nation meeting as the Swazi National Council assembled at Ludzidzini this 4th day of October, 2004, hereby Accept the following Constitution as the Supreme Law of the Land.

CHAPTER I THE KINGDOM AND ITS CONSTITUTION

The Kingdom and its territory

1. (1) Swaziland is a unitary, sovereign, democratic Kingdom.

(2) The territory of Swaziland comprises all the land that immediately before the 6 th September 1968 comprised the former Protected State of Swaziland together with such additional land as may from time to time be declared to form part of Swaziland in accordance with international law.

The Constitution

2. (1) This Constitution is the supreme law of Swaziland and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

(2) The King and iNgwenyama and all the citizens of Swaziland have the right and duty at all times to uphold and defend this Constitution.

(3) Any person who -

(a) by himself or in concert with others by any violent or other unlawful means suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act; or

(b) aids and abets in any manner any person referred to in paragraph (a);

commits the offence of treason.

The Anthem, Flag and Languages

3. (1) The National Anthem and Flag of Swaziland shall be the Anthem or Flag lawfully in use at the time of commencement of this Constitution or such other Anthem or Flag as may from time to time be prescribed.

(2) The official languages of Swaziland are siSwati and English.

(3) Notwithstanding the provisions of subsection (2), the authoritative text of any law or document shall be the text in which that law or document was originally passed or produced.

CHAPTER II MONARCHY .

King and iNgwenyama

4. (1) Without prejudice to the provisions of section 228, King and iNgwenyama of Swaziland is an hereditary Head of State and shall have such official name as shall be designated on the occasion of his accession to the Throne.

(2) The King and iNgwenyama is a symbol of unity and the eternity of the Swazi nation.

(3) The King and iNgwenyama is the-(a) Commander-in-Chief of the Defence Force;

(b) Commissioner-in-Chief of the Police Service; and (c) Commissioner-in-Chief of the Correctional Services.

(4) The King and iNgwenyama has such rights, prerogatives and obligations as are conferred on him by this Constitution or any other law, including Swazi law and custom, and shall exercise those rights, prerogatives and obligations in terms and in the spirit of this Constitution.

Succession to the Throne

5. (1) Succession to the office of King and iNgwenyama is hereditary and governed by this Constitution and Swazi law and custom.

(2) Where the office of King and iNgwenyama becomes vacant the successor to the Throne shall be determined and declared in accordance with Swazi law and custom.

Umntfwana (Crown Prince)

6. (1) Until he accedes to the Throne, a person declared a successor under section 5, shall be designated as Umntfwana.

(2) Unless the situation otherwise requires, Umntfwana shall accede to the Throne when he has attained the age of eighteen years.

(3) Umntfwana, before being declared king shall be installed iNgwenyama in accordance with Swazi law and custom.

(4) Umntfwana shall not assume any of the duties of the office of King and iNgwenyama until he accedes to the Throne. (5) The Crown Prince shall be entitled to such training, allowance and other privileges as may be prescribed appropriate to his status.

The Ndlovukazi

7. (1) Without prejudice to the provisions of section 229, the Ndlovukazi is traditionally the mother of the King and iNgwenyama and is appointed in accordance with Swazi law and custom.

(2) Until the King and iNgwenyama has been installed, that is to say, until he has publicly assumed the functions and responsibilities of the King and iNgwenyama in accordance with this Constitution and Swazi law and custom, or during any period when he is by reason of absence from Swaziland or any other cause unable to perform the functions of his office, those functions shall be performed, save as otherwise provided in this Constitution, by the Ndlovukazi acting as Queen Regent.

(3) In her capacity as Queen Regent, the Ndlovukazi shall be assisted and advised by the Umntfwanenkhusi Lomkhulu -in-Libandla.

(4) The Queen Regent shall be entitled to such remuneration as may be prescribed and that remuneration shall be paid out of the Consolidated Fund and shall not be reduced during the continuance in office of the Queen Regent.

(5) Civil proceedings shall not be instituted or continued in respect of which relief is claimed against the Queen Regent for anything done or omitted to be done by the Queen Regent in her private capacity and shall not be summoned to appear as a witness in any civil or criminal proceedings.

(6) Where provision is made by law limiting the time within which proceedings of any description may be brought against a person, the period during which that person held a position of Queen Regent shall not be taken into account in calculating the period of time prescribed by that law which determines whether any such proceedings as are mentioned in this section may be brought against that person.

(7) The Queen Regent shall be immune from taxation in respect of – (a) any remuneration received in terms of subsection (4);

(b) all income accruing to her in her private capacity; and (c) all property owned by her in her private capacity and so far as the taxation relates to the period of regency.

(8) The Ndlovukazi shall, before commencing to act as Queen Regent take and subscribe an oath for the due execution of office in accordance with Swazi law and custom.

(9) The Queen Regent shall hand over her office to the Ndlovukazi when Umntfwana assumes the office of King and iNgwenyama.

Umntfwanenkhusi Lomkhulu (Senior Prince)

8. (1) Without prejudice to the provisions of section 234, Umntfwanenkhusi Lomkhulu is appointed in accordance with Swazi law and custom.

(2) Where the Ndlovukazi in her capacity as Queen Regent is temporarily out of the Kingdom or for any reason temporarily unable to perform the functions of her office, subject to any requirements under Swazi law and custom, the Umntfwanenkhusi Lomkhulu may perform those functions subject to any specific instructions she may make.

(3) Umntfwanenkhusi Lomkhulu when acting in terms of subsection (2) shall be entitled to such remuneration as may be prescribed and that remuneration shall be paid out of the Consolidated Fund and shall not be reduced during his continuance in office.

(4) Civil proceedings shall not be instituted or continued in respect of which relief is claimed against the Umntfwanenkhusi Lomkhulu when acting in terms of subsection (2) for anything done or omitted to be done by him in his private capacity and he shall not be summoned to appear as a witness in any civil or criminal proceedings.

(5) Where provision is made by law limiting the time within which proceedings of any description may be brought against a person, the period during which that person held a position of Umntfwanenkhusi Lomkhulu in terms of subsection (2) shall not be taken into account in calculating the period of time prescribed by that law which determines whether such proceedings as are mentioned in this section may be brought against that person.

(6) The Umntfwanenkhusi Lomkhulu when acting in terms of subsection (2) shall be immune from taxation in respect of -

(a) any remuneration received in terms of subsection (3);

(b) all income accruing to him in his private capacity; and (c) all property owned by him in his private capacity in so far as the taxation relate to the period of regency.

(7) Umntfwanenkhusi Lomkhulu shall, before commencing to act in terms of subsection (2) take and subscribe an oath for the due execution of the office in accordance with Swazi law and custom.

Civil List of King and iNgwenyama

9. (1) The King and iNgwenyama shall be paid such emoluments and shall have such Civil List as may be prescribed.

(2) Any remuneration prescribed under this section shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the continuance in office of King and iNgwenyama.

Immunity of King and iNgwenyama

10. The King and iNgwenyama shall be immune from taxation in respect of his Civil List, all income accruing to him and all property owned by him in any private capacity.

Protection of King and iNgwenyama in respect of legal proceedings

11. The King and iNgwenyama shall be immune from - (a) suit or legal process in any cause in respect of all things done or omitted to be done by him; and

(b) being summoned to appear as a witness in any civil or criminal proceeding.

Oath by King and iNgwenyama

12. The King and Ngwenyama shall upon his installation as King and Ngwenyama take and subscribe an oath for the due execution of his office in accordance with Swazi law and custom.

The King's Advisory Council

13. (1) There shall be the King's Advisory Council composed and constituted as Lipoqo under Section 231.

(2) The function of the Council shall be to advise the King and Ngwenyama as provided for under Section 231.

CHAPTER III PROTECTION AND PROMOTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Fundamental rights and freedoms of the individual

14. (1) The fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely –

- (a) respect for life, liberty, right to fair hearing, equality before the law and equal protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association and of movement;
- (c) protection of the privacy of the home and other property rights of the individual;
- (d) protection from deprivation of property without compensation;
- (e) protection from inhuman or degrading treatment, slavery and forced labour, arbitrary search and entry; and
- (f) respect for rights of the family, women, children, workers and persons with disabilities.

(2) The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforceable by the courts as provided in this Constitution.

(3) A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

Protection of right to life

15. (1) A person shall not be deprived of life intentionally save in the execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which that person has been convicted.

(2) The death penalty shall not be mandatory.

(3) A sentence of life imprisonment shall not be less than twenty five years.

(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of life in contravention of this section if death results from use of force to such extent as is reasonably justifiable and proportionate in the circumstances of the case –

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a serious criminal offence.

(5) Abortion is unlawful but may be allowed –(a) on medical or therapeutic grounds including where a doctor certifies that –

- (i) continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman;
- (ii) continued pregnancy will constitute a serious threat to the mental health of the woman;

- (iii) there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;
- (b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or
- (c) on such other grounds as Parliament may prescribe.

Protection of right to personal liberty

16. (1) A person shall not be deprived of personal liberty save as may be authorised by law in any of the following cases -

- (a) in execution of the sentence or order of a court, whether established for Swaziland or another country, or of an international court or tribunal in respect of a conviction of a criminal offence;
 - (b) in execution of the order of a court punishing that person for contempt of that court or of another court or tribunal;
 - (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;
 - (d) for the purpose of bringing that person before a court in execution of the order of a court;
 - (e) upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence under the laws of Swaziland;
 - (f) in the case of a person who has not attained the age of eighteen years, for the purpose of the education, care or welfare of that person;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease;
 - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of the care or treatment of that person or the protection of the community;
 - (i) for the purpose of preventing the unlawful entry of that person into Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while being conveyed through Swaziland in the course of the extradition or removal of that person as a convicted prisoner from one country to another; or
 - (j) to such extent as may be necessary in the execution of a lawful order - (i) requiring that person to remain within a specified area within Swaziland or prohibiting that person from being within such an area;
 - (ii) reasonably justifiable for the taking of proceedings against that person relating to the making of any such order; or
 - (iii) reasonably justifiable for restraining that person during any visit, which that person is permitted to make to any part of Swaziland in which, in consequence of that order, the presence of that person would otherwise be unlawful.
- (2) A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which that person understands, of the reasons for the arrest or detention and of the right of that person to a legal representative chosen by that person.
- (3) A person who is arrested or detained – (a) for the purpose of bringing that person before a court in execution of the order of a court; or

(b) upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence, shall, unless sooner released, be brought without undue delay before a court.

(4) Where a person arrested or detained pursuant to the provisions of subsection

(3), is not brought before a court within forty-eight hours of the arrest or detention, the burden of proving that the provisions of subsection (3) have been complied with shall rest upon any person alleging that compliance.

(5) Where a person is brought before a court in execution of the order of a court in any proceedings or upon any suspicion of that person having committed or being about to commit an offence, that person shall not be further held in custody in connection with those proceedings or that offence save upon the order of a court.

(6) Where a person is arrested or detained - (a) the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the arrest or detention and place of the arrest or detention.

(b) the next-of-kin, legal representative and personal doctor of that person shall be allowed reasonable access and confidentiality to that person; and

(c) that person shall be allowed reasonable access to medical treatment including, at the request and at the cost of that person, access to private medical treatment.

(7) If a person is arrested or detained as mentioned in subsection (3) (b) then, without prejudice to any further proceedings that may be brought against that person, that person shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that that person appears at a later date for trial or for proceedings preliminary to trial.

(8) A person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting.

(9) Where a person is convicted and sentenced to a term of imprisonment for an offence, any period that person has spent in lawful custody in respect of that offence before the completion of the trial of that person shall be taken into account in imposing the term of imprisonment.

Protection from slavery and forced labour

17. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour. (3) For the purposes of this section, the expression "forced labour" does not include any labour –

(a) required in consequence of the sentence or order of a court;

(b) required of any person while that person is lawfully detained which, though not required in consequence of the sentence or order of the court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which that person is detained;

(c) required of a member of a disciplined force in pursuance of the duties of that member or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of that service;

(d) required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of that labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) reasonably required as part of reasonable and normal parental, cultural, communal or other civic obligations, unless it is repugnant to the general principles of humanity.

Protection from inhuman or degrading treatment

18. (1) The dignity of every person is inviolable.

(2) A person shall not be subjected to torture or to inhuman or degrading treatment or punishment.

Protection from deprivation of property

19. (1) A person has a right to own property either alone or in association with others.

(2) A person shall not be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied -

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health;

(b) the compulsory taking of possession or acquisition of the property is made under a law which makes provision for -

(i) prompt payment of fair and adequate compensation; and

(ii) a right of access to a court of law by any person who has an interest in or right over the property;

(c) the taking of possession or the acquisition is made under a court order.

Equality before the law

20. (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability.

(3) For the purposes of this section, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.

(4) Subject to the provisions of subsection (5) Parliament shall not be competent to enact a law that is discriminatory either of itself or in its effect.

(5) Nothing in this section shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society.

Right to fair hearing

21. (1) In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law.

(2) A person who is charged with a criminal offence shall be-(a) presumed to be innocent until that person is proved or has pleaded guilty;

(b) informed as soon as reasonably practicable, in a language which that person understands and in sufficient detail, of the nature of the offence or charge;

- (c) entitled to legal representation at the expense of the government in the case of any offence which carries a sentence of death or imprisonment for life;
 - (d) given adequate time and facilities for the preparation of the defence;
 - (e) permitted to present a defence before the court either directly or through a legal representative chosen by that person;
 - (f) afforded facilities to examine in person or by a legal representative the witnesses called by the prosecution and to obtain the attendance of witnesses to testify on behalf of that person on the same conditions as those applying to witnesses called by the prosecution; and
 - (g) permitted to have, without payment, the assistance of an interpreter if that person cannot understand the language used at the trial.
- (3) Except with the free consent of the person concerned and for purposes of subsection (2), the trial shall not take place in the absence of that person unless that person acts so as to render the continuance of the proceedings in the presence of that person impracticable and the court has ordered that person to be removed and the trial to proceed in the absence of that person.
- (4) Where a person is tried for any criminal offence, the accused person or person authorised by the accused person shall, if the accused person or person authorised by the accused person so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
- (5) A person shall not be charged with or held to be guilty of a criminal offence on account of any act or omission that did not, at the time the act or omission took place, constitute an offence.
- (6) A penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (7) A person who has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which that person could have been convicted at the trial for the offence, save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.
- (8) A person shall not be tried for a criminal offence where that person has been pardoned for that offence.
- (9) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.
- (10) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.
- (11) All proceedings of every court or adjudicating authority shall be held in public.
- (12) Notwithstanding the provisions of subsection (11), a court or adjudicating authority -
- (a) may, unless it is otherwise provided by Act of Parliament, exclude from its proceedings persons other than the parties and their legal representatives to such extent as the court may consider -
 - (i) in circumstances where publicity may unduly prejudice the interests of defence, public safety, public order, justice, or public morality or would prejudice the welfare of persons under the age of eighteen years or as the court may deem appropriate; or

(ii) in interlocutory proceedings;

(b) shall, where it is so prescribed by a law that is reasonably required in the interests of defence, public safety, public order, justice, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of the persons concerned in the proceedings, exclude from its proceedings persons, other than the parties and their legal representatives, to such extent as is so prescribed.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

(a) subsection (2) (a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2) (e) to the extent that the law in question prohibits legal representation before a Swazi Court or before any Swazi court hearing appeals from such a court;

(c) subsection (2) (f) to the extent that the law in question imposes conditions that should be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(d) subsection (7) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying and convicting that member shall in sentencing that member to any punishment take into account any punishment awarded under that disciplinary law.

(14) In the case of a person who is held in lawful detention, the provisions of subsections (1), (2) (e) and (f) and (3) shall not apply in relation to the trial of that person for a criminal offence under the law regulating the discipline of persons held in such detention.

(15) In this section “criminal offence” means a criminal offence under the law of Swaziland, and “proceedings” in relation to a court or adjudicating authority includes the announcement of the decision of the court or adjudicating authority.

Protection against arbitrary search or entry.

22. (1) A person shall not be subjected – (a) to the search of the person or the property of that person;

(b) to the entry by others on the premises of that person;

(c) to the search of the private communications of that person, except with the free consent of that person first obtained.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that -

(a) is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) authorises an officer or agent of the Government or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything on those premises for the purposes

of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate as the case may be;

(d) authorises, for the purposes of enforcing the judgement or order of a court in any civil proceedings, the entry upon any premises by order of a court,

except so far as, in respect of paragraph (c) or (d) that provision or, as the case may be, the thing done under the authority of that Government, local authority or body corporate is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of conscience or religion

23. (1) A person has a right to freedom of thought, conscience or religion.

(2) Except with the free consent of that person, a person shall not be hindered in the enjoyment of the freedom of conscience, and for the purposes of this section freedom of conscience includes freedom of thought and of religion, freedom to change religion or belief, and freedom of worship either alone or in community with others.

(3) A religious community is entitled to establish and maintain places of education and to manage any place of education which that community wholly maintains, and that community may not be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which that community wholly maintains or in the course of any education which that community otherwise provides.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of members of any other religion or belief.

Protection of freedom of expression

24. (1) A person has a right of freedom of expression and opinion.

(2) A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of expression, which includes the freedom of the press and other media, that is to say -

(a) freedom to hold opinions without interference;

(b) freedom to receive ideas and information without interference;

(c) freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons); and

(d) freedom from interference with the correspondence of that person.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

- (b) that is reasonably required for the purpose of - (i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
- (ii) preventing the disclosure of information received in confidence;
- (iii) maintaining the authority and independence of the courts; or (iv) regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television or any other medium of communication; or
- (c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association

25. (1) A person has the right to freedom of peaceful assembly and association.

(2) A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of peaceful assembly and association, that is to say, the

right to assemble peacefully and associate freely with other persons for the promotion or protection of the interests of that person.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.

(4) Without prejudice to the generality of subsection (2), nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision - (a) for the registration of trade unions, employers organisations, companies, partnerships or co-operative societies and other associations including provision relating to the procedure for registration, prescribing qualifications for registration and authorising refusal of registration on the grounds that the prescribed qualifications are not fulfilled; or

(b) for prohibiting or restricting the performance of any function or the carrying on of any business by any such association as is mentioned in paragraph (a) which is not registered.

(5) A person shall not be compelled to join or belong to an association.

Protection of freedom of movement

26. (1) A person shall not be deprived of the freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland, the right to leave Swaziland and immunity from expulsion from Swaziland. (2) Any restriction on the freedom of movement of a person or residence that is involved in the lawful detention of that person shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) for the imposition of restrictions on the movement or residence within Swaziland of any person or on the right of any person to leave Swaziland that are reasonably required in the interests of defence, public safety or public order; (b) for the imposition of restrictions on the movement or residence within Swaziland of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health, and except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions, by order of a court, on the movement or residence within Swaziland of any person or on the right of any person to leave Swaziland either in consequence of having been found guilty of criminal offence under the law of Swaziland or for the purpose of ensuring the appearance of that person before a court at a later date for the trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to the extradition or lawful removal from Swaziland of that person;

(d) for the imposition of restrictions on the freedom of entry or movement of any person who is not a citizen of Swaziland;

(e) for the imposition of restrictions on the movement or residence within Swaziland of any person who holds or is acting in any public office;

(f) for the removal of a person from Swaziland to be tried or punished in some other country for criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which that person has been convicted; or (g) for the imposition of restrictions on the right of any person to leave Swaziland that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, the case of that person shall be reviewed by the Commission on Human Rights and Public Administration.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Nothing contained in or done under the authority of any provision of Swazi law and custom shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorises the imposition of restrictions upon the freedom of any person to reside in any part of Swaziland.

Rights and protection of the family

27. (1) Men and women of marriageable age have a right to marry and found a family.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental unit of society and is entitled to protection by the State.

(4) Motherhood and childhood are entitled to special care and assistance by society and the State.

(5) Society and the State have the duty to preserve and sustain the harmonious development, cohesion and respect for the family and family values.

(6) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of the needy and the elderly.

Rights and freedoms of women

28. (1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

(2) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

(3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

Rights of the child

29. (1) A child has the right to be protected from engaging in work that constitutes a threat to the health, education or development of that child.

(2) A child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction.

(3) The child has the right to be properly cared for and brought up by parents or other lawful authority in place of parents.

(4) Children whether born in or out of wedlock shall enjoy the same protection and rights.

(5) Children have the duty to respect their parents at all times and to maintain those parents in case of need.

(6) Every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.

(7) Parliament shall enact laws necessary to ensure that -(a) a child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;

(b) a child is entitled to reasonable provision out of the estate of its parents;

(c) parents undertake their natural right and obligation of care, maintenance and proper upbringing of their children; and

(d) children receive special protection against exposure to physical and moral hazards within and outside the family.

Rights of persons with disabilities

30. (1) Persons with disabilities have a right to respect and human dignity and the Government and society shall take appropriate measures to ensure that those persons realise their full mental and physical potential.

(2) Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives.

Abolition of the status of illegitimacy

31. For the avoidance of doubt, the (common law) status of illegitimacy of persons born out of wedlock is abolished.

Rights of workers

32. (1) A person has the right to practise a profession and to carry on any lawful occupation, trade or business.

(2) A worker has a right to –

(a) freely form, join or not to join a trade union for the promotion and protection of the economic interests of that worker; and

(b) collective bargaining and representation.

(3) The employer of a female worker shall accord that worker protection before and after child birth in accordance with law.

(4) Parliament shall enact laws to –

(a) provide for the right of persons to work under satisfactory, safe and healthy conditions;

(b) ensure equal payment for equal work without discrimination;

(c) ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays; and

(d) protect employees from victimisation and unfair dismissal or treatment.

Right to administrative justice

33. (1) A person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved.

(2) A person appearing before any administrative authority has a right to be given reasons in writing for the decision of that authority.

Property rights of spouses

34. (1) A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.

(2) Parliament shall, as soon as practicable after the commencement of this Constitution, enact legislation regulating the property rights of spouses including common-law husband and wife.

Enforcement of protective provisions

35. (1) Where a person alleges that any of the foregoing provisions of this Chapter has been, is being, or is likely to be, contravened in relation to that person or a group of which that person is a member (or, in the case of a person who is detained, where any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction – (a) to hear and determine any application made in pursuance of subsection (1);

(b) to determine any question which is referred to it in pursuance of subsection (3);

and may make such orders, issue such writs and make such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall where a party to the proceedings so requests, stay the proceedings and refer the question to the High Court unless, in the judgement of that person, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Supreme Court, in accordance with the decision of the Supreme Court.

(5) An appeal shall not lie, without the leave of the Supreme Court, from any determination by the High Court that an application made in pursuance of subsection (1) is merely frivolous or vexatious.

(6) Provision may be made by or under an Act of Parliament for conferring upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or expedient for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) The Chief Justice may make rules for purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications to that court may be made).

Declaration of emergency

36. (1) The king may, on the advice of the Prime Minister, by proclamation which shall be published in the Gazette, declare that a state of emergency exists in Swaziland or any part of Swaziland for the purposes of this Chapter.

(2) The provisions of subsection (1) shall not apply and a proclamation shall not be issued under that subsection and where issued that proclamation shall not be effective in law unless -

(a) Swaziland is at war or circumstances have arisen making imminent a state of war between Swaziland and a foreign State;

(b) there is in Swaziland a natural disaster or imminent threat of a natural disaster; or

(d) there is action taken or immediately threatened by a person or body of persons of such a nature or on so extensive a scale as to be likely to endanger the public safety or to deprive the community or a significant part of that community of supplies or services essential to the life of the community.

(3) Copies of the Gazette containing the proclamation of a state of emergency shall as soon as practicable and at any rate not later than seven days from date of publication of that proclamation be laid before Parliament by the Prime Minister.

(4) A declaration under subsection (1) if not sooner revoked, shall cease to have effect -

(a) in the case of a declaration made when Parliament is sitting or has been summoned to meet within three days, at the expiration of a period of seven days beginning with the date of publication of the declaration;

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless, before the expiration of that period, the declaration is approved by a resolution passed by a two-thirds majority at a joint sitting of all the members of the Senate and the House.

(5) Subject to the provisions of subsection (12), the joint sitting referred to in subsection (4) shall not dissolve but only be adjourned to be reconvened from time to time by the President of the Senate or the Speaker of the House until the emergency is ended.

(6) A declaration approved by a resolution passed at a joint sitting under subsection (4) shall continue in force until the expiration of a period of three months beginning with the date upon which that declaration was so approved or until such earlier date as may be specified in the resolution.

(7) Notwithstanding the provisions of subsection (6), the declaration may be extended from time to time for periods of not more than three months at a time by a resolution passed by a three-fifths majority at a joint sitting of all the members of Senate and the House.

(8) Where a person is detained or restricted by virtue of a power exercised in the absolute discretion of any authority and conferred by any such law as is referred to in section 38(1), the following shall apply, that is to say -

(a) that person shall, as soon as reasonably practicable and in any case not more than seventy two hours after the detention or restriction, be furnished with a statement in writing in a language that the person understands specifying in sufficient detail the grounds upon which that person is detained or restricted;

(b) not more than five days after detention or restriction, a notification shall be published in the Gazette stating that the person has been detained or restricted and giving particulars of the provision of law under which the detention or restriction is authorised;

(c) not more than fourteen days after detention or restriction and thereafter at intervals of three months, the case of that person shall be reviewed by the Commission on Human Rights and Public Administration;

(d) the detained or restricted person shall be afforded reasonable facilities to consult a legal practitioner who shall be permitted to make representations to the tribunal; and

(e) at the hearing before the tribunal, that person may appear in person or by legal representative.

(9) On any review by a tribunal of the case of a detained or restricted person the tribunal may make recommendations concerning the necessity or expediency of

continuing the detention or restriction to the authority by which the detention or restriction was ordered and the authority shall be obliged to act in accordance with any such recommendations.

(10) Where movement of persons is restricted or curfew imposed, that restriction or curfew, unless lifted within twenty-one days, shall be reviewed by the tribunal appointed in terms of subsection (8) (c) at intervals of not more than one month and any person or group of persons affected by the restriction or curfew may make submissions to the tribunal.

(11) Where the public emergency has been extended beyond twenty-one days, the Prime Minister shall make a report to a joint sitting of the Senate and the House stating among other things, the number of persons, if any, detained or restricted in terms of this section, the status of the emergency and the public reaction to the continued state of emergency.

(12) The provisions of the First Schedule shall apply with respect to the summoning and procedure of the joint sitting of the Senate and the House.

Derogations during public emergency

37. (1) Without prejudice to the power of Parliament to make provision in any situation or the provisions of section 38, nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of any provision of this Chapter to the extent that the law authorises the taking, during any period of public emergency, of measures that are reasonably justifiable for dealing with the situation that exists during that period.

(2) A law that is passed during a period of public emergency and is expressly declared to have effect only during that period shall have effect in terms provided in the section of this Chapter under which that law is passed.

Prohibition of certain derogations

38. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms -

- (a) life, equality before the law and security of person;
- (b) the right to fair hearing;
- (c) freedom from slavery or servitude;
- (d) the right to an order in terms of section 35 (1); and (e) freedom from torture, cruel, inhuman or degrading treatment or punishment.

Saving clauses and interpretation

39. (1) Save as may otherwise be expressly indicated, nothing contained in section 21 (2) or section 36 (8) shall be construed as entitling a person to legal representation at public expense.

(2) Nothing contained in section 20, 24 or 25 shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to the communication or association with other persons or as to the movement or residence of those officers.

(3) In relation to a person who is a member of a disciplined force of Swaziland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 15, 17, or 18.

(4) Measures taken in relation to a person who is a member of a disciplined force of a country with which Swaziland is at war and any law, to the extent that it authorises the taking of any of those measures shall not be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(5) The provisions of section 36 (8) do not apply in the case of a detained or restricted person who is a citizen of a country which is at war with Swaziland or has been engaged in hostilities against Swaziland in association with or on behalf of that country or otherwise assisting that country.

(6) In this Chapter, unless the context otherwise requires -“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means a court of law having jurisdiction in Swaziland, but does not include, save in sections 15 and 17, a court established by a disciplinary law;

“disciplinary law” means law regulating the discipline of any disciplined force;

“disciplined force” means – (a) an air, military or naval force;

(b) the Swaziland Royal Police Service;

(c) the Swaziland Correctional Services.

“member” in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“period of public emergency” means any period so declared under section 36.

“property” means property, movable or immovable, corporeal or incorporeal, of any description whatever including Swazi nation land and any right or interest lawfully held by any person in that property.

CHAPTER 1V CITIZENSHIP

Part 1 Acquisition of Citizenship

Citizen of Swaziland

40. A person who, on the commencement of this Constitution, is a citizen of Swaziland shall continue to be such citizen.

Citizenship by descent

41. A person born, whether before or after the commencement of this Constitution and whether in or outside of Swaziland, is a citizen by descent if by birth that person is a descendant.

Citizenship by operation of law

42. (1) A person born in or outside Swaziland before the commencement of this Constitution shall be a citizen of Swaziland by operation of law if at the birth of that person one of the parents was a citizen of Swaziland.

(2) In this section “citizen by operation of law” refers to a person who was born before the existence of the status of a citizen of Swaziland and was a member of a class of persons -

(a) generally regarded as Swazi by descent; and (b) subsequently declared by law to be citizens of Swaziland.

(3) This section shall cease to apply to a person being a citizen of another country who, on being so required by the Board in terms of section 49 (1) (d), has failed to renounce that other citizenship -

(a) within one year after that person attains the age of majority (or within such extended period as the Board may allow); or

(b) where that person attained the age of majority before the commencement of this Constitution, within one year after that commencement (or within such extended period as the Board may allow).

Citizenship by birth

43. (1) A person born in Swaziland after the commencement of this Constitution is a citizen of Swaziland by birth if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.

(2) A person born outside Swaziland after the commencement of this Constitution is a citizen of Swaziland if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.

(3) A person born outside Swaziland who becomes a citizen by virtue of subsection (2) shall cease to be a citizen if the father of that person was also born outside Swaziland unless, within one year after attaining the age of majority (or within such extended time as the Board may allow) that person notifies the Board in writing of the desire to retain the citizenship of Swaziland.

(4) Where a child born outside of marriage is not adopted by its father or claimed by that father in accordance with Swazi law and custom and the mother of that child is a citizen of Swaziland, the child shall be a citizen of Swaziland by birth.

(5) A child adopted, whether before or after the commencement of this Constitution, under the legislation relating to the adoption of children or under customary law, shall, if not already a citizen, be deemed to be a citizen of Swaziland by birth if, at the time of adoption the adoptive parent was a citizen of Swaziland or would

have been a citizen if this Constitution were in force.

Citizenship by marriage

44. (1) A woman who is not a citizen of Swaziland at the date of her marriage to a person who is a citizen (otherwise than by registration) shall become a citizen by lodging a declaration in the prescribed manner with the Minister responsible for citizenship or with any Diplomatic Mission or Consular Office of Swaziland or at any other prescribed office, either before or at any time during the marriage, accepting Swaziland citizenship.

(2) A woman who lodges a declaration in terms of subsection (1) shall be a citizen from the date of her marriage, where the declaration is lodged before the marriage, or where the declaration is lodged after marriage, from date of lodgement.

(3) This section applies to marriage whether before or after the commencement of this Constitution.

Citizenship by registration

45. (1) A person may acquire citizenship by registration where that person satisfies the Board on the conditions set out in subsection (2), (3) or (4).

(2) The conditions for registration of a person are that the person-(a) has been ordinarily and lawfully resident in Swaziland, (i) for a continuous period of at least twelve months immediately preceding the date of application for registration; and

(ii) for periods amounting in the aggregate to not less than five years during the seven years preceding the date of application for registration.

(b) is of good character;

(c) has an adequate knowledge of siSwati or English;

(d) intends, in the event of citizenship being granted, to reside in Swaziland;

(e) has adequate means for support whilst in Swaziland; and (f) has contributed and shall contribute to the development of the country.

(3) A person who is ordinarily resident in Swaziland and has been so resident for a period of at least ten years and whose application is supported by a Chief after consultation with bandlancane or supported by three reputable citizens, may be registered as a citizen.

(4) Citizenship by registration shall not be granted to any person under this section until that person has taken the oath or affirmation of allegiance in the Second Schedule or such other oath or affirmation as may be prescribed.

(5) The person to whom citizenship is granted in terms of this section shall be a citizen from the date on which a certificate of registration as a citizen is granted.

(6) In this section, “bandlancane” means a Chief’s council established in accordance with Swazi law and custom.

Posthumous children

46. A child born after the death of the father shall be deemed to be a citizen under this Chapter on the same conditions as if the father were alive when that child was born.

Foundlings

47. A deserted child of not more than seven years found in Swaziland shall, unless the contrary is proved, be deemed to have been born in Swaziland and shall be treated for the purposes of this Chapter as a citizen by birth.

Birth aboard a ship or aircraft

48. (1) A person born aboard a ship or aircraft registered in Swaziland wherever it may be shall be deemed to be born in Swaziland.

(2) A person born aboard an unregistered ship or aircraft of the Government shall be deemed to be born in Swaziland.

Part 2 Loss of Citizenship

Deprivation of citizenship.

49. (1) A person who is a citizen of Swaziland by registration may be deprived of that citizenship by order of the Board where the Board is satisfied that –

- (a) the issue of the relevant certificate has been declared by a court to have been procured by fraud, misrepresentation or concealment of material facts;
- (b) the person has shown himself by any overt act other than marriage to have acquired another citizenship;
- (c) the person has by any voluntary act other than marriage acquired another citizenship;
- (d) the person has, on being so required by the Board, failed to renounce the citizenship of any other country;
- (e) the person has been resident outside Swaziland (otherwise than in the public service) for a continuous period of seven years and during that period has failed without reasonable excuse to register with the Board at such times and in such manner as may be prescribed a declaration of intention to retain citizenship of Swaziland,

and that on any of these grounds it is not conducive to the public good that the person should continue to be a citizen of Swaziland.

(2) A woman who acquired citizenship as a consequence of her marriage to a citizen of Swaziland, may be deprived of that citizenship where the marriage was entered into merely for the purpose of acquiring citizenship.

(3) Before making a revocation order, the Board shall give notice to the person concerned of the fact that the revocation of the citizenship of that person is being considered, stating the grounds for revocation and the right of that person to apply to the Board within the period stipulated in the notice challenging the revocation order and giving reasons in support of the challenge.

(4) The Board shall investigate the case and where reasonably practicable hear the person or the legal representative of that person.

(5) In depriving a person of Swaziland citizenship, the Board shall endeavour not to render the person stateless.

(6) In this section “registration” includes naturalisation or registration (otherwise than as of right) under any law that existed before the commencement of this Constitution.

Renunciation of citizenship

50. If a citizen of Swaziland who has attained the age of majority, or being a woman is or is about to be married, is or is about to become a citizen of another country and for that reason desires to renounce his or her citizenship of Swaziland, that citizen may do so by lodging with the Board a declaration of renunciation of that citizenship and, upon lodgement of the declaration or, if not then a citizen of that other country, upon becoming that citizen, he or she shall cease to be a citizen of Swaziland.

Preservation of obligations on cessation of citizenship.

51. Where a person ceases to be a citizen of Swaziland that cesser shall not of itself operate to discharge any obligations, duty or liability undertaken, imposed or incurred before the cessation.

Death of citizen or loss of citizenship.

52. (1) The death of a citizen of Swaziland shall not affect the citizenship of a surviving spouse or child or another dependant.

(2) Loss of Swazi citizenship by a person shall not of itself affect the citizenship of a spouse or child.

Citizenship Board.

53. (1) There shall be a Citizenship Board which shall have the exclusive authority to -

(a) grant or cancel citizenship by registration;

(b) investigate and where appropriate revoke the citizenship of any person under section 49;

(c) advise the Minister responsible for citizenship on any other aspects relating to citizenship; and

(d) do such things as are incidental or related to the exercise of its powers.

(2) The Board shall consist of a Chairman and not more than seven members appointed by the King on the advice of the Minister responsible five of whom shall constitute a quorum and the Chief Immigration Officer shall be ex officio member.

(3) At least one of the members of the Board shall have such qualification as is required for appointment as a Judge of the High Court.

(4) The Chairman and members of the Board shall hold office for a period not exceeding five years and shall be eligible for a single re-appointment.

(5) The Chairman and members of the Board may be removed from office by the King on the advice of the Minister responsible for incapacity (whether from infirmity of the body or mind) or for misbehaviour.

(6) A person who has a case before the Board shall have the right to be heard and to be represented by a legal practitioner at the hearing.

(7) All matters submitted for consideration by the Board shall be finalised within a period of six months.

Certificate of citizenship

54. (1) The Board shall cause to be issued on request to a citizen of Swaziland a certificate of citizenship in prescribed form certifying that that person is a citizen of Swaziland. (2) A certificate of citizenship shall be the property of Government and shall be delivered up on demand by or on behalf of the Board. (3) The Board may revoke a certificate of citizenship for good cause.

Provision for other matters

55. (1) Subject to the provisions of this Chapter Parliament may make law relating to the acquisition or loss of citizenship by registration or naturalisation, including but not limited to, the following -

- (a) keeping of record of citizens; (b) registration of births abroad; (c) certificate of citizenship; (d) offences; and (e) incidental matters to the above.

CHAPTER V DIRECTIVE PRINCIPLES OF STATE POLICY AND DUTIES OF THE CITIZEN

General objectives

56. (1) The Directive Principles of State Policy contained in this Chapter shall guide all organs and agencies of the State, citizens, organisations and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just, free and democratic society.

(2) The Prime Minister shall report to Parliament at least once a year all the steps taken to ensure the realization of the directive principles contained in this Chapter.

(3). The provisions of sections 57 to 63 inclusive are not enforceable in any court or tribunal.

(4) The distribution of powers and functions as well as checks and balances provided for in this Constitution among the various organs and institutions of Government shall be supported through the provision of adequate resources for their effective functioning at all levels.

Law enforcement objectives

57. (1) Law enforcement officials shall at all times fulfil the duty imposed upon them by the law by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

(2) In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

(3) Law enforcement officials may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

(4) Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all those acts.

Political objectives

58. (1) Swaziland shall be a democratic country dedicated to principles which empower and encourage the active participation of all citizens at all levels in their own governance.

(2) In the conduct of public affairs the State shall be guided by the principle of decentralisation and devolution of governmental functions and powers to the people at appropriate levels where the people can best manage and direct their own affairs.

(3) The State shall cultivate among all the people of Swaziland through various measures including civic education respect for fundamental human rights and freedoms and the dignity of the human person.

(4) All associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and practice.

(5) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.

(6) The State shall promote, among the people of Swaziland, the culture of political tolerance and all organs of State and people of Swaziland shall work towards the promotion of national unity, peace and stability.

(7) The State shall provide a peaceful, secure and stable political environment which is necessary for economic development.

Economic objectives

59. (1) The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Swaziland and to provide adequate means of livelihood and suitable employment and public assistance to the needy.

(2) The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include -

(a) the guarantee of a fair and realistic remuneration for production and productivity in order to encourage continued production and higher productivity;

(b) affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy;

(c) ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country;

(d) undertaking even and balanced development of all regions and in particular improving the conditions of life in the rural areas, and generally, redressing any imbalance in development between the rural and urban areas; and

(e) the recognition that the most secure democracy is the one that assures the basic necessities of life for its people as a fundamental duty.

(3) The State shall take appropriate measures to promote the development of agriculture and industry.

(4) Foreign direct investment shall be encouraged subject to any law regulating investment.

(5) The State shall afford equality of economic opportunity to all citizens and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of economic development.

(6) The State shall endeavour to settle the “land issue” and the issue of land concessions expeditiously so as to enhance economic development and the unity of the Swazi people.

Social objectives

60. (1) The State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights and freedoms by providing those institutions with adequate resources to function effectively.

(2) The State shall guarantee and respect the independence of non-governmental organisations which protect and promote human rights.

(3) The State shall give the highest priority to the enactment of legislation for economic empowerment of citizens.

(4) The State shall ensure gender balance and fair representation of marginalized groups in all constitutional and other bodies.

(5) The State shall make reasonable provision for the welfare and maintenance of the aged and shall protect the family and recognise the significant role of the family in society.

(6) The State and society shall recognise the right of persons with disabilities to respect and human dignity. .

(7) The State shall promote recreation and shall ensure that adequate facilities for sports are provided throughout the country and that sports are provided as a means of fostering national integration, health and self-discipline as well as international friendship and understanding.

. (8) Without compromising quality the State shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population.

(9) The State shall institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life.

. (10) The State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole.

(11) The State shall endeavour to preserve and protect places of historical interest and artefacts and the environment.

(12) All public offices shall be held in trust for the people and the State shall do everything to ensure transparency in the conduct of public affairs.

Foreign policy objectives

61. (1) In its dealings with other nations, the Government shall – (a) promote and protect the interests of Swaziland;

(b) seek the establishment of a just and equitable international economic and social order;

(c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means;

(d) be opposed to all forms of domination, racism and other forms of oppression and exploitation.

(2) Swaziland shall actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity.

Objectives on independence of the judiciary

62. (1) The independence of the judiciary as enshrined in this Constitution or any other law shall be guaranteed by the State. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

(2) The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

(3) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue is within its competence as defined by law.

(4) There shall be no inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review in accordance with the law.

(5) Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments, promotion or transfer for improper motives.

(6) The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

Duties of the citizen

63. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen to -

- (a) uphold and defend this Constitution and the law;
- (b) promote the prestige and good name of Swaziland and respect the symbols of the nation;
- (c) further the national interest and to foster national unity;
- (d) respect the rights, freedoms and legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;
- (e) promote democracy and the rule of law;
- (f) work conscientiously in the lawfully chosen occupation of that citizen;
- (g) protect and preserve public property, and to combat misuse and waste of public funds and property;
- (h) co-operate with lawful agencies in the maintenance of law and order; and
- (i) protect and safeguard the environment.

CHAPTER VI THE EXECUTIVE

Executive authority of Swaziland

64. (1) The executive authority of Swaziland vests in the King as Head of State and shall be exercised in accordance with the provisions of this Constitution.

(2) The King shall protect and defend this Constitution and all laws made under or continued in force by this Constitution.

(3) Subject to the provisions of this Constitution, the King may exercise the executive authority either directly or through the Cabinet or a Minister.

(4) The King in his capacity as Head of State has authority, in accordance with this Constitution or any other law, among other things to -

- (a) assent to and sign bills;
- (b) summon and dissolve Parliament;
- (c) receive foreign envoys and appoint diplomats;
- (d) issue pardons, reprieves or commute sentences;
- (e) declare a state of emergency;
- (f) confer honours;
- (g) establish any commission or vusela; and (h) order a referendum.

Exercise of King's functions

65. (1) In the exercise of the functions under this Constitution or any other law the King shall act on the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except where -

(a) any function under this Constitution is expressed (in whatever terms) to be exercisable by him acting in his discretion or on the advice or the recommendation of or after consultation with any other person or authority;

(c) any function conferred by any other law is expressed (in whatever terms) to be exercisable by him in his discretion; and

(d) the provisions of section 158(5), 159(5), 175(4) or paragraph 1(1) of the First Schedule apply.

(2) Where, in terms of subsection (1), the Cabinet or a Minister gives advice to the King, the King may refer back that advice for further consideration by the Cabinet, and Cabinet shall meet within ten days to reconsider the advice as required by the King.

(3) Where the King is required to exercise any function on the advice or recommendation of any person or authority, he shall exercise that function on that advice or recommendation, save that the King may before acting on the advice or recommendation, in his discretion, once refer back that advice or recommendation in whole or in part for reconsideration within ten days by the person or authority concerned.

(4) Where the King is required by this Constitution to exercise any function after consultation with any person or authority, the King may or may not exercise that function following that consultation.

The Cabinet of Ministers

66. (1) There shall be a Cabinet which shall consist of the Prime Minister, Deputy Prime Minister and such number of Ministers as the King, after consultations with the Prime Minister, may deem necessary for the purpose of administering and executing the functions of the Government.

(2) The Prime Minister shall be the chairman of the Cabinet and leader of Government business in Parliament.

Appointment of Prime Minister and other Ministers

67. (1) The King shall appoint the Prime Minister from among members of the House acting on recommendation of the King's Advisory Council.

(2) The King shall appoint Ministers from both chambers of Parliament on the recommendation of the Prime Minister.

(3) At least half the number of Ministers shall be appointed from among the elected members of the House.

Vacation of office of Prime Minister or Minister

68. (1) The office of the Prime Minister shall become vacant where - (a) the King revokes the appointment for incompetence;

(b) the Prime Minister is declared an insolvent;

(c) the Prime Minister ceases to be a member of the House;

(d) the Prime Minister resigns from office;

(e) after a resolution of no confidence in the Prime Minister is passed by at least two thirds majority of all members of the House, the King removes the Prime Minister;

(f) the Prime Minister is removed from office for misbehaviour or inability to perform the functions of that office (whether arising from infirmity of body or mind); or

(g) the Prime Minister dies.

(2) Where the King considers the question of removing the Prime Minister from office in terms of subsection (1) (f) -

(a) the King shall appoint a tribunal, which shall consist of a chairman who shall be the Chief Justice and two other reputable persons one of whom should have held the position of a Minister, Speaker of the House or President of the Senate;

(b) the tribunal shall enquire into the matter and report to the King whether or not to remove the Prime Minister from office for inability or misbehaviour.

(3) The Prime Minister shall not hold office for more than two consecutive terms.

(4) The office of a Minister shall become vacant where - (a) the King, acting on the recommendation of the Prime Minister, revokes that appointment;

(b) the Minister is declared an insolvent;

(c) the Minister ceases to be a member of Parliament;

(d) the Minister resigns from office;

(e) after a resolution of no confidence is passed by at least two thirds majority of all the members of the House on the Minister, the King removes the Minister;

(f) the Minister dies; or

(g) the Minister is removed from office for misbehaviour or inability to perform the functions of that office.

(5) Where a resolution of no confidence is passed on the Cabinet by a three-fifths majority of all members of the House the King shall dissolve the Cabinet.

(6) A Minister shall not be in office for more than two consecutive terms.

(7) For purposes of this section -

(a) a vote of no confidence in the Cabinet, Prime Minister or Minister shall not be moved more than once in a session;

(b) any period served in an office within the life of Parliament constitutes a "term of office".

Responsibility of Cabinet

69. (1) The Cabinet shall keep the King fully informed about the general conduct of the government of Swaziland and shall furnish the King with such information as the King may require in respect of any particular matter relating to the government of Swaziland

(2) The Cabinet shall be collectively responsible to Parliament for any advice given to the King by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of the office of Minister.

(3) The Cabinet shall formulate and implement the policy of the Government in line with any national development strategy or plan and perform such other functions as may be conferred by this Constitution or any other law.

Assignment of responsibilities

70. The King may, after consultation with the Prime Minister, assign to the Prime Minister or any other Minister responsibility for the conduct of any business of the Government including the administration of any department of Government.

Exercise of the Prime Minister's functions during absence or illness

71. Where the Prime Minister is absent from Swaziland or is by reason of illness or any other cause unable to exercise the functions conferred on the Prime Minister by this Constitution or any other law, those functions shall be exercised by the Deputy Prime Minister or where the Deputy Prime Minister is for any reason unable to exercise the functions of the office of the Prime Minister, by such other Minister as the King may authorize in writing for a maximum period not exceeding three months.

Exercise of Minister's functions during absence or illness

72. Where a Minister is absent from Swaziland or is by reason of illness or any other cause unable to exercise the functions of the office of that Minister the Minister may, after consultation with the Prime Minister, delegate those functions to another Minister in writing for a maximum period not exceeding six months.

Oaths of office

73. A Prime Minister, Deputy Prime Minister or Minister shall, before assuming the duties of office take and subscribe the oath of allegiance and the oath for the due execution of office as set out in the Second Schedule.
Secretary to Cabinet

74. (1) There shall be a Secretary to the Cabinet who shall be the head of the public service and whose office shall be a public office.

(2) The King, in appointing the Secretary to Cabinet, shall act on the advice of the Prime Minister after recommendation by the Civil Service Commission.

(3) The Secretary to Cabinet shall, in addition to any other functions, which may be conferred by the Prime Minister or by any other law -

(a) be chief adviser to the Prime Minister on management systems, structures and organization of Ministries;

(b) review and monitor the overall performance of each Ministry in implementing government policies and programmes, including the discharge by the Principal Secretaries of their functions;

(c) have charge of Cabinet office and be responsible in accordance with the instructions given by the Prime Minister, for arranging the business and keeping the minutes of the Cabinet and for conveying decisions made in Cabinet to the appropriate authorities.

Direction of government departments

75. (1) Where a Minister has been charged with the responsibility for any department of government, the Minister shall be responsible for the policy and general direction and control over such department.

(2) Two or more government departments may be placed under the responsibility of one Minister.

Principal Secretaries

76. (1) The King, shall appoint Principal Secretaries on a renewable five year contract on the advice of the Civil Service Commission.

(2) Subject to the provisions of this Constitution, a Ministry or a department of the Government shall be under the supervision of a Principal Secretary whose office shall be a public office.

Attorney-General

77. (1) There shall be an Attorney-General for Swaziland whose office shall be a public office and who shall be appointed by the King acting on the recommendation of the Minister responsible for Justice after consultation with the Judicial Service Commission.

(2) A person shall qualify to be appointed Attorney-General where that person qualifies for appointment as a judge of the superior courts.

(3) The Attorney-General shall – (a) be the principal legal adviser to the Government;

(b) be ex-officio member of the Cabinet; and (c) represent chiefs in their official capacity in legal proceedings.

(4) The Attorney-General shall, whenever requested so to do, advise the King on any matter of law including any matter relating to any function vested in the King by this Constitution or any other law.

(5) Without prejudice to the general functions under subsection (3), the functions of the Attorney-General shall be to –

(a) draft and sign all Government Bills to be presented to Parliament;

(b) draw or peruse agreements, contracts, treaties, conventions and documents, by whatever name called, to which the Government is a party or in respect of which the Government has an interest;

(c) represent the Government in courts or in any legal proceedings to which Government is a party;

(d) be available for consultations with the Director of Public Prosecutions in terms section 162 (7);

(e) assist Ministers in piloting bills in Parliament and provide guidance in legal matters to Parliament.

(f) perform such other functions as may be assigned to the Attorney General by law.

(6) The functions of the Attorney-General under subsection (5)(a), (b) (c), (e) and (f) may be exercised by the Attorney-General in person or by subordinate officers acting in accordance with the general or special instructions of the Attorney-General.

(7) Subject to the other provisions of this Constitution, an agreement, contract, treaty, convention or document by whatever name called, to which Government is a party or in respect of which the Government has an interest, shall not be concluded without the advice of the Attorney-General (in person or by subordinate officers acting in accordance with the general or special instruction of the Attorney-General), except in such cases and subject to such conditions as Parliament may prescribe.

(8) In the exercise of the functions vested in the Attorney-General by this Constitution, the Attorney-General shall not be subject to the direction or control of any other person or authority.

(9) The Attorney-General shall be disciplined or removed from office by the King in terms of the recommendations following an inquiry by a tribunal consisting of a chairman recommended by the Chief Justice and two other members appointed by the King.

Prerogative of Mercy

78. (1) The King may, in respect of a person sentenced to death or life imprisonment – (a) grant a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period;

(c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or

(d) remit the whole or part of that sentence, penalty or forfeiture otherwise due to the Government on account of that offence.

(2) In the exercise of the powers conferred upon him by subsection (1), the King shall act on the advice of a Committee on the Prerogative of Mercy made up of two persons appointed by the King drawn from the King's Advisory Council, the Attorney-General, the Minister responsible for justice and a suitably qualified medical practitioner recommended by the Minister responsible for health and appointed by the King..

(3) The King shall designate one of the members of the Committee as chairman.

(4) The Committee may act notwithstanding any vacancy in its membership or the absence of any member, and the validity of the transaction of business by the Committee shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(5) Whenever any person has been sentenced to death by any court in Swaziland other than a court-martial, the chairman shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as the chairman may require, to be taken into consideration at the meeting of the Committee so that the Committee may advise the King whether or not to exercise the powers in terms of subsection (1).

(6) The provisions of this section shall not apply in relation to any conviction by a court established under a law of a country other than Swaziland that has jurisdiction in Swaziland in pursuance of arrangements made between the Government of Swaziland and another Government or an international organization relating to the presence in Swaziland of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.

(7) Nothing in this section shall be construed as precluding an Act of Parliament from making provision of general application under which any sentence of imprisonment shall be reduced where such conditions (being conditions relating to

good behaviour by the person on whom the sentence was imposed whilst serving that sentence) as are prescribed are fulfilled.

CHAPTER VII THE LEGISLATURE

Part 1(a) System of Government

System of government

79. The system of government for Swaziland is a democratic, participatory, tinkhundla based system which emphasises devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office.

Tinkhundla

80. (1) For purposes of political organisation and popular representation of the people in Parliament, Swaziland is divided into several areas called tinkhundla.

(2) An inkhundla – (a) is established by the King on the recommendation of the Elections and Boundaries Commission;

(b) consists of one or more chiefdoms which act as nomination areas for the elected members of the House (the primary level elections);

(c) is, among other things, also used as a constituency for the election of the elected members of the House (the secondary level elections).

(3) The tinkhundla units or areas, inspired by a policy of decentralisation of state power, are the engines of development and the central pillars underpinning the political organisation and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered.

Bucopho (Inkhundla Committee)

81. (1) An inkhundla, as a local authority area, is under the general administration of an executive committee called Bucopho.

(2) Bucopho consists of persons elected from the chiefdoms or polling divisions within an inkhundla and shall have same qualifications as a Member of Parliament.

(3) Bucopho operates under the chairmanship of the Indvuna YeNkhundla who supervises the activities of the inkhundla and also convenes and presides over meetings of the inkhundla.

(4) An inkhundla represented by the bucopho has a corporate status and may perform acts as bodies corporate may perform.

Regional Administration

82. (1) Swaziland is divided into four administrative Regions, namely, Hhohho, Lubombo, Manzini and Shiselweni.

(2) Each Region is divided into as many tinkhundla as may be recommended by the Elections and Boundaries Commission.

(3) Each Region has a Regional Council consisting of persons nominated by each inkhundla in that Region from among the Bucopho members in the Region.

(4) A Regional Council shall advise the Regional Administrator, on the administration of the Region and coordinate social and economic development of the Region and perform such other functions within the Region as may be prescribed.

(5) A Regional Council may be subdivided into portfolio committees.

Regional Administrator

83. (1) Each Region is headed by an administrative official called the Regional Administrator.

(2) The Regional Administrator is appointed by the King on the advice of the Minister responsible for tinkhundla.

(3) The Regional Administrator shall convene and preside over meetings of the Regional Council and perform such other functions as may be prescribed.

(4) A Regional Administrator has the status of a deputy minister and has such other benefits and privileges as may be prescribed.

(5) A Regional Administrator may resign from office or be removed from office by the King on the advice of the Prime Minister or after a resolution of no confidence passed by a two-thirds majority of all members of the Regional Council.

Part 1(b) Representation of the people

Right to representation

84. (1) Subject to the provisions of this Constitution, the people of Swaziland have a right to be heard through and represented by their own freely chosen representatives in the government of the country.

(2) Without derogating from the generality of the foregoing subsection, the women of Swaziland and other marginalized groups have a right to equitable representation in Parliament and other public structures.

Right to vote at elections

85. (1) Subject to the provisions of this Constitution, every Swazi or person ordinarily resident in Swaziland has a right to vote at any election of members of the House or members of the Bucophu.

(2) A person is not entitled to vote in terms of subsection (1) if that person is for any reason unable to attend in person at the place and time prescribed for polling except as it may otherwise be prescribed.

(3) A person shall not vote at any election in terms of this section except at an inkhundla where that person is registered as a voter unless a special polling arrangement has been prescribed.

(4) A person is not entitled to stand as a candidate for election in terms of this section or section 86 unless that person is registered as a voter in that inkhundla or Region.

Representation of women

86. (1) Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty percentum of the total membership of Parliament, then, and only then, the provisions of this section shall apply.

(2) For the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3).

Election by secret ballot

87. (1) The election of persons to any chamber of Parliament or Bucophu shall be by secret ballot at both primary and secondary levels or any other level in accordance with the first-past-the-post system in which the person receiving the highest number of votes is elected.

(2) For the purposes of subsection (1), the votes shall be cast in ballot boxes of a design calculated to ensure efficiency and reliability.

(3) Notwithstanding the principle of secrecy, a voter who is handicapped may be assisted in casting the vote.

(4) All nominations for Bucophu, or member of Parliament shall be open and supported by at least ten persons qualified to vote in that inkhundla.

(5) At the primary level, there shall be no canvassing for votes as persons are nominated (that is, invited to serve) on the basis of their being known to that community.

(6) For purposes of this section, nomination or election at “primary” or “secondary” level means nomination or election of the elected member of Parliament or Bucophu as the case may be at the level of chiefdom or polling division or inkhundla respectively.

Qualification as a voter

88. (1) Subject to the provisions of section 89, a person is qualified to be registered as a voter if, and is not otherwise qualified unless, that person has attained the age of eighteen years and is a citizen of or is ordinarily resident in Swaziland.

(2) A person qualified for the purposes of this section is entitled to be registered as a voter in one inkhundla only.

(3) A person is “ordinarily resident” in Swaziland where that person has lived in, or has been associated with, that inkhundla for a period of not less than five years or is permanently resident in Swaziland and has relevant documents to that effect.

Disqualification as a voter

89. A person is not qualified to be registered as a voter or to vote where that person – (a) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;

(b) is, for an act which is a criminal offence under the law of Swaziland, under sentence of death or life imprisonment imposed on that person by a court in any country; or

(c) is disqualified for registration as a voter under any law for the time being in force in Swaziland relating to offences connected with elections.

Part 1 (c) Elections and Boundaries Commission

Elections and Boundaries Commission

90. (1) There shall be an independent authority styled the Elections and Boundaries Commission (“the Commission”) for Swaziland consisting of a chairperson, deputy chairperson and three other members.

(2) The members of the Commission shall be appointed by the King on the advice of the Judicial Service Commission.

(3) A person shall not be appointed member of the Commission where that person –

(a) is a member of Parliament;

(b) is or has been in the last five years actively engaged in politics;

(c) is a public officer other than judge of a superior court or magistrate;

(d) is an unrehabilitated insolvent;

(e) has been convicted of an offence involving dishonesty in any country during the last ten years.

(4) A person shall be deemed to be “actively engaged in politics” or to have been so engaged during the relevant period or any part of that period where that person – (a) is or was at any time during that period a member of the House or a Senator;

(b) is or was at any time during that period, nominated as a candidate for election to the House or Bucopho Committee; or

(c) is or was at any time during that period the holder of an office in any organisation that sponsors or supports or has at any time sponsored or supported a candidate for election as a member of the House or Bucopho committee.

(5) The members of the Commission shall be appointed for a period not exceeding twelve years without the option for renewal.

- (6) The chairperson, deputy chairperson and the other members of the Commission shall possess the qualifications of a Judge of the superior courts or be persons of high moral character, proven integrity, relevant experience and demonstrable competence in the conduct of public affairs.
- (7) The functions of the Commission shall be to – (a) oversee and supervise the registration of voters and ensure fair and free elections at primary, secondary or other level;
- (b) facilitate civic or voter education as may be necessary in between elections;
- (c) review and determine the boundaries of tinkhundla areas for purposes of elections;
- (d) perform such other functions in connection with elections or boundaries as may be prescribed;
- (e) produce periodic reports in respect of work done.
- (8) Three members of the Commission including either the chairman or deputy chairman shall constitute a quorum.
- (9) A member of the Commission shall not enter upon the duties of that Commission until that member has taken and subscribed the oath of allegiance and oath for the due execution of office that are set out in the Second Schedule.
- (10) The provision of this Constitution relating to the removal of judges of the superior courts from office shall, subject to any necessary modifications, qualifications or adaptations, apply to the removal from office of the chairperson and other members of the Commission.
- (11) The office of any member of the Commission shall become vacant where that member resigns or circumstances arise that would disqualify that member for appointment as such.
- (12) If before the Commission has submitted its report under section 92 the office of chairperson or any other member of the Commission falls vacant or the holder of that office becomes unable for any reason to discharge the functions as chairperson or member of the Commission the King shall appoint another person to be chairperson or member as provided under subsection (2).
- (13) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.
- (14) There shall be a secretariat of the Commission provided by the Ministry responsible for elections.

Review of tinkhundla boundaries

91. (1) During the fourth year of Parliament, the Elections and Boundaries Commission shall review the number and boundaries of tinkhundla (constituencies) into which Swaziland is divided and submit to the King a report with recommendations to change or retain the existing position.
- (2) The report under this section shall be made at least nine months before the dissolution of Parliament in terms of section 134(2).
- (3) The boundaries of each inkhundla shall be such that the number of inhabitants of an inkhundla is as nearly equal to the population quota as is reasonably practicable having regard to the terrain, the means of communication (transport) within that inkhundla and any other relevant community interest.
- (4) The boundaries of an inkhundla shall not extend over more than one Region.
- (5) In this section “population quota” means the number obtained by dividing the number of inhabitants of the Region (as ascertained by reference to the latest national population census) by the number of tinkhundla into which the Region is to be divided under section 80.

Report of the Elections and Boundaries Commission

92. (1) The Commission shall as soon as practicable after every election produce and submit a report on that election to the minister responsible for elections, stating – (a) the general conduct of the elections and the number of voters who participated;

(b) any irregularities or abnormalities observed;

(d) whether any nomination or election was disputed and with what result;

(e) any observed or remarkable peculiarities;

(f) recommendations, if any.

(2) The report of the Commission in terms of section 91 shall state, among other things, whether -

(a) any alteration is necessary to the boundaries of any inkhundla;

(b) any one additional inkhundla or more should be established; or (c) any inkhundla should be abolished or merged with any other.

(3) The report of the Commission under section 91 shall also contain the proposed boundaries of the affected inkhundla or tinkhundla.

(4) The King shall as soon as practicable after the submission of the report of the Commission and in any event not later than six months before the dissolution of Parliament in terms of section 134(2), by proclamation in the Gazette declare the boundaries of an inkhundla or tinkhundla as delimited by the Commission to be effective at the next dissolution of Parliament or so soon thereafter as may be convenient for the next general elections..

Part 2 Composition of Parliament

Parliament

93. The Parliament of Swaziland shall consist of a Senate and a House of Assembly.

Senate

94. (1) The Senate shall consist of not more than thirty-one members (in this Constitution referred to as “Senators”) who shall be elected or appointed in accordance with this section.

(2) Ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by or under any law at their first meeting so as to represent a cross-section of the Swazi society.

(3) Twenty Senators, at least eight of whom shall be female, shall be appointed by the King acting in his discretion after consultation with such bodies as the King may deem appropriate.

(4) The Senators appointed in terms of subsection (3) shall be persons who, in the opinion of the King –

(a) are able by reason of their special knowledge or practical experience to represent economic, social, cultural/traditional or marginalized interests not already adequately represented in Parliament; or

(b) are by reason of their particular merit, able to contribute substantially to the good government and progressive development of Swaziland.

House of Assembly

95. (1) Subject to the provisions of this Constitution, the House of Assembly shall consist of not more than seventy-six members composed as follows –

- (a) not more than sixty members elected from tinkhundla areas serving as constituencies;
- (b) not more than ten members nominated by the King acting in his discretion after consultation with such bodies as the King may deem appropriate;
- (c) four female members specially elected from the four Regions subject to subsection (3);
- (d) the Attorney-General who shall be an ex officio member.

(2) The nominated members of the House shall be appointed by the King – (a) so that at least half of them are female; and

(b) so as to represent interests, including marginalized groups, not already adequately represented in the House.

(3) The members elected on a regional basis, under subsection (1)(c), shall continue to be so elected, whenever the provisions of section 86 (1) are true, in terms of the following paragraphs –

- (a) at the instance of the Chairman of the Elections and Boundaries Commission, the elected members from each Region shall on their first meeting nominate not less than three and not more than five women from each Region qualified to be members of Parliament;
- (b) the list of nominated candidates shall be published in at least two local newspapers and the electronic media on at least three consecutive days; and
- (c) after ten days from the date of last publication the House shall meet to vote for one woman from each of the Regions, taking into consideration any relevant input in terms of paragraph (b).

Qualifications for membership of Parliament

96. Subject to the provisions of this Constitution, a person qualifies to be appointed, elected or nominated, as the case may be, as a Senator or a member of the House if that person –

- (a) is a citizen of Swaziland;
- (b) has attained the age of eighteen years and is a registered voter;
- (c) has paid all taxes or made arrangements satisfactory to the Commissioner of Taxes; and
- (d) is registered as a voter in the inkhundla in which that person is a candidate (in the case of elected members)

Disqualifications for membership of Parliament

97. (1) Notwithstanding the provisions of section 96, a person does not qualify to be appointed, elected or nominated as the case may be, a Senator or member of the House if that person –

- (a) has been adjudged or otherwise declared – (i) insolvent under any law and has not been rehabilitated; or (ii) to be of unsound mind;
- (b) is under sentence of death or of imprisonment for more than six months for an act which is a criminal offence in Swaziland;
- (c) is a member of the armed forces of Swaziland or is holding or acting in any public office and has not been granted leave of absence for the duration of Parliament;

- (d) is not qualified to be a voter under any provision of this Constitution;
 - (e) is otherwise disqualified by law in force in Swaziland relating to general elections;
 - (f) has been found to be incompetent to hold public office under any law relating to tenure of public office whether elected or not;
 - (g) is a party to, or is a partner in, a firm or a director or manager, of a company which is a party to any subsisting Government contract and has not made the required disclosure of –
 - (i) the nature of the contract; (ii) the interest of that person in the contract; (iii) the interest of that firm or company in the contract;
 - (h) holds or is acting in any office the functions of which involve any responsibility for or in connection with the conduct of any election or the compilation or a revision of any electoral register.
- (2) For the purposes of subsection (1)(g), the required disclosure shall be –
- (a) in the case of an elected Senator, to the elected members of the House through the Speaker of the House soon after the election;
 - (b) in the case of an appointed Senator or nominated member of the House, to the King through the President of the Senate or the Speaker of the House as the case may be soon after appointment is made;
 - (c) in the case of an elected member of the House, during the period commencing with the writ for election in the Gazette and ending three days before the date of the election by publication of a notice in English in the Gazette and in English and Siswati in a newspaper circulating in Swaziland.
- (3) Any disclosure made in terms of subsection 1(g) shall be posted conspicuously for a period of at least one month within the Parliament building.
- (4) In this section “Government contract” means any contract with the Government for or on any account of the public service the consideration for which exceeds five thousand Emalangeni or such other amount as Parliament may prescribe or which forms part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the transaction exceeds five thousand Emalangeni.

Tenure of seats of members of Parliament

98. (1) The seat of a Senator or of a member of the House shall become vacant where-

- (a) Parliament is dissolved;
- (b) the holder of that seat resigns in writing addressed to the Clerk to Parliament;
- (c) the holder is absent from twenty sittings of the chamber during any meeting of that chamber without the permission in writing of the presiding officer and is unable to offer a reasonable explanation to the Parliamentary Committee on Privileges;
- (d) circumstances arise that would cause the holder to be disqualified or ineligible for election or appointment;
- (e) the holder is expelled by a resolution of at least two-thirds of all members of a chamber for contempt of Parliament;
- (f) the holder becomes a member of the other chamber of Parliament;
- (g) the holder becomes a party to any Government contract contrary to section 97 (1) (g).

(2) If in the circumstances it appears to them to be just to do so, the Senate or the House as the case may be, may by a resolution exempt the holder of a seat from vacating the seat as required under subsection (1) (h) where the holder before becoming a party to the contract or before or as soon as practicable after becoming otherwise interested in the contract discloses to the President or the Speaker as the case may be the interest of that holder.

Vacation of seat on sentence, etc

99. (1) Where a member of the Senate or the House is for an offence which is a criminal offence in Swaziland sentenced by a court in any country to death or imprisonment (by whatever name called) for a term of or exceeding six months, including a suspended sentence, that member shall forthwith cease to be such a member and the seat of that member shall become vacant at the expiration of a period of sixty days from date of that sentence.

(2) The provisions of subsection (1) shall not apply where before the expiration of the period of sixty days the member receives a free pardon or the conviction is set aside or the sentence is reduced to a term of less than six months or a punishment other than imprisonment is substituted.

(3) Where in terms of subsection (2) the sentence of the member has been reduced to a term less than six months but more than two months the member shall be deemed to have been suspended by the Senate or House as the case maybe for the duration of the effective term of imprisonment unless the concerned chamber resolves otherwise.

President of Senate

100. (1) When the Senate first meets after any general election, and before it proceeds to despatch any other business, it shall elect, from within the Senate or outside the Senate, a person to be the President of the Senate in accordance with the Standing Orders.

(2) Where the office of the President falls vacant at any time before the next dissolution of Parliament the Senate may elect as soon as practicable another person to the office of President.

(3) A person shall not be elected President unless that person has some parliamentary experience and is otherwise able to maintain order in the Senate and properly guide the Senators in their business in terms of the Standing Orders.

(4) A person shall not be elected President from outside the Senate unless that person qualifies in terms of this Constitution to be elected or appointed as a Senator.

(5) A person shall not hold the position of President of Senate and that of a Cabinet Minister simultaneously.

(6) The salary and other allowances payable to the President shall not be varied to the disadvantage of the President during tenure of office.

(7) The office of President shall become vacant – (a) where the President resigns in writing addressed to the Clerk to Parliament;

(b) where the Senate passes a resolution by not less than two-thirds of all its members to that effect;

(c) where circumstances arise which would render that President disqualified or ineligible to be a Senator under this Constitution or any other law; or

(d) where the President for any reason ceases to be a member of the Senate.

(8) The person elected President of Senate shall not enter upon the duties of the office unless that person has taken and subscribed before the Senate the oath of allegiance set out in the Second Schedule.

Deputy President of Senate

101. (1) The Deputy President of Senate shall be elected from among the Senators at the first meeting of the Senate after any general election or whenever such office has become vacant, in accordance with the Standing Orders.

(2) The Deputy President shall perform the functions of the President whenever the President is absent or is for any reason unable to perform the functions of that office or when the President authorises the Deputy to do so.

(3) The provisions of section 100(5), (6), (7) and (8) shall apply to the office of the Deputy President as they apply to the office of President.

(4) The office of Deputy President shall also become vacant where the Deputy is elected President of the Senate.

The Speaker of the House

102. (1) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person from within or outside the House to be the Speaker of the House of Assembly, in accordance with the Standing Orders.

(2) Where the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House may elect as soon as practicable another person to that office.

(3) A person shall not be elected Speaker of the House unless that person has some parliamentary experience and is otherwise able to maintain order in the House and properly guide the members of the House in the discharge of the business of the House in terms of the Standing Orders.

(4) A person shall not be elected Speaker from outside the House if that person would be disqualified to be a member of the House under this Constitution or any other law.

(5) A person elected shall not hold the position of Speaker of the House and that of a Cabinet Minister simultaneously.

(6) The salary and other allowances payable to the Speaker shall not be varied to the disadvantage of the Speaker during the tenure of office.

(7) The office of Speaker of the House shall become vacant where – (a) the Speaker resigns in writing addressed to the Clerk to Parliament;

(b) the House passes a resolution by not less than two-thirds of all its members to that effect;

(c) any circumstance arises which would render the Speaker disqualified or ineligible to be a member of the House under this Constitution or any other law; or

(d) for any reason the Speaker ceases to be a member of the House.

(8) The person elected Speaker of the House shall not enter upon the duties of the office unless that person has taken and subscribed the oath of allegiance set out in the Second Schedule.

Deputy Speaker of the House

103. (1) When the House first meets after any general election it shall elect from among the members of the House a person to be Deputy Speaker of the House of Assembly.

(2) Where the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament the House may elect as soon as practicable another person to that office.

(3) The provisions of section 102 (5), (6), (7) and (8) shall apply to the office of Deputy Speaker as they apply to the office of Speaker.

(4) The office of Deputy Speaker shall also become vacant where the Deputy is elected Speaker of the House.

Acting President and Speaker

104. (1) Where the office of President or Deputy President is vacant or the holder of the office of President or Deputy President is for any reason unable to perform the functions of that office, the Senate may elect a person (not being a Minister) from among the members of the Senate to act as President until the President or Deputy President has been elected or as the case may be, the President or Deputy President has resumed the functions of that office.

(2) Where the office of Speaker or Deputy Speaker is vacant or the holder of the office of Speaker or Deputy Speaker is for any reason unable to perform the functions of that office the House may elect a person (not being a Minister) from among the members of the House to act as Speaker until the Speaker or Deputy Speaker is elected or, as the case may be, the Speaker or Deputy Speaker has resumed the functions of that office.

(3) The provisions of sections 100 (5), (6), (7) and (8) and 102 (5), (6), (7) and (8) shall apply in relation to a person elected under this section as they apply in relation to the holder of the office of President or Speaker.

Decision as to membership of Parliament

105. (1) The High Court shall have jurisdiction to hear and determine any question whether –

(a) any person has been validly elected or appointed as a Member of Parliament;

(b) any person has been validly elected as President, Deputy President, Speaker or Deputy Speaker; or

(c) any person, having been validly elected as President, Deputy President, Speaker or Deputy Speaker, has validly vacated that office.

(2) A person aggrieved by the determination of the High Court under this section may appeal to the Supreme Court within thirty days.

(3) The Attorney-General or any member of the chamber in which the question under this section is raised or any aggrieved person may make application to the High Court in terms of subsection (1).

(4) In the exercise of the functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

(4) Provision may be made by Act of Parliament with respect to – (a) the circumstances and manner in which and the conditions upon which any application may be made to the High Court under this section; or (b) the powers, practice and procedure of the High Court in relation to any application under this section.

(6) Subject to any provisions made by Act of Parliament under subsection (5) the Chief Justice may make rules for regulating the practice and procedure of the High Court under this section.

Part 3 (a) Legislation in Parliament

Power to make laws

106. Subject to the provisions of this Constitution – (a) the supreme legislative authority of Swaziland vests in the King-in- Parliament;

(b) the King and Parliament may make laws for the peace, order and good government of Swaziland.

Exercise of power to make laws

107. Subject to the provisions of this Constitution, the power of the King and Parliament to make laws shall be exercised by bills -

- (a) passed by both chambers of Parliament;
- (b) passed by the House in the cases referred to in sections 112, 113, 114 and 116 (2);
- (c) passed at a joint sitting of the Senate and the House, in the cases referred to in sections 115(3), 116 (1) 117, and Chapter XVII;
- (d) passed by the Senate in the case referred to in section 115 (4), and assented to by the King under his hand.

Assent to bills

108. (1) A bill shall not become law unless the King has assented to it and signed it in token of that assent.

(2) Subject to the provisions of sections 117 and 246, a bill shall be presented to the King for assent where, and shall not be so presented unless, that bill has been passed by – (a) both Houses of Parliament without any amendments or with such amendments only as are agreed to by both Houses;

- (b) the House in terms of sections 112, 113, 114 and 116 (2);
- (c) the Senate in terms of section 115 (4);
- (d) a joint sitting of the Senate and the House in terms of sections 115 (3), 117 (1), 118 and Chapter XVII.

(3) Where a bill that has been duly passed is presented to the King for assent the King shall signify that he assents or withholds assent –

- (a) in the case of an appropriation bill, or bill for a law to amend this Constitution, within ten days;
- (b) in the case of any other bill, within twenty-one days.

When laws come into operation

109. (1) The Attorney-General shall cause a bill that has been duly passed and assented to in accordance with this Constitution, to be published in the Gazette as law as soon as practicable.

(2) A law made by the King and Parliament shall not come into operation until that law has been published in the Gazette.

(3) Subject to the provisions of section 119, the King and Parliament may state when a law or part of the law shall come into operation.

(4) Laws made by the King and Parliament in terms of this Constitution shall be styled “Acts of Parliament”, and the words of enactment shall be “ENACTED by the King and the Parliament of Swaziland”.

Introduction of bills

110. A bill may be introduced in either chamber of Parliament except that – (a) a money bill shall not be introduced in the Senate,

(b) a bill affecting matters in terms of section 115 shall not be introduced in the House.

Bills settling financial matters

111. Except with the consent of the Cabinet signified by the Prime Minister or the Minister responsible for finance, neither chamber of Parliament shall -

(a) proceed upon any bill including an amendment to a bill that in the opinion of the person presiding makes provision for any of the following –

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) the imposition of any charge upon the Consolidated Fund or other public funds of Swaziland or the alteration of any such charge otherwise than by reduction;

(iii) the payment, issue or withdrawal, from the Consolidated Fund or other public funds of Swaziland of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal, or the composition or remission of any debt due to the Government; or

(b) proceed upon any motion including an amendment to a motion the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in paragraph (a) of this section.

Limitation on powers of Senate – appropriation bills

112. (1) When a bill that in the opinion of the Speaker is an appropriation bill is sent to the Senate from the House that bill shall bear a certificate of the Speaker that it is an appropriation bill.

(2) Where a bill passed by the House and certified by the Speaker as an appropriation bill is sent to the Senate that bill shall forthwith be introduced in the Senate and passed by the Senate without delay.

(3) Where the bill in terms of subsection (2) -

(a) is not passed by the Senate by the end of the seventh day after the day on which the bill was sent to the Senate; or

(b) is passed by the Senate with amendments to which the House does not agree within the period referred to in paragraph (a),

the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House otherwise resolves, be presented to the King for assent.

Limitation on powers of Senate – other money bills

113. (1) When a bill that in the opinion of the Speaker is a money bill other than an appropriation bill is sent to the Senate from the House that bill shall bear a certificate of the Speaker that the bill is a money bill other than an appropriation bill.

(2) Subject to the provisions of section 114, where a bill passed by the House and certified as provided under subsection (1) is sent to the Senate at least thirty days before the end of the session, the Senate shall pass that bill, with or without amendments, within those thirty days.

(3) Where the bill referred to in subsection (2) - (a) is not passed by the Senate as required, or (b) is passed by the Senate with amendments to which the House does not agree within the period of thirty days after that bill was sent to the Senate,

the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House otherwise resolves, be presented to the King for assent.

Limitation on powers of Senate – urgent bills

114. Where the King by writing under his hand certifies to the President that enactment of a bill (including a money bill but not an appropriation bill) passed by the House, is a matter of urgency, the bill, having been sent to the Senate at least ten days before the end of the session -

(a) is not passed by the Senate within those ten days after that bill is so sent; or

(b) is passed by the Senate with amendments to which the House does not agree within ten days after that bill was sent to the Senate,

the bill, with such amendments, if any, as may be agreed to by both chambers, shall, unless the House otherwise resolves, be presented to the King for assent.

Matters regulated by Swazi law and custom

115. (1) A bill (including any amendment to a bill) which, in the opinion of the presiding officer would affect or alter any matter regulated in terms of this section shall only be introduced in the Senate.

(2) Where a bill, in terms of this section, is duly introduced the Senate shall not proceed to the Second Reading of that bill until -

(a) a copy of that bill has been sent by the President to the Council of Chiefs, and

(b) a period of sixty days has elapsed since the copy was sent to the Council in terms of paragraph (a).

(3) Subject to the provisions of subsection (4), where a bill affecting or altering any of the matters referred to in this section has been introduced in and passed by the Senate and has been sent to the House at least sixty days before the end of the session but has not within that period been passed by both Chambers, the bill shall be referred to a joint sitting of the Senate and the House in accordance with the provisions of the First Schedule.

(4) A bill having been duly introduced in and passed by the Senate shall not be referred to a joint sitting in terms of subsection (3) where the bill-

(a) has been sent to the House at least sixty days before the end of the session, and (b) has not been considered by the House within sixty days after the bill is so sent,

but shall, unless the Senate otherwise agrees, be presented to the King for assent.

(5) A bill shall not be presented to the King for assent in terms of subsection (4) unless the Senate so resolves by two-thirds majority of all the Senators.

(6) The provisions of this section apply to a bill which, in the opinion of the presiding officer would, if enacted, alter or affect -

(a) the status, powers or privileges, designation or recognition of the Ngwenyama, Ndlovukazi or Umntfwanenkhosi Lomkhulu;

(b) the designation, recognition, removal, powers, of chief or other traditional authority;

(c) the organisation, powers or administration of Swazi (customary) courts or chiefs' courts;

(d) Swazi law and custom, or the ascertainment or recording of Swazi law and custom;

(e) Swazi nation land; or

(f) Incwala, Umhlanga (Reed Dance), Libutfo (Regimental system) or similar cultural activity or organisation.

(7) Subject to the provisions of this section, the matters listed under subsection (6) shall continue to be regulated by Swazi law and custom.

Procedure where chambers disagree on bills

116. (1) Subject to the provisions of subsection (2), where a bill having been introduced in and passed by one chamber of Parliament -

- (a) has been sent to the other chamber at least sixty days before the end of the session; and
- (b) has been considered by that other chamber within sixty days after the bill is so sent; but
- (c) has not within that period been passed either without amendment or with amendments which are agreed to by the chamber in which the bill was introduced,

neither chamber shall proceed upon the bill and the bill shall be referred to a joint sitting of the Senate and the House in accordance with the provisions of the First Schedule.

(2) A bill, having been introduced in and passed by the House, shall not be referred to a joint sitting of the Senate and the House where that bill –

- (a) has been sent to the Senate at least sixty days before the end of the session; and
 - (b) has not been considered by the Senate within sixty days after the bill is so sent,
- but shall, unless the House otherwise resolves, be presented to the King for assent.

(3) This section does not apply to a bill certified under section 112 (1), 113 (1), 114 or a bill for a law to amend this Constitution.

Reference back of bills by King

117. (1) Where a bill, having been passed by both chambers of Parliament sitting separately, is presented to the King for assent, the King, acting in his discretion, may by message refer back such provisions of the bill as the King may indicate, for consideration at a joint sitting of the Senate and the House in accordance with the provisions of the First Schedule.

(2) Where the bill referred to in subsection (1) – (a) is passed within sixty days of the message, the bill shall again be presented to the King for assent; or

(b) is not passed as provided in paragraph (a), the bill shall lapse.

(3) This section does not apply to a bill certified under section 112(1), 113(1) or a bill for a law to amend this Constitution or a bill which has been passed at a joint sitting of the Senate and the House.

Functions of Speaker

118. (1) In this part, where a bill is presented to the King for assent in pursuance of the provisions of section 112(3), 113 (3), 114, or 116(2), as the case may be, that bill shall bear a certificate of the Speaker of the House that those provisions have been complied with.

(2) Any function under this section or section 112,113,114, or 116 which falls to be exercised by the Speaker may, if the Speaker is absent or is for any reason unable to exercise the functions of office, be exercised by the Deputy Speaker.

(3) A certificate given by the Speaker or Deputy Speaker, as the case may be, under this section shall be conclusive for all purposes and shall not be questioned in any court of law.

Retroactive legislation

119. (1) Parliament or any other authority or person has no power to pass any law – (a) to alter the decision or judgement of any court as between the parties to that decision or judgement; or

(b) which operates retroactively, (i) to impose any limitations on any person;

(ii) to adversely affect the personal rights and liberties of any person; or

(iii) to impose a burden, obligation or liability on any person.

(2) The provisions of subsection (1) (b) shall not apply in the case of law enacted under sections 199, 200, 201, 202, 204 and 205 of this Constitution.

Interpretation

120. (1) In this Part, “money bill” means a bill that contains only provisions dealing with -

(a) the imposition, repeal, remission, alteration or regulation of taxation;

(b) the imposition of charges on the Consolidated Fund or any other public fund of Swaziland or the variation or repeal of any such charges;

(c) the grant of money to the King or to any other person or authority or the variation or revocation of that grant;

(d) the appropriation, receipt, custody, investment, issue, or audit of accounts of public money;

(e) the raising or guarantee of any loan or the repayment of that loan; or (f) subordinate matters incidental to any of the above matters.

(2) In this section the expressions “taxation”, “public money”, and “loan” do not include any taxation, money or loan raised by local government authorities or other local bodies.

Part 3 (b) Procedure in Parliament

Regulation of procedure in Parliament

121. (1) Subject to the provisions of this Constitution – (a) each chamber of Parliament may make Standing Orders with respect to -

(i) its own procedure;

(ii) the passing of bills;

(iii) presiding in either chamber;

(iv) conduct of debates or other proceedings in that chamber in one or both official languages;

(v) affording reasonable assistance to a member of that chamber moving a private member’s bill by the department of Government affected by the bill;

(vi) the office of Attorney-General or Parliamentary Counsel affording professional assistance in the drafting of a private member’s bill;

(vii) the nomination or election of women in the House under section 95;

(viii) any matter in connection with which Standing Orders are required to be made under this Constitution;

(b) each chamber of Parliament may act notwithstanding any vacancy in its membership, including a vacancy not filled when the chamber first meets after any general election;

(c) the presence or participation of any person not entitled to be present at or to participate in the proceedings of a chamber shall not invalidate the proceedings of that chamber.

(2) The Standing Orders of the House of Assembly, 1968, published under Legal Notice No.52 of 1968; the Standing Orders Relating to Private Bills, published under Legal Notice No.17 of 1969; the Standing Orders of Senate Relating to Public Business, 1970, published under Legal Notice No.47 of 1970, shall, as may be

amended and subject to any necessary adaptations, modifications and qualifications, apply to the procedure and conduct of the business of the House of Assembly and Senate.

Presiding in Senate

122. There shall preside at any meeting of the Senate – (a) the President of the Senate;

(b) the Deputy President in the absence of the President or in the circumstances in which the rules of procedure of the Senate authorise the Deputy President to preside; or

(c) such other Senator as the Senate may elect for the purpose of presiding at that sitting in the absence of the President and Deputy President.

Presiding in the House of Assembly

123. There shall preside at any sitting of the House – (a) the Speaker of the House of Assembly;

(b) the Deputy Speaker, in the absence of the Speaker and in the circumstances in which the rules of procedure of the House authorise the Deputy Speaker to preside; or

(c) such member as the House may elect for the purpose of presiding at that sitting in the absence of the Speaker or Deputy Speaker.

Quorum in Senate and House

124. (1) Where objection is taken by a Senator present that there are present in the Senate (besides the person presiding) fewer than twelve Senators and, after such interval as may be prescribed in the rules of procedure of the Senate, the person presiding ascertains that there are still fewer than twelve Senators present, the person presiding shall thereupon adjourn the Senate.

(2) Where objection is taken by any member of the House present that there are present in the House (besides the person presiding) fewer than thirty members and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that there are still fewer than thirty members present, the person presiding shall thereupon adjourn the House.

Voting in Parliament

125. (1) Except as otherwise provided in this Constitution, any question proposed for decision in either chamber of Parliament shall be determined by a majority of the votes of the members of that chamber present and voting.

(2) Subject to the provisions of subsection (3), the President or Deputy President of Senate or the Speaker or Deputy Speaker of the House or a member of either chamber presiding in that chamber shall have an original but not a casting vote.

(3) A President of the Senate or Speaker of the House who is elected from outside the Senate or House shall not have a right to vote in the chamber.

(4) The Attorney-General shall have no vote in the House.

(5) Where upon any question before either chamber the votes are equally divided the motion shall be lost.

(6) The rules of procedure of either chamber may make provision under which a member who votes upon a question in which that member has a direct pecuniary interest shall be deemed not to have voted.

Right of Ministers, etc to address other chamber

126. (1) A Minister who is a member of the House or the Attorney-General shall be entitled to attend all sittings of the Senate and to take part in all proceedings of the Senate but shall not be regarded as a member of or be entitled to vote on any question before the Senate.

(2) A Minister who is a Senator shall be entitled to attend all sittings of the House and take part in all proceedings of that House but shall not be regarded as a member of or be entitled to vote on any question before the House.

Unqualified persons sitting or voting

127. (1) Any person who sits or votes in either chamber knowing or having reasonable grounds for knowing of the disqualification to sit or vote commits an offence and liable on conviction to a fine not exceeding an amount prescribed under the Standing Orders.

(2) Any prosecution for an offence under this section shall be instituted in the High Court only with the written consent of the Attorney-General.

Oaths by members of Parliament

128. (1) Every member of Parliament shall, before taking the seat as such member, take and subscribe before the chamber of which that member is a member the oath of allegiance that is set out in the Second Schedule or such other oath as may be prescribed.

(2) Notwithstanding the provisions of subsection (1), a member of Parliament may before taking and subscribing the oath of allegiance take part in the election of the President of Senate or Speaker of the House or other person presiding.

(3) A person elected as President, Speaker, Deputy President or Deputy Speaker shall, where that person has not already taken and subscribed the oath of allegiance under subsection (1), take and subscribe that oath before the chamber before entering upon the functions of that office.

(4) The oath of allegiance under this section shall be administered by the Clerk to Parliament or the Attorney-General.

Committees of Parliament

129. (1) Each chamber of Parliament shall appoint sessional committees and other committees as may be necessary for the effective discharge of the functions of that chamber.

(2) The standing committees shall be charged with such functions, including the investigation and inquiry into the activities and administration of ministries and departments as Parliament may determine and the investigations and enquiries may extend to proposals for legislation.

(3) Every member of Parliament not being a Minister shall be a member of at least one of the standing committees.

(4) The composition of the committees shall, as much as possible, reflect the different shades of opinion or interest in Parliament.

(5) A committee appointed under this section shall have the powers, rights and privileges of the High Court or a Justice of the High Court at a trial for – (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) compelling the production of documents; and (c) issuing a commission or request to examine witnesses abroad.

Parliamentary immunities and privileges

130. (1) The President, Speaker, members of Parliament and any other person participating or assisting in or acting in connection with or reporting the proceedings of Parliament or any of its committees shall be entitled to such immunities and privileges as Parliament may by law prescribe.

(2) The freedom of speech, immunities and privileges, referred to in subsection (1), shall not be impeached or questioned in any court of law or place outside of Parliament.

(3) Any process issued by any court in the exercise of its civil or criminal jurisdiction shall not be served or executed within the precincts of Parliament while Parliament is sitting, or through the President or the Speaker, the Clerk or any other officer of Parliament.

Part 3 (c) Parliamentary Service

Parliamentary service

131. (1) There shall be a parliamentary service which shall form part of the public service of Swaziland.

(2) The parliamentary service shall be administered by a Parliamentary Service Board consisting of – (a) the President and Speaker who shall be chairperson on a rotational basis;

(b) four other members, two of whom shall be members of Parliament, to be appointed and removed by the Presiding Officers on the advice of the Joint House Committee;

(c) the Clerk to Parliament, as secretary and ex officio member.

(3) The Parliamentary Service Board shall be responsible for the proper and effective administration of Parliament.

(4) The Parliamentary Service Board may make regulations, prescribe terms and conditions of service of the parliamentary service staff with the approval of the Joint House Committee and do anything necessary for the efficient administration of the parliamentary service.

Clerk to Parliament and other staff

132. (1) There shall be a Clerk to Parliament and such other staff of the parliamentary service as the Parliamentary Service Board may determine.

(2) The Clerk to Parliament shall be head and controlling officer of the Parliamentary service.

(3) The appointment of the Clerk and any other member of the staff of the parliamentary service shall be made by the Parliamentary Service Board in consultation with the Civil Service Commission.

(4) The Clerk to Parliament or any member of staff of the parliamentary service shall not be suspended, transferred, promoted, removed or dismissed except by or with the approval of the Parliamentary Service Board.

Part 4 Summoning, prorogation and dissolution

Sessions of Parliament

133. (1) There shall be a session of Parliament at least once in every year so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting of Parliament in the next session.

(2) Each session of Parliament shall be held at such a place within Swaziland and commence at such a time as the King may appoint by notice in the Gazette.

(3) Subject to the provisions of subsection (2), the sittings of each chamber of Parliament shall be held at such time and place as that chamber may, by its rules of procedure or otherwise, determine.

(4) Whenever Parliament is dissolved a general election of the elected members of the House shall be held within sixty days of the date of dissolution and a session of Parliament shall be appointed to commence within thirty days of the date of that general election.

Prorogation and dissolution of Parliament

134. (1) The King may at any time – (a) prorogue Parliament; or (b) dissolve Parliament.

(2) Subject to the provisions of subsections (3) and (7) Parliament, unless sooner dissolved shall stand dissolved five years less two months from the date of first meeting of the House following a general election.

(3) At any time when Swaziland is at war, Parliament may from time to time extend the period specified in subsection (2) for not more than twelve months at a time.

(4) The life of Parliament shall not be extended in terms of subsection (3) for more than five years.

(5) In the exercise of his power to dissolve Parliament in terms of this section, the King shall act on the recommendation of the Prime Minister save that –

(a) where the Prime Minister recommends a dissolution and the King considers that – (i) the government of Swaziland can be carried on without dissolution; or (ii) the dissolution would not be in the interests of Swaziland, the King may refuse to dissolve Parliament; or, (b) where the House passes a resolution of no confidence in the Government of Swaziland and the Prime Minister does not within three days after that resolution resign, the King may dissolve Parliament or Cabinet.

(6) Where Parliament is dissolved in terms of subsection (1) (b) the members of Parliament shall be deemed to have vacated office on the day but one of the first meeting of the House after the general election.

(7) Where Parliament is dissolved in terms of subsection (2), the members shall be deemed to have vacated office at the end of five years from the date of the first meeting of the House following a general election.

Recalling Parliament in case of emergency

135. (1) Where, between a dissolution of Parliament and the next ensuing general election of the elected members of the House, an emergency arises of such a nature that in the opinion of the King, after consultation with the President and Speaker of the dissolved Parliament, it is necessary for the two chambers of Parliament to be summoned before that general election can be held, the King may, by proclamation published in the Gazette, summon the preceding chambers of Parliament as constituted immediately before that dissolution.

(2) Where the King has recalled Parliament in terms of subsection (1), the two chambers of Parliament shall be deemed (except for purposes of section 136) not to have been dissolved but shall be deemed (except for the purposes of section 137) to be dissolved as soon as the emergency has been disposed of or on the date on which the next ensuing general election of elected members of the House is held.

(3) For the purposes of this section “emergency” includes the necessity to enact a law.

General elections

136. (1) A general election of elected members of the House shall be held at such time within sixty days after every dissolution of Parliament, as the King shall appoint by proclamation published in the Gazette.

(2) Subject to the provisions of this Constitution, Parliament may enact laws for the conduct of elections and the qualification of voters.

Filling of casual vacancies

137. (1) Where any person vacates a seat as a Senator for any reason other than a dissolution of Parliament -

(a) the King shall appoint a person; or (b) the House shall elect a person,

to fill the vacancy under the same provisions of section 95 as the person whose seat has become vacant was appointed or elected.

(2) Where any person vacates a seat as a member of the House for any reason other than a dissolution of Parliament, the King shall -

(a) appoint another member; or (b) issue a writ for the election of a member, to fill the vacancy under the same provisions of section 96 as the member whose seat has become vacant was nominated or elected.

(3) Unless more than two vacancies occur in one chamber of Parliament, a casual vacancy as referred to in subsection (1) or (2) shall not be filled under this section where Parliament stands to be dissolved within a period of less than nine months.

CHAPTER VIII THE JUDICATURE

Part I General

Administration of Justice

138. Justice shall be administered in the name of the Crown by the Judiciary which shall be independent and subject only to this Constitution.

The Judiciary

139. (1) The Judiciary consists of - (a) the Superior Court of Judicature comprising -

(i) The Supreme Court, and (ii) The High Court;

(b) such specialised, subordinate and Swazi courts or tribunals exercising a judicial function as Parliament may by law establish.

(2) The Judiciary has jurisdiction in all matters civil and criminal, including matters relating to this Constitution, and such other jurisdiction as may by law be conferred on it.

(3) The superior courts are superior courts of record and have the power to commit for contempt to themselves and all such powers as were vested in a superior court of record immediately before the commencement of this Constitution.

(4) Except as may otherwise be provided in this Constitution or as may otherwise be ordered by a court in the interest of public morality, public safety, public order or public policy, the proceedings of every court shall be held in public.

(5) Subject to the provisions of this Constitution, the Chief Justice is the head of the Judiciary and is responsible for the administration and supervision of the Judiciary.

Judicial power of Swaziland

140. (1) The judicial power of Swaziland vests in the Judiciary. Accordingly, an organ or agency of the Crown shall not have or be conferred with final judicial power.

(2) In the exercise of the judicial power under this Constitution or any other law, the superior courts may, in relation to any matter within their jurisdiction, issue such orders or directions as may be necessary to ensure the enforcement of any judgement, decree or order of those courts.

Independence of the Judiciary

141. (1) In the exercise of the judicial power of Swaziland, the Judiciary, in both its judicial and administrative functions, including financial administration, shall be independent and subject only to this Constitution, and shall not be subject to the control or direction of any person or authority.

(2) Neither the Crown nor Parliament nor any person acting under the authority of the Crown or Parliament nor any person whatsoever shall interfere with Judges or judicial officers, or other persons exercising judicial power, in the exercise of their judicial functions.

(3) All organs or agencies of the Crown shall give to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts under this Constitution.

(4) A judge of a superior court or any person exercising judicial power, is not liable to any action or suit for any act or omission by that judge or person in the exercise of the judicial power.

(5) The administrative expenses of the Judiciary, including all salaries, allowances, gratuities and pensions payable to, or in respect of persons serving in the Judiciary, shall be charged on the Consolidated Fund.

(6) The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Judge of a superior court or any judicial officer or other person exercising judicial power, shall not be varied to the disadvantage of that Judge or judicial officer or other person.

(7) The Judiciary shall keep its own finances and administer its own affairs, and may deal directly with the Ministry responsible for finance or any other person in relation to its finances or affairs.

Administrative functions of the Chief Justice

142. Subject to the provisions of this Constitution or any other law, the Chief Justice as head of the Judiciary may make rules for regulating the practice and procedure of the superior and subordinate courts, including the specialised and local courts as well as powers of judicial officers.

Oaths by Justices of the superior courts

143. A judge of the Supreme Court or the High Court shall not enter upon the duties of office unless that judge has taken and subscribed the oath of allegiance and the oath for the due execution of office as set out in the Second Schedule.

Appointment of assessors

144. (1) A superior court may hear a case wholly or in part with the assistance of assessors.

(2) A superior court may in any case in which it appears to that court to be expedient call in the aid of one or more assessors with such qualifications as the court may deem appropriate.

Part 2 (a) The Supreme Court

Composition of the Supreme Court

145. (1) There shall be a Supreme Court of Judicature for Swaziland consisting of the Chief Justice and not less than four other Justices of the Supreme Court.

(2) The Supreme Court shall be duly constituted for its ordinary work by not less than three Justices of the Supreme Court.

(3) A full bench of the Supreme Court shall consist of five Justices of that Court.

(4) The Chief Justice shall preside at sittings of the Supreme Court, and when not sitting the most senior of the Justices constituting the court shall preside.

Jurisdiction of Supreme Court (General)

146. (1) The Supreme Court is the final court of appeal. Accordingly, the Supreme Court has appellate jurisdiction and such other jurisdiction as may be conferred on it by this Constitution or any other law.

(2) Without derogating from the generality of the foregoing subsection, the Supreme Court has -

(a) such jurisdiction to hear and determine appeals from the High Court of Swaziland and such powers and authority as the Court of Appeal possesses at the date of commencement of this Constitution; and

(b) such additional jurisdiction to hear and determine appeals from the High Court of Swaziland and such additional powers and authority, as may be prescribed by or under any law for the time being in force in Swaziland.

(3) Subject to the provisions of subsection (2), the Supreme Court has for all purposes of and incidental to the hearing and determination of any appeal in its jurisdiction the power, authority and jurisdiction vested in the court from which the appeal is brought.

(4) A decision of the Supreme Court shall be enforced, as far as that may be effective, in like manner as if it were a judgment of the court from which the appeal was brought.

(5) While it is not bound to follow the decisions of other courts save its own, the Supreme Court may depart from its own previous decision when it appears to it that the previous decision was wrong. The decisions of the Supreme Court on questions of law are binding on other courts.

(6) Subject to the provisions of this Constitution or as may be prescribed by any other law, an appeal from the full bench of the High Court (or any other court) shall be heard and determined by a full bench of the Supreme Court.

Appellate jurisdiction of Supreme Court

147. (1) An appeal shall lie to the Supreme Court from a judgement, decree or order of the High Court -

(a) as of right in a civil or criminal cause or matter from a judgement of the High Court in the exercise of its original jurisdiction; or

(b) with the leave of the High Court, in any other cause or matter where the case was commenced in a court lower than the High Court and where the High Court is satisfied that the case involves a substantial question of law or is in the public interest.

(2) Where the High Court has denied leave to appeal the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant or refuse leave accordingly.

Supervisory and review jurisdiction

148. (1) The Supreme Court has supervisory jurisdiction over all courts of judicature and over any adjudicating authority and may, in the discharge of that jurisdiction, issue orders and directions for the purposes of enforcing or securing the enforcement of its supervisory power.

(2) The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by an Act of Parliament or rules of court.

(3) In the exercise of its review jurisdiction, the Supreme Court shall sit as a full bench.

Powers of a single Justice of Supreme Court

149. (1) Subject to the provisions of subsections (2) and (3) a single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the determination of the cause or matter before the Supreme Court.

(2) In criminal matters, where a single Justice refuses or grants an application in the exercise of power vesting in the Supreme Court, a person affected by such an exercise is entitled to have the application determined by the Supreme Court constituted by three Justices.

(3) In civil matters, any order, direction or decision made by a single Justice may be varied, discharged or reversed by the Supreme Court of three Justices at the instance of either party to that matter.

Part 2 (b) The High Court

Composition of the High Court

150. (1) There shall be a High Court of Judicature for Swaziland consisting of –

(a) the Chief Justice, ex officio;

(b) not less than four Justices of the High Court as may be prescribed; and (c) such other Justices of the Superior Court of Judicature as the Chief Justice may, in writing assign to sit as High Court Justices for any case or period.

(2) The High Court shall be duly constituted – (a) by a single Judge of the High Court;

(b) by a single Judge of the High Court with assessors; or (c) by a single Judge of the superior courts with or without assessors.

(3) A full bench of the High Court shall consist of three Justices of the Superior courts.

(4) The Chief Justice shall always preside whenever sitting as a Justice of the High Court.

(5) The Chief Justice shall designate in writing the most senior Justice of the High Court to be Principal Judge of the High Court to preside and exercise such functions as may be stated in the designation.

(6) There shall be such divisions of the High Court consisting of such number of Justices respectively as the Chief Justice may determine after consultation with the Minister responsible for Justice and the President of the Swaziland Law Society.

Jurisdiction of the High Court

151. (1) The High Court has –

(a) unlimited original jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution;

(b) such appellate jurisdiction as may be prescribed by or under this Constitution or any law for the time being in force in Swaziland;

(c) such revisional jurisdiction as the High Court possesses at the date of commencement of this Constitution; and

(d) such additional revisional jurisdiction as may be prescribed by or under any law for the time being in force in Swaziland.

(2) Without derogating from the generality of subsection (1) the High Court has jurisdiction -

(a) to enforce the fundamental human rights and freedoms guaranteed by this Constitution; and

(b) to hear and determine any matter of a constitutional nature.

(3) Notwithstanding the provisions of subsection (1), the High Court – (a) has no original or appellate jurisdiction in any matter in which the Industrial Court has exclusive jurisdiction;

(b) has no original but has review and appellate jurisdiction in matters in which a Swazi Court or Court Martial has jurisdiction under any law for the time being in force.

(4) The High Court has no power, in a trial for the offence of treason, to convict any person for an offence other than treason.

(5) A Justice of the High Court may, in accordance with rules of court, exercise in court or in chambers all or any of the jurisdiction vested in the High Court by this Constitution or any other law.

(6) For the purposes of hearing and determining an appeal within its jurisdiction and the enforcement of a judgement or order made on any appeal, the High Court shall have all the powers, authority and jurisdiction vested in the court or tribunal from which the appeal is brought.

(7) In this section any reference to “revisional jurisdiction” shall be construed as including a reference to jurisdiction to determine reserved questions of law and cases stated.

(8) Notwithstanding subsection (1), the High Court has no original or appellate jurisdiction in matters relating to the office of iNgwenyama; the office of iNdllovukazi (the Queen Mother); the authorisation of a person to perform the functions of Regent in terms of section 8; the appointment, revocation and suspension of a Chief; the composition of the Swazi National Council, the appointment and revocation of appointment of the Council and the procedure of the Council; and the Libutfo (regimental) system, which matters shall continue to be governed by Swazi law and Custom.. Review and supervisory powers of High Court

152. The High Court shall have and exercise review and supervisory jurisdiction over all subordinate courts and tribunals or any lower adjudicating authority, and may, in exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its review or supervisory powers.

Part 3 Appointment, removal, etc of Superior Court Justices

Appointment of Justices of the superior courts

153. (1) The Chief Justice and the other Justices of the superior courts- shall be appointed by the King on the advice of the Judicial Service Commission.

(2) Where the office of the Chief Justice is vacant, or where the Chief Justice is for any reason unable to perform the functions of office -

(a) until a person has been appointed to, and has assumed the functions of, that office; or

(b) until the person holding the office of Chief Justice has resumed the functions of that office, as the case may be,

those functions shall be performed by the most senior of the Justices of the Supreme Court.

(3) Where it appears to the Chief Justice that for a short duration the prescribed complement of the Supreme Court or High Court, as the case may be, is for any reason unlikely to be realised or where the exigencies of the situation so require, the Chief Justice shall advise the King to appoint a qualified person to act in that Court for that duration.

(4) Whether in respect of the office of the Chief Justice or office of any Justice of the superior courts, an acting appointment shall not exceed a single renewable period of three months.

(5) Notwithstanding the provisions of subsections (3) and (4), the Chief Justice after consultations with the Judicial Service Commission may make an acting appointment where the duration does not exceed one month, unrenovable.

(6) A person whose appointment to act as a Justice of a superior court has expired may, with the consent of the King acting on the advice of the Chief Justice or the Chief Justice after consultation with the Judicial Service Commission, continue to act for such a period not exceeding three months as may be necessary to enable that person to deliver judgement or to do any other thing in relation to proceedings that were commenced before that person previously to the expiry of the acting appointment.

Qualification for appointment to the superior courts

154. (1) A person shall not be appointed as a Justice of a superior court unless that person is a person of high moral character and integrity and in the case of an appointment to –

(a) the Supreme Court,

(i) that person is or has been a legal practitioner, barrister or advocate of not less than fifteen years practice in Swaziland or any part of the Commonwealth or the Republic of Ireland; or, (ii) that person is, or has served as, a Judge of the High Court of Swaziland or Judge of a superior court of unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or the Republic of Ireland for a period of not less than seven years ; or,

(iii) that person is, or has served as, such legal practitioner, barrister or advocate as mentioned in paragraph (a) (i), and as such Judge as mentioned in paragraph (a) (ii) for a combined period of that practice and service of not less than fifteen years;

(b) the High Court,

(i) that person is or has been a legal practitioner, barrister or advocate of not less than ten years practice in Swaziland or any part of the Commonwealth or the Republic of Ireland; or

(ii) that person is, or has served as, a Judge of a superior court of unlimited jurisdiction in civil and criminal matters in any part

of the Commonwealth or the Republic of Ireland for a period of not less than five years; or

(iii) that person is, or has served as, such legal practitioner, barrister or advocate as referred to in paragraph (b) (i) and as such Judge as referred to in paragraph (b) (ii) for a combined period of such practice and service of not less than ten years.

Tenure of office of superior court Justice

155. (1) A Justice of the Supreme Court of Judicature shall hold office in terms of this Constitution.

(2) The office of a Justice of a superior court shall not be abolished while there is a substantive holder of that office.

(3) In the case of a Justice of a superior court, it shall not be necessary for the appointment to be subject to any period of probation.

Retirement and resignation of Justices of the superior courts

156. (1) Subject to the provisions of this Constitution or any other law, a Justice of a superior court -

(a) may retire at any time after attaining the age of sixty-five years subject to a service of at least ten years;

(b) shall vacate office, in the case of - (i) the Supreme Court, at seventy-five years;

(ii) the High Court, at seventy five years;

(iii) the Supreme Court and High Court, upon removal from office in terms of section 158.

(2) A Justice of a superior court may at any time resign from office by notice in writing addressed to the Chairman of the Judicial Service Commission.

(3) Notwithstanding that a justice has attained the age at which that justice is required to vacate office, a Justice of a superior court may continue in office for such period, not exceeding six months, as may be necessary to enable that justice to deliver judgement or do any other thing in relation to proceedings that were commenced before that justice previously to attaining that age.

Appointment of Justices of the superior courts on contract

157. (1) A person who is not a citizen of Swaziland shall not be appointed as Justice of a superior court after seven years from the commencement of this Constitution.

(2) Unless otherwise agreed between the contracting parties, a judge on contract shall vacate office at the end of the period provided in the contract.

Removal of Justices of superior courts

158. (1) A Justice of the Superior Court of Judicature may only be removed from office in accordance with the provisions of this section.

(2) A Justice of a superior court shall not be removed from office except for stated serious misbehaviour or inability to perform the functions of office arising from infirmity of body or mind.

(3) Where the King acting on the advice of an ad hoc committee in the case of the Chief Justice, and on the advice of the Chief Justice in the case of any Justice of a superior court, considers that the question of removing from office the Chief Justice or a Justice on any ground stated in sub-section (2) ought to be investigated, the King shall refer the matter to the Judicial Service Commission for investigation.

(4) The Commission shall enquire into the matter and recommend to the King whether the Chief Justice or the Justice ought to be removed from office.

(5) Notwithstanding any provision of this Constitution, the King shall in each case act on the recommendation of the Commission.

(6) Where the question of removal in terms of this section has been referred to the Commission the King may suspend from office the Chief Justice or the other Justice as the case may be for the duration of the inquiry.

(7) Subject to considerations of fairness and natural justice, the Commission shall be reconstituted for the purpose as may be appropriate, the Chief Justice being replaced by the most senior Justice of the Supreme Court, and a Justice who is a member of the Commission being replaced by another Justice appointed by the other members of the Commission.

(8) An inquiry in terms of this section shall not take longer than three months.

(9) The King may at any time revoke a suspension under this section.

(10) In this section “ad hoc committee” means a committee made up of the Minister responsible for Justice and Chairman of the Civil Service Commission and the President of the Law Society of Swaziland.

Part 4

Judicial Service Commission

Judicial Service Commission

159. (1) There shall be an independent Judicial Service Commission for Swaziland, hereinafter in this chapter referred to as “the Commission”.

(2) The Commission shall consist of the following-(a) the Chief Justice, who shall be the chairman;

(b) two legal practitioners of not less than seven years practice and in good professional standing to be appointed by the King;

(c) the Chairman of the Civil Service Commission; and (d) two persons appointed by the King.

(3) In the exercise of its functions under this Constitution, the Commission or member of the Commission shall not be subject to the direction or control of any person or authority.

(4) A Member appointed in terms of subsection (2) (b) or (d) shall hold office for a period not exceeding four years and shall be eligible for re-appointment for a further one period.

(5) A member appointed in terms of subsection (2) (b) or (d) (where a member appointed under paragraph (d) does not hold the position of judge of a superior court) shall be removed from office by the King where the question of removal has been referred to a tribunal appointed in terms of subsection (6) and the tribunal has recommended that the member be removed from office-

(a) for inability to exercise the functions of office (by reason of infirmity of body or mind or any other cause); or

(b) for misbehaviour.

(6) Where the Chief Justice represents to the King that the question of removing a member appointed in terms of subsection (2)(b) or (d) as mentioned in subsection (5) ought to be investigated, then -

(a) the King shall appoint a tribunal consisting of a chairman and two other persons selected by the Chief Justice (after consultation with the President of the Law Society of Swaziland) from among persons who hold or have held or qualify to hold high judicial office; and

(b) the tribunal shall enquire into the matter, and report on the facts to the King and recommend to him whether the member concerned ought to be removed under subsection (5).

(7) Where the position of Chief Justice is vacant or for any other reason the Chief Justice is not available the most senior of the judges of the Supreme Court shall act as chairman of the Commission.

(8) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer of the Government for the purpose of the discharge of its functions.

Functions of the Judicial Service Commission

160. (1) Subject to any other powers or general functions conferred on a service commission in terms of this Constitution, the Judicial Service Commission shall, among other things, perform the following functions –

(a) advise the King in the exercise of the power to appoint persons to hold or act in any office specified in this Constitution which includes power to exercise disciplinary control over those persons and to remove those persons from office;

(b) advise the King on the appointment, discipline and removal of the Director of Public Prosecutions and other public officers as provided in this Constitution;

(c) review and make recommendations, subject to the provisions of this Constitution, on the terms and conditions of service of Judges and persons holding the judicial offices enumerated in subsection (3);

(e) receive and process recommendations and complaints concerning the judiciary;

(f) advise the Government through the Minister responsible for Justice on improving the administration of justice generally; and

(g) any other function prescribed by this Constitution or Parliament.

(2) Without derogating from the provisions of subsection (1), the Commission has power to appoint persons to hold or act in any of the offices mentioned under subsection (3) including the power to exercise disciplinary control over those persons and the power to remove those persons from office.

(3) The offices referred to in subsection (2) are -

(a) the office of -

(i) Registrar of the Supreme Court; (ii) Registrar of the High Court; (iii) Deputy Registrar of the Supreme Court; (iv) Deputy Registrar of the High Court; (v) Master of the High Court; (vi) Deputy Master of the High Court; (vii) Magistrate;

(b) such other offices connected with any court as Parliament may prescribe.

Secretariat to the Commission

161. (1) There shall be a secretariat of the Commission established in terms of section 183.

(2) The functions of the secretariat shall be as provided under section 183 (2).

(3) The secretary of the Commission, in addition to the functions in terms of subsection (2), shall among other things, organise and manage the secretariat, keep the chairman informed of all activities of the Commission and act as a public relations officer for the Commission.

CHAPTER IX DIRECTOR OF PUBLIC PROSECUTIONS AND THE COMMISSION ON HUMAN RIGHTS AND PUBLIC ADMINISTRATION

Part I Director of Public Prosecutions

Appointment, tenure functions, etc.

162. (1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions, in this Chapter referred to as “the Director,” shall be appointed by the King on the advice of the Judicial Service Commission.

(3) A person shall not qualify to be appointed Director unless that person qualifies for appointment as a judge of the superior courts.

- (4) The Director shall have power in any case in which the Director considers it proper to do so, to-
- (a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person against the laws of Swaziland;
 - (b) take over and continue any criminal proceedings that may have been instituted or undertaken by any other person or authority;
 - (c) discontinue, at any stage before judgment is delivered, any criminal proceedings instituted or undertaken by the Director or any other person or authority; and
 - (d) perform such other functions as may be prescribed.
- (5) The powers under subsection (4) may be exercised by the Director in person or by subordinate officers acting in accordance with the general or special instructions of the Director.
- (6) In the exercise of the powers conferred under this Chapter, the Director shall - (a) have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of the legal process; and (b) be independent and not be subject to the direction or control of any other person or authority.
- (7) Without derogating from the provisions of subsection (6), the Director shall, in the exercise of the powers under this Chapter, consult the Attorney-General in relation to matters where national security may be at stake.
- (8) The Director shall be removed from office in the same manner and on the same grounds as a Judge of the superior courts, except that the Minister responsible for Justice shall initiate the proceedings in terms of section 158 (3).

Part 2 Commission on Human Rights and Public Administration

Commission on Human Rights and Public Administration

163. (1) There shall be established within a year of the first meeting of Parliament after the commencement of this Constitution, a Commission on Human Rights and Public Administration in this Chapter referred to as “the Commission”.
- (2) The Commission shall consist of - (a) a Commissioner for Human Rights and Public Administration; and (b) at least two Deputy Commissioners for Human Rights and Public Administration as may be necessary for the effective discharge of the functions of the Commission.
- (3) The members of the Commission shall be appointed by the King on the advice of the Judicial Service Commission.
- (4) Subject to subsection (5) (a), a person shall not qualify for appointment as Commissioner unless that person qualifies for appointment as judge of the superior courts.
- (5) A person shall not be eligible for appointment as Deputy Commissioner unless that person -
- (a) is of high moral character and proven integrity; and (b) possesses considerable experience and demonstrated competence in the conduct of public affairs; or
 - (c) is of high calibre in the conduct of public affairs.
- (6) The first persons to be appointed Commissioner and Deputy Commissioner shall hold office for a term not exceeding seven years and five years respectively and may be re-appointed for a single term of five years each.

(7) A person appointed subsequent to the first appointment as Commissioner or Deputy Commissioner respectively shall hold office for a term not exceeding five years and may be re-appointed for a single term.

Functions of the Commission

164. (1) The Commission shall perform the following functions – (a) investigate complaints concerning alleged violations of fundamental rights and freedoms under this Constitution;

(b) investigate complaints of injustice, corruption, abuse of power in office and unfair treatment of any person by a public officer in the exercise of official duties;

(c) investigate complaints concerning the functioning of any public service, service commission, administrative organ of the Government, the Armed Forces in so far as the complaints relate to the failure to achieve acceptable delivery of services or equitable access by all in the recruitment to those services or fair administration by those services;

(d) take appropriate action for the remedying, correction or reversal of instances specified in paragraphs (a), (b) and (c) through such means as are fair, proper and effective, including –

(i) publicising the findings and recommendations of the Commission;

(ii) negotiation and compromise between the parties concerned;

(iii) causing the complaint and the findings of the Commission on that complaint to be reported to the superior of an offending person or institution;

(iv) referring matters to the Director of Public Prosecutions or the Attorney General for appropriate action to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and

(v) bringing proceedings to restrain the enforcement of any legislation or regulation by challenging the validity of that legislation or regulation where the offending action or conduct is sought to be justified by reference to that legislation or regulation.

(e) investigate instances of alleged or suspected corruption and the misappropriation of public moneys or property by officials and to take or recommend appropriate steps, including reports to the Attorney General or the Director of Public Prosecutions or the Auditor General;

(f) eliminate or foster the elimination of corruption, abuse of authority or public office;

(g) promote and foster strict adherence to the rule of law and principles of natural justice in public administration;

(h) promote fair, efficient and good governance in public affairs;

(i) take such other measures incidental to the above as may be prescribed by Parliament.

(2) The Commission may investigate any matter referred to in subsection (1) in any of the following circumstances –

(a) where a complaint is duly made to the Commission by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;

(b) where a member of Parliament requests the Commission to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained an injustice; (c) in any other circumstances in which the Commissioner, in good faith, considers that the Commission ought to investigate the matter on the ground that some person or body of persons has or may have sustained an injustice.

Powers of the Commission

165. (1) The powers of the Commission shall include the following – (a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document, record or thing required for the investigation by the Commission;

(b) to fine any person for contempt of any subpoena or order, or cause that person to be brought by a competent court for the enforcement of the subpoena or order of the Commission;

(c) to question any person in respect of any subject matter under investigation before the Commission;

(d) to require any person to disclose truthfully and frankly any information within the knowledge of that person relevant to any investigation by the Commission.

(2) The Commission may during the course of its proceedings or as a consequence of its findings, make such orders and give such directions as are necessary and appropriate in the circumstances.

(3) The Commission shall not investigate – (a) a matter which is pending before a court;

(b) a matter involving the relations or dealings between the Government and any other Government or an international organisation; or

(c) a matter relating to the exercise of any royal prerogative by the Crown.

(4) Subject to the provisions of subsection (3) the Commission may investigate an authority that has been established to investigate a matter where in the opinion of the Commissioner the authority is failing to carry out its mandate with due speed.

Independence of the Commission

166. The Commission shall be independent in the performance of its functions and shall not be subject to the direction or control of any person or authority.

Discretion of Commissioner

167. In determining whether to initiate, continue or discontinue an investigation, the Commissioner shall exercise discretion and in particular and without prejudice to the generality of that discretion, the Commissioner may refuse to initiate or continue an investigation where it appears that -

(a) the complaint relates to action of which the complainant had knowledge for more than twelve months before the complaint was received by the Commission;

(b) the subject matter of the complaint is trivial, frivolous, vexatious or is not made in good faith; or

(c) the complainant has not a sufficient interest in the subject matter of the complaint, unless justified in terms of section 164 (2) (c).

Report of investigation

168. (1) Where a complaint, or request for an investigation, is duly made and the Commissioner decides not to investigate the matter or where the Commissioner decides to discontinue an investigation of the matter, the Commissioner shall inform the person who made the complaint or request of the reasons for not investigating or for discontinuing the investigation.

(2) The Commission may, where necessary, issue an interim report containing such recommendations as it may deem appropriate in the circumstances.

(3) The Commission shall, upon completion of an investigation inform the public officer, person, private enterprise or institution of the findings in writing.

(4) Upon the completion of an investigation the Commissioner shall inform the department of Government or the authority concerned of the results of the investigation and where the Commissioner is of the opinion that any person has sustained an injustice in consequence of a fault in administration, the Commissioner shall inform the department of Government or the authority of the reasons for the opinion and make such recommendations as the Commissioner thinks fit.

(5) The Commission may in the interim report, or in the final report, specify the time within which the injustice should be remedied.

(6) Where the investigation is undertaken as a result of a complaint or request, the Commissioner shall inform the person who made the complaint or request of the findings.

(7) Where the matter in the opinion of the Commissioner is of sufficient public importance or where the Commissioner has made a recommendation under subsection (4) or (5) and within the time specified by the Commissioner no sufficient action has been taken to remedy the injustice, or terminate the offensive conduct then, subject to such provision as may be made by Parliament, the Commission shall lay a special report on the case before Parliament.

(8) The Commissioner shall make annual reports to Parliament on the performance of the Commission which reports shall include statistics in such form and in such detail as may be prescribed of the complaints received by the Commission and the results of any investigation.

Restrictions on matters for investigation

169. The Commission shall not, in investigating any matter leading to, resulting from or connected with the decision of a Minister, inquire into or question the policy of the Government in accordance with which the decision was made.

Vacation of office and immunity of Commissioners

170. (1) The provision of this Constitution relating to the removal of judges of the superior courts from office shall, subject to any necessary modifications and adaptations, apply to the removal from office of the Commissioner or Deputy Commissioner.

(2) A member of the Commission shall have such and like protection and privilege in the case of any action or suit brought against the Commission for any act done or omitted to be done in the honest execution of the duties of the Commission as is by law given to acts done or words spoken by a judge of the superior courts in exercise of the judicial office.

Staff and expenses of the Commission

171. (1) The Commission shall have such staff as shall be appropriate for the effective discharge of the functions of the Commission.

(2) Administrative expenses of the Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund.

CHAPTER X THE PUBLIC SERVICE

Part 1 Service Commissions

Administration of the public service

172. (1) The Public Service of Swaziland shall be administered through service commissions or similar bodies established under this Constitution or any other law. (2) The public service may be divided into sectoral units for ease of management and quick delivery.

(3) Each sectoral unit may have a separate service commission.

Establishment and membership

173. (1) There shall be independent and impartial service commissions established in terms of this Constitution or any other law for the better management and exercise of certain powers and functions regulating the public service or any part or aspect of the public service.

(2) A service commission shall consist of not less than three and not more than five members one of whom shall be appointed a chairman.

(3) Members of a service commission shall be appointed by the King on the recommendation of a line Minister or any other authority as may be provided in this Constitution or any other law.

(4) In making the recommendations to the King for the appointment of a member of a service commission, the line Minister shall proceed in a competitive, transparent and open manner on the basis of suitable qualifications, competence and relevant experience and the Minister shall endeavour to recommend a person who can effectively discharge the responsibilities of that office.

Disqualification for membership

174. (1) A person shall not qualify to be appointed as a member of a service commission unless that person possesses relevant training and is of high moral character and proven integrity and that person-

(a) qualifies to be elected as a member of Parliament;

(b) is not a public officer, a Minister, member of Parliament or a

member of the King's Advisory Council or similar body; or (c) is not a member of a trade union or staff association.

(2) A person shall not be disqualified from membership in terms of subsection (1) (b) or (c) where that person resigns or retires from that occupation within a period of three months from the date of appointment.

Tenure of office and removal from office

175. (1) The tenure of office of an inaugural chairman and each member shall be six and four years respectively.

(2) The chairman and a member shall be eligible for re-appointment for a single term of four years.

(3) The chairman or member may vacate office by resignation on notice of three months.

(4) A member of a service commission shall be removed from office by the King where a tribunal appointed under subsection (5) recommends that the member ought to be removed from office for -

(a) inability to exercise the functions of office (by reason of infirmity of body or mind or any other cause); or

(b) misbehaviour.

(5) Where the Prime Minister (after consultation with the line Minister) in the case of the chairman or the chairman in the case of any other member represents to the King that the question of removing a member of a service commission under subsection (4) ought to be investigated, then -

(a) the King shall appoint a tribunal consisting of a chairman (selected by the Chief Justice from persons who hold or have held or qualify to hold high judicial office) and two other persons recommended by the line Minister; and

(b) the tribunal shall enquire into the matter and report on the facts to the King and recommend whether the member ought to be removed under subsection (4).

Functions and powers of service commissions

176. (1) The functions of a service commission shall include appointments (including promotions and transfers) and selection of candidates for appointment, confirmation

of appointments, termination of appointments, disciplinary control and removal from office of officers within the public service or any sector of the public service.

(2) For the performance of its functions, a service commission may, among other things –

(a) inspect Government offices;

(b) examine official documents, books or other records;

(c) obtain information and advice from any public officer or other Government servant; and

(d) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of the functions of that service commission.

(3) A service commission may require any public officer or other Government employee whose evidence appears to be material to the determination of any enquiry or investigation conducted by that service commission, to attend at such time and place as may be specified by the service commission, to give evidence or produce any official document, book or other record in the possession or control of that person which relates to a matter in question at any inquiry or investigation.

(4) A service commission may, in consultation with the line Minister, make regulations for the better carrying out of its functions.

Protection of members

177. Every member of a service commission shall have such and like protection and privilege in the case of any action or suit brought against that member for any act done or omitted to be done in the honest execution of the duties of that member as is by law given to acts done or words spoken by a judge of the High Court in the exercise of the judicial office.

Independence of a service commission

178. In the performance of its functions under this Constitution, a service commission shall be independent of and not subject to any Ministerial or political influence and this independence shall be an aspect of the exercise of any delegated powers or functions of the Civil Service Commission or any other service commission or similar body.

Privilege of communication

179. A person shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between a service commission or any member or officer of that service commission, and the Government, or a line Minister, or any officer of the Government, or between any member or officer of a

service commission and its chairman, or between members or officers of a service commission, in exercise of, or in connection with the exercise of, the functions of a service commission, unless a judge of a superior court orders otherwise.

Oath of office

180. A member of a service commission or similar body shall not enter upon the duties of office until that member has taken and subscribed the oath of allegiance and the oath for the due execution of office as set out in the Second Schedule.

Delegation of functions

181. (1) Except as may be specified in this Constitution or any other law, nothing in this Constitution shall be construed as preventing a service commission from delegating any of its powers or functions to a principal secretary or head of department, or any other person or body of persons or line managers in respect of certain grades or ranks of officers.

(2) Where a delegation of functions is necessary, an appropriate framework for regulating the delegation of those functions shall be put in place before the delegated functions are exercised.

(3) Where there is authority for further delegation of functions, that delegation shall be subject to like principles and considerations as outlined in subsection (2).

(4) Notwithstanding the provisions of subsection (1), the delegation of powers or functions shall not be deemed to prevent a service commission from exercising any of the delegated powers or functions.

Legal representation

182. Any person appearing before a service commission or any person or body conducting an inquiry or investigation on behalf of a service commission shall be entitled to legal representation at the expense of that person.

Secretariat

183. (1) Every service commission shall set up and maintain a competent and qualified secretariat consisting of a secretary and support staff as determined by the body responsible for the public service management or any law.

(2) The functions of the secretariat shall include the following -

- (a) providing technical and administrative support to the service commission;
- (b) keeping proper files and correspondence of the service commission;
- (c) keeping proper records of minutes of the service commission;
- (c) convening and preparing for meetings of the service commission as the chairman may direct;
- (d) advertising new or vacant posts as the service commission may direct;
- (e) carrying out any other function which the service commission or chairman may direct.

Annual reports

184. Every service commission shall, as soon as possible after the end of each financial year, submit a report to the line Minister in respect of the discharge of its functions during the past year and the line Minister shall lay every such report before both Houses of Parliament for consideration during budget debates.

Application of this Part

185. This Part applies subject to any express limitation or enlargement to all the service commissions or similar bodies established under this Constitution or any other law.

Part 2 Civil Service Commission

Establishment, membership etc

186. (1) Subject to any other provision of this Constitution, the Civil Service Commission is established and constituted in terms of Part I of this Chapter. (2) The Civil Service Commission may, among other things -

- (a) initiate or cause to be initiated appropriate procedures or processes leading to the selection or short listing of candidates for appointment to public office;
- (b) enquire or cause to be enquired into any grievance or complaint whether or not leading to disciplinary action;
- (c) exercise appellate functions, with power to vary, in respect of certain decisions by persons or authorities exercising delegated powers;
- (d) do or cause to be done any act or thing reasonably necessary for the due and prompt execution of any function prescribed in this Constitution or any other law; and
- (e) delegate upon the Chairman or any of its members any of its functions.

Appointment, promotion, transfer etc of public officers

187. (1) Subject to the provisions of this Constitution or any other law, the power of appointment (including acting appointments, secondments, and confirmation of appointments) promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers shall vest in the Civil Service Commission.

(2) A public officer holding a permanent or temporary position shall not be eligible for appointment to any body that acts in any advisory capacity to the Head of State.

Appointment and removal from office of Ambassadors, etc

188. (1) The power to appoint persons to hold or act in the offices to which this section applies and to remove from office persons holding or acting in those offices shall vest in the King acting on the recommendation of the Minister responsible for foreign affairs.

(2) The offices to which this section applies are the office of Ambassador, High Commissioner, Swaziland Representative in any other foreign country or to an International Organisation.

The Police Service

189. (1) The Royal Swaziland Police Service shall be responsible for preserving the peace, for prevention and detection of crime and the apprehension of offenders.

(2) The Police Service shall have and exercise such other powers and functions as may be prescribed.

(3) Subject to any lawful superior orders, the command and overall superintendence of the Police Service shall vest in the Commissioner of Police who shall also be responsible for the administration and discipline of the Police Service.

(4) The power to appoint a person to hold or act in the office of Commissioner of Police (including that of Deputy Commissioner of Police) and the power to discipline and remove from office that person shall vest in the King acting on the advice of the minister responsible for the Police Service and the recommendation of the appropriate service commission or similar body.

(5) Subsection (4) does not apply in respect of officers below the rank of Deputy Commissioner of Police who, pending the formal establishment of a sector service commission or similar body, shall continue being the responsibility of the Civil Service Commission, subject to any delegation of that responsibility.

The Correctional Services

190. (1) The Correctional Services for Swaziland shall be responsible for the protection and holding on terms convicted persons and the rehabilitation of those persons and the keeping of order within the correctional or prison institutions of the Kingdom.

(2) The superintendence of the Correctional Services is vested in the Commissioner of Correctional Services.

(3) Subject to any lawful superior orders, the Commissioner of Correctional Services shall be responsible for the administration of and the discipline within the Correctional Services.

(4) The power to appoint a person to hold or act in the office of Commissioner of Correctional Services, (including that of Deputy Commissioner of Correctional Services) and the power to discipline or remove from office that person vests in the King acting on the advice of the Minister responsible for Justice and the recommendation of the appropriate service commission or similar body.

(5) Subsection (4) does not apply in respect of officers below the rank of Deputy commissioner of Correctional Services who, pending the formal establishment of a sector service commission, shall continue being the responsibility of the Civic Service Commission, subject to any delegation of that responsibility.

The Defence Force

191. (1) The Umbutfo Swaziland Defence Force consists of an Army, an Air Force and a Navy, in that order of precedence.

(2) The primary object of the Defence Force is to defend and protect the sovereignty and integrity and people of the Kingdom of Swaziland in accordance with the Constitution and the principles of international law regulating the use of force.

(3) The Umbutfo Swaziland Defence Force is a disciplined, non-partisan, permanent national defence force, ultimately subordinate and accountable to civilian authority.

(4) The King and iNgwenyama is the Commander-in-Chief of the Umbutfo Swaziland Defence Force whose members shall be citizens of Swaziland.

(5) The Army Commander and the other commanders are appointed and removed from office by the King and iNgwenyama as Commander-in-Chief acting on the advice of the Defence Council.

(6) There shall be a Defence Council appointed and removed from office by the King and iNgwenyama on prescribed terms and conditions.

(7) The Defence Council is responsible for, among other things, advising the King and iNgwenyama on all matters concerning the Defence Force.

Disciplinary control over Principal Secretaries, Ambassadors, etc.

192. (1) The power to exercise disciplinary control including removal of the officers to which this section applies vests in the King acting as provided in this section.

(2) Before exercising any disciplinary control in terms of subsection (1), the King shall direct the line Minister to refer the question of the exercise of that disciplinary control to the Civil Service Commission or appropriate similar body.

- (3) The line Minister shall cause the person concerned to be furnished with a statement of the grounds upon which it is proposed to exercise the disciplinary control.
- (4) The Civil Service Commission or other appropriate similar body shall enquire into the facts of the case and shall, where the person so requests, consider any representations made by that person orally or in writing or by legal representative.
- (5) The Commission or the other body shall report to the line Minister its findings on the facts and its recommendations concerning the exercise of disciplinary control.
- (6) Where the Commission or the other body reports adversely and recommends the exercise of the proposed disciplinary control, the concerned person shall be entitled to the report.
- (7) The line Minister shall make any comments on the report and transmit the report with the comments to the King.
- (5) This section applies to the office of –
- (a) Secretary to Cabinet; (b) Principal Secretary; (c) Commissioner or Deputy Commissioner of Police; (d) Commissioner or Deputy Commissioner of Correctional Services; (e) Ambassador, High Commissioner, Swaziland Representative to a foreign country or to an International Organisation.

Recognition of other service commissions

193. (1) Subject to the provisions of this Constitution and any other law, other service sectors having separate service commissions or similar bodies may be recognised as part of the public service.
- (2) The recognition of certain service commissions or similar bodies at the commencement of this Constitution does not preclude the recognition or establishment of other service commissions in terms of any other law.
- (3) For the avoidance of any doubt, in any case in which this section or this Constitution does not apply the power to appoint, promote, transfer, or discipline or dismiss public officers shall, pending the establishment of the appropriate service commission or similar body continue to vest where it vests at the commencement of this Constitution.

Protection of public officers

194. (1) A public officer shall not be –(a) victimized or discriminated against for having performed faithfully the duties of office in accordance with this Constitution; or
- (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause or due process of law.
- (2) A public officer who is appointed by the King and who has been removed but not dismissed from that office unless promoted shall revert to the same or equivalent rank in the public service which that officer held prior to the appointment in terms of that section or accept a retirement package.
- (3) An officer referred to in sub-section (2) shall not have or continue to enjoy any personal right to the salary or related privileges of the position or rank from which that officer has been removed.
- (4) The matter of a public officer who has been suspended shall be finalised within six months failing which the suspension shall be lifted.
- (5) Where the suspension is lifted under the provisions of subsection (4) the suspending authority shall give a full report to the line Minister as to the circumstances leading to the suspension and the lifting of that suspension.

Pensions laws and protection of pensions rights

195. (1) The law to be applied with respect to any pensions benefits that were granted to any person at the date of the commencement of this Constitution shall be the law

that is in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) applies) shall -

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before the date of commencement of this Constitution, be the law that was in force immediately before that date; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after the date of commencement of this Constitution, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply, the law for which that person shall opt, shall for the purposes of this section, be deemed to be more favourable to that person than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been fully paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) Subject to the imposition of any reasonable conditions relating to the form in which any payment of pensions benefits is to be remitted, a person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Swaziland may, within a reasonable time after that person has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of the remission) to any country of choice outside Swaziland.

(6) Pensions benefits shall not be the subject of attachment by order of court for the satisfaction of any judgment or pending the determination of civil proceedings to which a person is a party except where that judgement or civil proceedings are in respect of maintenance.

(7) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of those persons in respect of that service.

(8) Reference in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power of commissions over pensions

196. (1) Where under any law any person or authority has a discretion – (a) to decide whether or not any pensions benefits shall be granted; or (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold, reduce in amount or suspend those benefits.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to that person shall be the greatest amount for which that person is eligible unless the appropriate Commission concurs in that person being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) in any action taken on the ground that any person who holds or has held the office of judge of the High Court, judge of the Supreme Court, Attorney General, Auditor-General or Director of Public Prosecutions has been guilty of misbehaviour unless that person has been removed from office by reason of that misbehaviour.

(4) In this section “the appropriate Commission” means -(a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before that person ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission; and

(b) in any other case, the Civil Service Commission or any other Service Commission or similar body.

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their services as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such services.

Right of action for wrongful dismissal, etc

197. (1) Where a public officer is removed from office under any of the provisions of this Constitution the removal of that person shall be without prejudice to any right of action to which that person may be entitled under any law for the time being in force for damages for wrongful dismissal or loss of status.

(2) The provisions of subsection (1) shall not apply and no damages shall be recoverable where the public officer is offered appointment to another public office in respect of which the emoluments are not less than the emoluments of the office from which that officer is removed.

(3) The law relating to rights of action for damages for wrongful dismissal or loss of status shall not be altered to the disadvantage of a public officer during the continuance in office of that public officer.

(4) This section does not apply to the holder of the office -(a) of judge of the High Court, judge of the Supreme Court, Attorney General, Director of Public Prosecutions, or Auditor-General;

(b) of member of a Service Commission, Commission or Board, established under this Constitution;

(c) to which section 188 applies;

who immediately prior to the appointment to that office (or where the person has held more than one such office in succession, to those offices) was not a public officer.

CHAPTER XI PUBLIC FINANCE

Consolidated Fund

198. (1) There shall be a Consolidated Fund into which, subject to the provisions of this Constitution, shall be paid -

(a) all revenue or other monies raised or received for the purposes or on behalf of the Government; and

(b) any other monies raised or received in trust for, or on behalf of, the Government.

(2) The revenues or other monies referred to in subsection (1) shall not include revenues or other moneys -

(a) that are payable in terms of or under this Constitution or any other law into some other fund established for a specific purpose ; or

(b) that may, in terms of or under any law, be retained by the department that received them for the purposes of defraying the expenses of that department.

Withdrawals from Consolidated Fund or Public Fund

199. (1) Monies shall not be withdrawn from the Consolidated Fund except-(a) to meet expenditure that is charged upon the Fund in terms of this Constitution or any other law in force in Swaziland; or

(b) where the issue of those monies has been authorised by, (i) an Appropriation Act; or

(ii) a supplementary estimate approved by a resolution of the House.

(2) Monies shall not be withdrawn from any public fund of Swaziland other than the Consolidated Fund or any Contingencies Fund unless the withdrawal of those moneys has been authorised by an Act of Parliament.

(3) Monies shall not be withdrawn from the Consolidated Fund except in the manner prescribed by an Act of Parliament.

(4) For the purposes of this section – (a) the deposit with a bank of any monies forming part of the Consolidated Fund;

(b) the investment of any monies forming part of the Consolidated Fund in the securities in which, under any law of Swaziland , trustees are authorised to invest;

(c) the making of advances to such extent and circumstances as may be prescribed,

are not to be regarded as withdrawal of those monies from the Fund.

Appropriation Act

200. (1) The Minister responsible for finance shall cause to be prepared and laid before both chambers of Parliament, before or not later than sixty days after the

commencement of each financial year, estimates of the revenues and expenditure of Swaziland for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund in terms of this Constitution or any other law) shall be included in a bill to be known as an Appropriation Bill which shall be introduced in the House to provide for the withdrawal from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

Supplementary estimates

201. (1) Where in any financial year it is found that– (a) the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated in terms of the Appropriation Act; or

(b) moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head in terms of the Appropriation Act or for a purpose for which no amount has been appropriated in terms of the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House and shall be included in a motion or motions seeking approval for the supplementary expenditure in such a manner as the House shall prescribe.

(2) Where a supplementary estimate is deemed desirable a final supplementary Appropriation Bill shall be introduced in the House, not later than the end of the financial year to which the estimate relates.

Expenditure in advance of appropriation

202. (1) Where the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, where the Minister considers that there is an urgent need to incur the expenditure and after obtaining the approval by the House, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure

necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

(2) The expenditure authorised under sub-section (1) shall not exceed one quarter of the amount authorised for that service in the preceding year.

Contingencies Fund

203. (1) There shall be a Contingencies Fund into which shall be paid moneys voted by Parliament or obtained pursuant to authority under an Act of Parliament and from which advances may be authorised by the Finance Committee established in terms of this Constitution, whenever this Committee is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the House, and a bill or motion shall be introduced in that House, as soon as possible, for the purpose of replacing the amount so advanced.

Power to borrow or lend

204. (1) Subject to the provisions of this Constitution, the Government, through the Minister responsible for finance, may borrow or raise moneys from any reputable source.

(2) The Minister responsible for finance shall not borrow, guarantee or raise a loan on behalf of Government or any other public institution, authority or person except as authorised by or under an Act of Parliament.

(3) An Act of Parliament made under subsection (2) shall provide, among other things, that -

(a) the terms and conditions of the loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament; and

(b) any moneys received in respect of the loan referred to in paragraph (a) shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund existing or created for the purpose of the loan.

(4) The House may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

(5) An agreement entered into in terms of subsection (4) shall be laid before the House and shall not come into operation unless it has been approved by the House by resolution.

(6) For the purposes of this section, the expression “loan” includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which -

- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or
- (b) moneys from any fund by whatever name called, established for the purposes of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

(7) Parliament may by law exempt any categories of loans from the provisions of subsections (2) and (3) subject to such conditions as Parliament may prescribe.

Public debt

205. (1) All debt charges for which Swaziland is liable shall be a charge on and paid out of the Consolidated Fund.

(2) For the purposes of this section “debt charges” includes interest on that debt, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the revenues of Swaziland or the Consolidated Fund and on the service and redemption of debt thereby created.

The Central Bank

206. (1) There shall be the Central Bank of Swaziland consisting of the Governor and such other staff and having such powers and functions as Parliament shall determine.

(2) The Central Bank shall, among other things-(a) be the only authority to issue the currency of the Kingdom;

(b) be the sole custodian of public funds both in and outside Swaziland with power, by appropriate instrument, to delegate such custody of funds as may be specified in that instrument;

(c) maintain an adequate external reserve for Swaziland;

(d) supervise the operations of financial institutions in the Kingdom;

(e) issue securities on its own accounts;

(f) promote monetary stability and a sound financial structure in Swaziland; and

(g) foster financial conditions supportive of an orderly balanced economic development of Swaziland.

(3) The powers of the Bank shall vest in a Board of Directors appointed by the Minister responsible for finance of which the Governor and the Deputy Governor shall be members.

(4) The Governor shall be appointed by the King on the advice of the Prime Minister based on the recommendation of the Board.

(5) The Bank shall be independent and not subject to the control or direction of any person or authority save as may be necessary for the due performance of its functions.

(6) The Bank shall have power to disallow any transaction, investment or transfer of any foreign exchange both in and outside Swaziland which is contrary to the law or which may be prejudicial to the monetary policy or price stability of Swaziland when performing its functions under this Constitution or any other law.

(7) Parliament shall make law for the proper organisation and efficient operation of the Bank and for other matters incidental to the operation of the Bank.

Auditor-General

207. (1) There is established the office of Auditor-General, which is a public office.

(2) The Auditor-General shall be appointed by the King acting on the advice of the Minister responsible for finance after recommendation by the Civil Service Commission.

(3) The public accounts of Swaziland and of all offices, courts and authorities of the Government shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any other person authorised by the Auditor-General shall have access to all books, records, reports and other documents relating to those accounts.

(4) Notwithstanding the provisions of subsection (3), where it is provided by any law, in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by that law.

(5) The Auditor-General shall submit reports to the Minister responsible for finance, who shall cause those reports to be laid before both chambers of Parliament.

(6) The Auditor-General shall perform such other functions as may be conferred by law.

(7) The Auditor-General shall, in the exercise of the powers of that office, be independent and not be subject to the direction or control of any person or authority.

(8) The Auditor-General shall, in the performance of the functions under this Constitution or any other law, have power to disallow any item of expenditure which is contrary to law and to surcharge the person responsible for incurring or authorising that expenditure or loss.

(9) The Auditor-General may only be removed from office on the same grounds and in the like manner as a judge of the superior court in terms of section 158 subject to the substitution of the Chief Justice and the Judicial Service Commission with the Chairman and the Civil Service Commission respectively.

Remuneration of certain officers

208. (1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the office to which this section applies shall be a charge on and paid out of the Consolidated Fund.

(3) The salary and the terms of office of the holder of any office to which this section applies shall not be altered to the disadvantage of the holder of that office after that holder has been appointed to that office.

(4) This section applies to the office of judge of the superior courts, appointed member of a Board, Commission or service commission, Attorney-General, Director of Public Prosecutions, Auditor-General, Secretary to Cabinet and such other office as may be prescribed.

The finance and public accounts committees

209. (1) There shall be established in the House two sessional committees, namely-

(a) the Finance Committee, and (b) the Public Accounts Committee.

(2) The duties of the Finance Committee shall be as regulated by the Standing Orders of the House and shall include -

(a) considering and reporting to the House on any supplementary estimate in terms of section 201; and

(b) considering and reporting to the House on any matter relating to public finance as the House may refer to the Committee.

(3) The duties of the Public Accounts Committee, shall be regulated by the Standing Orders of the House and shall include the duty to examine and report to the House on the accounts of the Government tabled before the House in terms of section 208(5).

(4) The provisions of section 129 shall apply in relation to the general powers, procedure and privileges of the two committees.

CHAPTER XII LAND, MINERALS, WATER AND ENVIRONMENT

Declaration of land, minerals and water as national resource

210. (1) Subject to the provisions of this Constitution or any other law, land, minerals and water are national resources.

(2) In the interests of the present and future generations, the State shall protect and make rational use of its land, mineral and water resources as well as its fauna and flora, and shall take appropriate measures to conserve and improve the environment.

Land

211. (1) From the date of commencement of this Constitution, all land (including any existing concessions) in Swaziland, save privately held title-deed land, shall continue to vest in iNgwenyama in trust for the Swazi Nation as it vested on the 12th April, 1973.

(2) Save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes.

(3) A person shall not be deprived of land without due process of law and where a person is deprived, that person shall be entitled to prompt and adequate compensation for any improvement on that land or loss consequent upon that deprivation unless otherwise provided by law.

(4) Subject to subsection (5), all agreements the effect of which is to vest ownership in land in Swaziland in a non-citizen or a company the majority of whose share-holders are not citizens shall be of no force and effect unless that agreement was made prior to the commencement of this Constitution.

(5) A provision of this chapter may not be used to undermine or frustrate an existing or new legitimate business undertaking of which land is a significant factor or base.

Land Management Board

212. (1) There shall be established a Land Management Board (hereafter in this section referred as the "Board"), shall consist of a chairman and not more than four members appointed by iNgwenyama.

(2) The members of the Board shall be appointed for a period of not more than five years and shall be eligible for re-appointment.

(3) The allowances payable to the members of the Board shall be charged on the Consolidated Fund.

(4) The Board is responsible for the overall management, and for the regulation of any right or interest in land whether urban or rural or vesting in iNgwenyama in trust for the Swazi nation.

(5) In performing its functions the Board shall be accountable to iNgwenyama.

(6) Subject to the provisions of this section, the Board may regulate its own procedure.

(7) A member of the Board (including the chairman) may be removed from office as far as may be practicable on the same grounds and in like manner as a member of a service commission under section 175.

Minerals

213. All minerals and mineral oils in, under or upon any land in Swaziland shall, after the commencement of this Constitution, continue to vest in iNgwenyama in trust for the Swazi Nation as vested on the 12 th April 1973.

Minerals Management Board

214. (1) There is established a Minerals Management Board (hereinafter referred to in this section as the “Board”) which shall consist of the Commissioner of Mines, a mine engineer, an economist, a legal practitioner with at least five years experience and three other persons all of whom shall be appointed by iNgwenyama on the advice of the Minister responsible for minerals.

(2) iNgwenyama shall appoint one of the persons referred in subsection (1) as Chairman of the Board.

(3) The members of the Board other, than the Commissioner of Mines, shall be appointed for a period of not more than five years and may be eligible for re appointment.

(4) The allowances payable to the members of the Board shall be charged on the Consolidated Fund.

(5) The functions of the Board is to advise iNgwenyama on the overall management of minerals and making of grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Swaziland.

(6) A member of the Board (including the chairman) may be removed from office as far as may be practicable on the same grounds and in like manner as a member of a service commission under section 175 subject to the substitution of the Prime Minister in that section with the minister responsible for natural resources.

(7) Subject to the provisions of this section, the Board shall regulate its own procedure.

Water

215. There shall be no private right of property in any water found naturally in Swaziland.

Environment

216. (1) Every person shall promote the protection of the environment for the present and future generations.

(2) Urbanisation or industrialisation shall be undertaken with due respect for the environment.

(3) The Government shall ensure a holistic and comprehensive approach to environmental preservation and shall put in place an appropriate environmental regulatory framework.

Further provisions

217. Parliament may make laws -

(a) providing for the management of land and settlement of land disputes and for the regulation of any right or interest in land whether urban or rural and whether privately owned or vesting in the King;

(b) regulating the rights and interests in minerals and mineral oils;

(c) regarding the use of water naturally found in Swaziland; and

(d) for the protection of the environment including management of natural resources on a sustainable basis.

CHAPTER XIII LOCAL GOVERNMENT

Local government

218. (1) Parliament shall within five years of the commencement of this Constitution provide for the establishment of a single country-wide system of local government which is based on the tinkhundla system of government, hierarchically organised according to the volume or complexity of service rendered and integrated so as to avoid the urban/ rural dichotomy.

(2) The primary objective of the tinkhundla – based system of government is to bring government closer to the people so that the people at sub-national or local community level progressively take control of their own affairs and govern themselves.

(3) Local government shall be organised and administered, as far as practicable, through democratically established regional and sub-regional councils or committees.

Local government areas

219. (1) Parliament shall provide for the division of Swaziland into as many local government areas as the Elections and Boundaries Commission may from time to time recommend.

(2) In defining local government areas the Commission shall –(a) take into account existing chiefdom areas;

(b) redraw tinkhundla boundaries as may be necessary;

(c) integrate urban and rural areas where necessary;

(d) take into consideration –

(i) the population, the physical size, the geographical features, the economic resources, the existing or planned infrastructure of each area;

(ii) the possibilities of facilitating the most rational management and use of the resources and infrastructure of the area,

with a view to ensuring that a local government area is, or has the potential for becoming, economically sustainable.

(3) The boundaries of chiefdom areas may be changed subject to section 115.

(4) A town or city may be divided into two or more areas of local government.

(5) Local government areas may be rural or urban or partly rural and partly urban.

(6) Subject to the recommendations of the Commission, Parliament may abolish a local government or alter the boundaries of a local government area.

Administration of local government areas

220. (1) A local government area shall be administered by an elected or appointed, or partly elected and partly appointed council or committee as Parliament may prescribe.

(2) Subject to re-election or re-appointment, the term of office of a council or committee shall be similar to that for members of Parliament.

Duties of a local government authority

221. (1) The primary duty of a local government authority is to ensure, in accordance with the law, the efficient management and development of the area under its jurisdiction in consultation with local traditional authority where applicable.

(2) A local government authority may maintain and protect life, public property, improve working and living conditions, promote the social and cultural life of the people, raise the level of civic consciousness, preserve law and order within its area and generally preserve the rights of the people in that area.

(3) Depending on its level of development, a local government authority shall determine, plan, initiate and execute policies, taking into account national policy or development plan.

(4) A local government authority shall organise and promote popular participation and cooperation in respect of political, economic, cultural and social life of the area under its control.

(5) A local government authority may oversee the performance of persons employed by the Government services or implementation of Government projects in the area of that local government authority.

Power to raise revenue, etc.

222. Subject to any other law a local government has power-(a) to levy and collect taxes, rates, duties and fees as may be specified for the execution of its programmes and policies;

(b) to formulate and execute plans, programmes and strategies for the effective mobilisation of the resources necessary for the overall benefit and welfare of the people within its area.

Subvention of local governments

223. The Government shall where necessary allocate funds and necessary expertise for the assistance of local governments.

Integration of development programmes

224. The development programmes of a local government shall where appropriate be integrated into the national development plan to be mainly funded by the Government.

Management of local government affairs

225. (1) There shall be designated a ministry to be responsible for the management of local government affairs.

(2) For effective management, the affairs of the ministry shall be divided along the four Regions headed by regional administrators in terms of this Constitution.

(3) Each Region shall be divided into various local government areas as provided under sections 80 and 219.

(4) For purposes of this chapter, chiefs shall be under the general oversight of the ministry for local government.

Constitution of local government authorities

226. Subject to the provisions of this Constitution, Parliament shall make provision for the constitution, powers, election, membership, vacation, qualification and regulations, accountability, auditing, control and supervision of local government authorities.

CHAPTER XIV TRADITIONAL INSTITUTIONS

Traditional institutions

227. (1) The Swazi traditional government is administered according to Swazi law and custom and the traditional institutions that are pillars of the monarchy as set out in subsection (2).

(2) The following Swazi traditional institutions are hereby guaranteed and protected -

(a) iNgwenyama; (b) iNdlovukazi; (c) Ligunqa (Princes of the Realm); (d) Likoqo (e) Sibaya; (f) (Tikhulu) Chiefs; (g) Umntfwanenkhusi Lomkhulu (Senior Prince); (h) Tindvuna (Royal Governors).

iNgwenyama

228. (1) iNgwenyama is the traditional head of the Swazi State and is chosen by virtue of the rank and character of his mother in accordance with Swazi law and custom.

(2) iNgwenyama enjoys the same legal protection and immunity from legal suit or process as the King.

(3) Subject to an elaborate system of advisory councils, the functions of iNgwenyama under this chapter shall be regulated by Swazi law and custom.

The Ndlovukazi

229. (1) The Ndlovukazi (Queen Mother) is traditionally the mother of the iNgwenyama and the symbolic Grandmother of the Nation.

(2) The Ndlovukazi is selected and appointed in accordance with Swazi law and custom.

(3) The official residence of the Ndlovukazi is the legislative and ceremonial capital of the nation and the arena of the Incwala and Umhlanga.

(4) The Ndlovukazi has such powers and performs such functions as Swazi law and custom assigns to her.

(5) Without derogating from the generality of subsection (4) the Ndlovukazi exercises a moderating advisory role on iNgwenyama.

(6) The Ndlovukazi shall be immune from-(a) suit and legal process in any civil case in respect of all things done or omitted to be done by her in her private capacity; and (b) being summoned to appear as a witness in any civil or criminal proceedings.

(7) The Ndlovukazi shall be immune from taxation in respect of emoluments or any income accruing to her in her private capacity and all property owned by her in her private capacity.

Ligunqa

230. (1) The Ligunqa (Bantfwabenkhusi) are princes of the realm, the paternal uncles and half-brothers of iNgwenyama who exercise functions of a sikhulu (chief) over some area and whose mothers were given liphakelo (authority to oversee and exercise jurisdiction over an area accorded by iNgwenyama in accordance with Swazi law and custom).

(2) Ligunqa ranks above likoqo and is convened by iNgwenyama or the Ndlovukazi as Queen Regent.

(3) The membership of ligunqa includes the indvuna referred to in Section 235(2) and some members of Emabekankhusi (king-makers) determined in accordance with Swazi law and custom.

(4) iNgwenyama, from time to time, consults all or some of the members of ligunqa on important or sensitive matters or disputes including matters of succession connected with the monarchy.

(5) Ligunqa will also advise iNgwenyama, the Ndlovukazi as Queen Regent where that advice is necessary in the national interest to ensure the stability and continuity of the monarchy.

Likoqo

231. (1) The Likoqo is an advisory council whose members are appointed by iNgwenyama from the membership of bantfwabenkhusi (emalangen), tikhulu (chiefs) and persons who have distinguished themselves in the service of the Nation.

- (2) Where necessary the members of liqoqo may be appointed by the Ndlovukazi as Queen Regent.
- (3) Liqoqo traditionally advises iNgwenyama on disputes in connection with the selection of tikhulu (chiefs) boundaries of chiefdoms and any other matter iNgwenyama may assign for their advice in confidence.
- (4) A judicial officer, member of Parliament or of a service commission shall not at the same time qualify to be a member of liqoqo.
- (5) A member of liqoqo shall hold office for a period not exceeding five years and shall be eligible for re-appointment and shall vacate office where the member -
 - (a) dies; (b) resigns; or (c) is removed from office by iNgwenyama or Indlovukazi as Queen Regent.
- (6) A member of liqoqo shall, before assuming office, take and subscribe the oath of allegiance and due execution of office set out in the Second Schedule.
- (7) Liqoqo is convened and traditionally presided over by iNgwenyama who may assign this responsibility to any person designated by him for that purpose.

Sibaya (the Swazi National Council)

- 232. (1) The people through Sibaya constitute the highest policy and advisory council (Libandla) of the nation.
- (2) The Sibaya is the Swazi National Council constituted by Bantfwabenhosi, the tikhulu of the realm and all adult citizens gathered at the official residence of the Ndlovukazi under the chairmanship of iNgwenyama who may delegate this function to any official.
- (3) Sibaya functions as the annual general meeting of the nation but may be convened at anytime to present the views of the nation on pressing and controversial national issues.

Tikhulu (Chiefs)

- 233. (1) Chiefs are the footstool of iNgwenyama and iNgwenyama rules through the Chiefs.
- (2) The iNgwenyama may appoint any person to be chief over any area.
- (3) The general rule is that every umphakatsi (Chief's residence) is headed by a Chief who is appointed by iNgwenyama after the Chief has been selected by the lusendvo (family council) and shall vacate office in like manner.
- (4) The position of a Chief as a local head of one or more areas is usually hereditary and is regulated by Swazi law and custom.
- (5) Unless the situation otherwise requires, a chief shall assume office at the age of eighteen years or so soon thereafter as the period of mourning comes to an end.
- (6) A Chief, as a symbol of unity and a father of the community, does not take part in partisan politics.
- (7) A Chief may be appointed to any public office for which the Chief may be otherwise qualified.
- (8) The powers and functions of chiefs are in accordance with Swazi law and custom or conferred by Parliament or iNgwenyama from time to time.
- (9) In the exercise of the functions and duties of his office a Chief enforces a custom, tradition, practice or usage which is just and not discriminatory.

Umntfwanenkosi Lomkhulu (Senior Prince)

234. Umntfwanenkhusi Lomkhulu is a paternal uncle of the King selected and appointed in accordance with Swazi law and custom.

Tindvuna

235. (1) Traditionally Swaziland has a number of tindvuna or governors in charge of the regiments and the royal villages.

(2) The Indvuna of the Ndlovukazi's residence is the first-amongst-equals or governor-general.

(3) The position of an indvuna is not strictly hereditary even though appointment is made within a limited range of leading commoner families.

(4) Tindvuna assist in the traditional government of the country by carrying out certain decisions and advising iNgwenyama or Ndlovukazi in various other respects.

(5) Tindvuna hear cases, give judgments and advise on the temper of the nation, organise labour for the royal fields and ensure that the royal kraals and villages are periodically repaired.

(6) Tindvuna also facilitate access to iNgwenyama or Ndlovukazi to those seeking royal audience.

(7) The Tindvuna of the royal residences will normally have a small council to consult before taking a decision.

CHAPTER XV INTERNATIONAL RELATIONS

International relations

236. (1) In dealing with other nations, Swaziland shall – (a) promote and protect the interests of Swaziland;

(b) observe and promote the policy of non-interference in the internal affairs of other nations;

(c) promote the principle of peaceful settlement of international disputes;

(d) endeavour to uphold the principles, aims and ideals of

- the United Nations, - the Commonwealth, - the African Union, - the Southern African Development Community, - other international organizations of which Swaziland is a member.

(2) Swaziland shall conduct its international affairs directly or through officers of the Government in accordance with the accepted principles of public or customary international law and diplomacy in a manner consistent with the national interest.

Diplomatic representation

237. (1) Subject to the provisions of section 188, the King shall appoint and remove from office the diplomatic representatives of Swaziland to other countries and international organisations.

(2) The King may receive envoys accredited to Swaziland.

International agreements

238. (1) The Government may execute or cause to be executed an international agreement in the name of the Crown.

(2) An international agreement executed by or under the authority of the Government shall be subject to ratification and become binding on the government by -

(a) an Act of Parliament; or

(b) a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament.

(3) The provisions of sub-section (2) do not apply where the agreement is of a technical, administrative or executive nature or is an agreement which does not require ratification or accession.

(4) Unless it is self-executing, an international agreement becomes law in Swaziland only when enacted into law by Parliament.

(5) Accession to an international agreement shall be done in the same manner as ratification under sub-section (2).

(6) For the purposes of this section, “international agreement” includes a treaty, convention, protocol, international agreement or arrangement.

CHAPTER XVI LEADERSHIP CODE OF CONDUCT

Purpose of Code

239. The Leadership Code of Conduct seeks to ensure that those in leadership, whether elective or appointive -

- (a) are transparent in their activities and accountable to the people they represent or serve;
- (b) are committed to the rule of law and administrative justice;
- (c) adhere to the principles of service for the common good;
- (d) do not abuse office; and
- (e) do not engage in conduct that is likely to lead to corruption in public affairs.

Conflict of interest

240. A person who holds an office referred to in section 241 (2) shall not-(a) assume a position where personal interest conflicts or is likely to conflict with the performance of functions of office; and

(b) engage in conduct that is -

- (i) likely to compromise the honesty, impartiality and integrity of that officer;
- (ii) likely to lead to corruption in public affairs; or (iii) which is detrimental to the public good or welfare or good governance.

Declaration of assets and liabilities

241. (1) A person who holds an office mentioned in sub-section (2) shall submit to the Integrity Commission, a written declaration of all property, assets owned by, or any benefit gained or liabilities owed by the holder of that office whether directly or indirectly -

- (a) within six months after the commencement of the Integrity Commission or before taking office as the case may be;
- (b) at the end of every two years; and (c) at the end of his term of office.

(2) Sections 240 and 241(1) apply to the holders of the following offices-(a) Prime Minister, Deputy Prime Minister and Minister;

- (b) member of the King’s Advisory Council;
- (c) member of Parliament including the Presiding Officers;
- (d) Chairman and member of a Service Commission or Board;
- (e) Army Commander and Deputy Army Commander;

- (f) Commissioner of Customs;
- (g) Commissioner of Police and Deputy Commissioner of Police;
- (h) Commissioner of Labour;
- (i) Commissioner of Correctional Services and Deputy Commissioner of Correctional Services;
- (j) Commissioner of Taxes;
- (k) Justice of the Superior Court of Judicature and all judicial officers;
- (l) Ambassador, High Commissioner, and Head of Diplomatic or Consular Mission;
- (m) Secretary to the Cabinet;
- (n) Commissioner and Deputy Commissioner of the Integrity Commission;
- (o) Member of the Elections and Boundaries Commission;
- (p) Attorney-General and Deputy Attorney-General;
- (q) Head of Ministry of government or department;
- (r) Director of Public Prosecutions and Deputy Director of Public Prosecutions;
- (s) Managing Director, general manager and departmental head of a public corporation or company in which the Government has a controlling interest; and
- (t) in the public service and any other public institution as Parliament may prescribe.

(3) The Commissioner and Deputy Commissioner of the Integrity Commission shall make the declaration under this section to the Judicial Service Commission.

(4) The declaration made under this section shall, on demand be produced in evidence before -

(a) a court of competent jurisdiction; or (b) an investigator appointed by the Integrity Commission.

(5) Any property or assets acquired by an officer after initial declaration required under this section and which is not reasonably attributable to income, government loan, inheritance or any other legitimate source shall be deemed to have been acquired in contravention of this Chapter unless duly declared.

(6) An allegation that an officer referred to in this section has contravened or has not complied with a provision of this Chapter shall be made to the Integrity Commission and in the case of a member of the Integrity Commission, to the Judicial Service Commission which shall, unless the person concerned makes a written admission of the contravention or non compliance, cause the matter to be investigated.

(7) The Integrity Commission or the Judicial Service Commission, as the case may be, may take such action as the commission considers appropriate in respect of the results of the investigation or admission.

Failure to comply with Code

242. (1) An officer who contravenes the Code may, after due process of law, be dismissed or removed from office by reasons of such breach or abuse and may be disqualified from holding any public office either generally or for a specified period.

(2) Any property or assets acquired after the initial declaration under this Chapter and which is not reasonably attributable to income, government loan, inheritance or any other legitimate source, shall, after due process of law, be forfeited to Government.

The Integrity Commission

243. (1) The Commission on Human Rights and Public Administration established in terms of section 163 of this Constitution shall for purposes of this Chapter, constitute the Integrity Commission.

(2) The Integrity Commission is responsible for receiving from time to time, declarations in writing of assets and liabilities of persons referred to in section 240(2), for enforcing the Code and supervising all matters connected with the Code as may be prescribed.

Penalties, etc

244. Parliament may make law -

(a) prescribing penalties additional to those prescribed for breach of the Code;

(b) prescribing procedures, guidelines and practices for ensuring the effective enforcement of the Code;

(c) necessary for ensuring the promotion and maintenance of honesty, probity, impartiality and integrity in public affairs;

(d) for the proper custody of declarations and other documents delivered to the Commission;

(e) for the maintenance of secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any person referred to in section 240 (2); and

(f) for a suitable judicial code of conduct.

CHAPTER XVII AMENDMENT OF THE CONSTITUTION

Mode of Amendment

245. (1) Subject to the provisions of this chapter, Parliament may amend any provision of this Constitution by the introduction of a bill expressly providing that the Constitution shall be amended as proposed in that bill.

(2) A bill to amend this Constitution shall only be introduced at a joint sitting of the Senate and the House summoned for the purpose in accordance with the provisions of the First Schedule.

(3) A bill under subsection (2) shall not be so introduced unless that bill has been published in the Gazette not less than thirty days before the introduction at the joint sitting.

(4) After the bill has been introduced in the joint sitting, no further proceedings shall be taken on the bill in Parliament until the prescribed period has elapsed.

(5) If, after the prescribed period the bill is passed at the joint sitting and or at a referendum with the requisite majority, the bill shall be submitted to the King for assent.

Amendment of specially entrenched provisions

246. (1) Where a bill in terms of this Chapter contains provision for amending any of the specially entrenched provisions of this Constitution as set out in sub-section (2), the bill shall not be passed at the joint sitting unless it is supported on its final reading by the votes of not less than three-quarters of all the members of the two chambers.

(2) The specially entrenched provisions are as follows -(a) The Kingdom and its Constitution: section 2;

(b) Monarchy: section 4, 5, 7(2), 7(3), 8(2), 9, 10, 11;

(c) Protection and Promotion of Fundamental Rights and Freedoms Chapter III

(d) The Executive: section 64, 65, 66(1), 69(1), 69(2);

- (e) The Legislature: section 79, 84, 93, 106, 108, 115, 119(1), 134;
 - (f) The Judicature: section 138, 139, 140, 141, 146, 151, 153(1) 155, 158, 159 except 159(5);
 - (g) Director of Public Prosecutions and the Commission on Human Rights: section 162(1), 162(4), 162(6);
 - (h) Public Finance: section 207(1);
 - (i) Land, Minerals, etc: section 210(1), 211(1), 213;
 - (j) Traditional Institutions: section 227, 228, 229; 230; 231;
 - (k) Amendment of the Constitution: Chapter XVII;
 - (l) Miscellaneous: Chapter XVIII in its application to any of the provisions referred to in this section except section 251;
 - (m) The First Schedule in its application to any of the provisions referred to in this section.
- (3) Where a bill in terms of this section has been duly passed at a joint sitting that bill shall not be presented to the King for assent unless it is approved by a simple majority of all votes validly cast at a referendum in such manner as may be prescribed, at which every person who at the time of the referendum is registered as a voter for purposes of the elected members of the House shall be entitled to vote.

Amendment of the entrenched provisions

247. (1) Where a bill in terms of this chapter contains provision for amending any of the entrenched provisions of this Constitution (as set out in subsection (2)), the bill shall not be passed at the joint sitting unless it is supported on its final reading by the votes of at least two-thirds of all the members of the two chambers.

- (2) The entrenched provisions are as follows -(a) Monarchy: section 12, 13;
- (b) The Executive: section 67, 68(2), 68(4), 68(7), 70, 77(1), 77(2), 77(8), 77(9);
- (c) The Legislature: section 85(1), 87(1), 87(2), 90, 105, 107, 111, 112, 115, 116, 117, 130, 131(1), 131(2), 133(1), 133(4), 135, 136;
- (d) The Judicature: section 142, 145, 147, 148, 149, 150, 154, 156, 157, 159(5), 160;
- (e) Director of Public Prosecutions and the Commission on Human Rights and Administration of Justice, section 162(2), 162(3), 162(5), 162(7), 163; 164, 166, 170;
- (f) The Public Service: section 173, 175, 176, 177, 178, 179, 181, 182, 187, 188, 189, 190, 191, 192, Part 3;
- (g) Public Finance: Chapter XI except section 207(1);
- (h) Land, Minerals, etc: section 212(1), 212(7), 214(1), 214(6), 215;
- (i) Local Government: section 218;
- (j) Traditional Institutions: Chapter XIV except sections 227, 228 and 229;
- (k) International Relations: section 236, 238;
- (l) Leadership Code of Conduct: section 240, 241(1), 242, 243;
- (m) Miscellaneous: Chapter XVIII in its application to any of the provisions referred to in this section;
- (n) The First Schedule in its application to any of the provisions referred to in this section.

Certificate of compliance

248. (1) A bill passed as provided under this chapter shall not be presented to the King for assent unless that bill is accompanied by a certificate under the hand of the President of Senate and the Speaker of the House of Assembly that the provision of sections 245, 246 and 247(1) have been complied with.

(2) Where the bill in terms of section 246 was approved at a referendum that bill shall also be accompanied by the certificate of the officer in charge of that referendum when presented for assent.

Lapsing of a bill

249. (1) A bill to amend this Constitution shall lapse -

(a) if that bill is not submitted for assent at the date of the conclusion of the next session of Parliament after the session in which it is introduced;

(b) if on any reading of the bill in a joint sitting that bill is not passed; or (c) if, having been submitted to a referendum in accordance with section 246(3), that bill is not approved in the manner provided by that subsection.

Interpretation

250. In this chapter -

(a) references to any of the provisions of this Constitution include references to any law that amends, alters or replaces that provision;

(b) references to the amendment of this Constitution or, as the case may be, to amending any provision of this Constitution include references - (i) to revoking that provision with or without re-enactment or the making of different provision in place of that other provision;

(ii) to modifying that provision, whether by omitting or amending any of its provisions or inserting additional provisions in that provision or otherwise;

(iii) to suspending the operation of that provision for any period or terminating that suspension, and

(c) "prescribed period" in relation to any bill containing provisions to alter any provision of this Constitution means a period of ninety days commencing from the introduction of the bill in a joint sitting.

CHAPTER XVIII MISCELLANEOUS

Council of Chiefs

251. (1) There shall be a Council of Chiefs which shall be composed of twelve Chiefs drawn from the four regions of the Kingdom appointed by the iNgwenyama on a rotational basis.

(2) There shall be a Chairman of the Council who shall be appointed by the iNgwenyama and a secretary whose office shall be a public office.

(3) The Council of Chiefs shall be responsible for, among other things- (a) advising the King on customary issues and any matter relating to or affecting chieftaincy including chieftaincy disputes;

(b) performing the function in terms of section 115; and (c) performing such other functions as may be assigned by this Constitution or any other law.

(4) Members of the Council of Chiefs shall be divided into three classes of four each and the first class shall vacate office at the expiry of two years, the second class shall vacate office at the expiry of three years and the third class shall vacate office at the expiry of four years.

(5) Chiefs in the respective regions may meet as and when necessary but at least twice a year.

The Law of Swaziland

252. (1) Subject to the provisions of this Constitution or any other written law, the principles and rules that formed, immediately before the 6th September, 1968 (Independence Day), the principles and rules of the Roman Dutch Common Law as applicable to Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland except where and to the extent that those principles or rules are inconsistent with this Constitution or a statute.

(2) Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognised and adopted and shall be applied and enforced as part of the law of Swaziland.

(3) The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to natural justice or morality or general principles of humanity.

(4) Parliament may -

(a) provide for the proof and pleading of the rule of custom for any purpose;

(b) regulate the manner in which or the purpose for which custom may be recognised, applied or enforced; and

(c) provide for the resolution of conflicts of customs or conflicts of personal laws.

Subordinate legislation

253. (1) An Act of Parliament may make provision conferring functions on a joint sitting of the chambers of Parliament with respect to any subordinate legislation (that is to say any instrument having the force of law made under an Act of Parliament) and for the summoning and procedure of a joint sitting for the purpose of the exercise of those functions.

(2) Every subordinate legislation shall before commencement be laid before each chamber of Parliament for a period of at least fourteen days.

(3) Subject to the provisions of subsection (4), if during the period of fourteen days that legislation is not called upon for debate by motion of any member, then the legislation shall be deemed to have been approved by the chamber concerned.

(4) Where the legislation is called up for debate, that legislation shall only come into force when after the debate the chamber concerned resolves to approve the legislation with or without any alterations.

(5) The provisions of subsections (2) to (4) inclusive shall not apply where a chamber resolves by a two-thirds majority of all its members that it shall not be necessary for the minister concerned to place the legislation in question before the chamber for the prescribed period.

References to public office, etc

254. In this Constitution, unless the context otherwise requires, the expression “public office” –

(a) shall be construed as including the offices of judges of the High Court and Supreme Court, the offices of members of all other courts of law in Swaziland (other than courts-martial), and the offices of members of the Police Force and of members of the Prison Services; and

(b) shall not be construed as including the offices of President or Deputy President of the Senate, Speaker or Deputy Speaker of the House, Minister, Deputy Minister, Senator, member of the House or Member of any Commission established by this Constitution.

Acting appointments

255. (1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating that office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office where the holder of that power is himself unable to perform those functions, the appointment shall not be called in question on the ground that the holder of the office was able to perform those functions.

Removal from office

256. (1) Reference in this Constitution to the power to remove a public officer from office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(2) Nothing contained in subsection (1) shall be construed as conferring on any person or authority power to require a judge of the superior courts, the Attorney General, the Director of Public Prosecutions or the Auditor-General to retire from the public service.

(3) Any power conferred by any law to permit a person to retire from public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the appropriate Service Commission.

(4) Any provision in this constitution that vests in any person or authority power to remove any public officer from office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations

257. (1) Save or as otherwise provided in this Constitution, any person who has been appointed to any office established by this Constitution may resign from that office by letter under his hand addressed to the person or authority by whom he was appointed, and the resignation shall take effect and the office shall accordingly become vacant -(a) at such time or on such date (if any) as may be specified in the writing or;

(b) subject to subsection (2), when the letter is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it.

(2) Any resignation referred to in subsection (1) may be withdrawn before becoming effective where the person or authority to whom the resignation is addressed consents to the withdrawal.

Re-appointments and concurrent appointments

258. (1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office, and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Power to amend or revoke instruments etc

259. Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, rule or direction.

Saving for jurisdiction of the High Court

260. A provision of this Constitution that a person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall not be construed as precluding the High Court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

Interpretation

261. (1) In this Constitution unless the context otherwise requires – “Act of Parliament” means any law made by the King and Parliament;

“chamber” means a house of Parliament;

“the Commonwealth” means the countries that are independent members of the Commonwealth and territories for whose international relations any of those countries is wholly or in part responsible;

“financial year” means the period of twelve months ending on the thirty-first day of March in any year or such other day as may be prescribed;

“the Gazette” means the Swaziland Government Gazette;

“the Government” means the Government of Swaziland;

“high judicial office” means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth that may be prescribed or the office of a judge of a court having jurisdiction in appeals from such a court;

“the House” means the House of Assembly;

“law” includes any instruments having the force of law and any unwritten rule of law;

“Ndlovukazi” means a person appointed in terms of section 229 of this Constitution;

“Ngwenyama” means a person appointed in terms of section 228 of this Constitution; “oath” means the oath of allegiance set out in the Second Schedule and also includes affirmation;

“Parliament” means the Parliament of Swaziland;

“prescribed” means prescribed in law or, in relation to anything that may be prescribed only by an Act of Parliament, it means so prescribed;

“public office” means subject to the provisions of section 254 any office of emolument in the public service;

“public officer” means subject to the provisions of section 254 the holder of any public office and includes any person appointed to act in any public office;

“public service” means the service of the Crown in a civil capacity in respect of the government of Swaziland;

“session” means, in relation to Parliament, the sittings of Parliament commencing when the House first meets after this Constitution comes into force or when Parliament first meets after its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

“Sibaya” means the nation meeting as the Swazi National Council at the Ndlovukazi’s official residence for the purpose of deliberating or deciding on important national matters;

“sitting” means in relation to a chamber, a period during which that chamber is sitting continuously without adjournment, and includes any period during which the chamber is in committee;

“vusela” means a consultative process whereby a person or group of persons or community is visited and addressed with a view to soliciting opinion or consensus on some public matter.

(2) In this Constitution -

(a) a reference to an appointment to any office shall be construed as including a reference to the appointment of a person to act or perform the functions of that office at any time when the office is vacant or the holder of that office is unable to perform the functions of that office; and

(b) a reference to the holder of an office by the term designating the office of that holder shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(3) Save as otherwise provided in this Constitution, the Interpretation Act 1899 or its successor shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution.

CHAPTER XIX TRANSITIONAL PROVISIONS

Existing Government

262. Notwithstanding anything in this Constitution, the Government existing immediately before the coming into force of this Constitution shall continue in office and, as far as possible, exercise its powers and functions in such a manner and with such modifications as are necessary to bring them into conformity with the provisions of this Constitution.

Existing Parliament

263. Notwithstanding anything in this Constitution, the Parliament existing immediately before the coming into force of this Constitution shall continue in office and, as far as possible, exercise its powers and functions in such a manner and with such modifications as are necessary to bring them into conformity with the provisions of this Constitution.

Existing Courts of Judicature

264. The Court of Appeal and the High Court, in existence immediately before the commencement of this Constitution shall be deemed, subject to such modifications as may be necessary, to have been established under this Constitution and shall perform the functions of the Supreme Court and the High court specified in Chapter VIII of this Constitution.

Continuation of appointment of justices of superior courts

265. (1) A Justice of the superior courts holding office immediately before the commencement of this Constitution shall continue to hold office as if appointed to that office under this Constitution.

(2) Any person to whom this section applies shall on the commencement of this Constitution be deemed to have taken and subscribed the oath of allegiance and the judicial oath as prescribed by this Constitution.

Existing offices

266. (1) A person who immediately before the commencement of this Constitution held or was acting in any office established by or by virtue of the constitution then in force, so far as is consistent with the provisions of this Constitution, shall be deemed to have been appointed as from the commencement of this Constitution, to hold or to act in the equivalent office under this Constitution.

(2) A person who before the commencement of this Constitution would have been required under the law in force to vacate that office at the expiration of a period of service shall, notwithstanding the provisions of subsection (1), vacate that office at the expiration of that period.

(3) The provisions of this section shall not prejudice any powers conferred by or under this Constitution or any other law or any person or authority to make provision for the abolition of office, or for the removal from office of persons holding or acting in any office and for requiring persons to retire from office.

(4) In determining, for the purposes of any law relating to retiring benefits or otherwise to length of service, the length of service of a public officer to whom the provisions of subsection (1) and (2) apply, service as a public officer under the Government which terminates immediately before the commencement of this Constitution shall be deemed to be continuous with service as a public officer which begins immediately at such commencement.

(5) Except as otherwise provided in this Constitution, the terms and conditions of service of a person to whom this section applies, shall not be less favourable than those applicable to that person immediately before the commencement of this Constitution.

(6) For the avoidance of doubt, it is declared that any office established before the commencement of this Constitution which is inconsistent with any provision of this Constitution is, on the commencement of this Constitution, abolished.

Appointment to certain offices

267. The first appointments to the following offices shall be made within six months after the commencement of this Constitution -

- (a) the chairmen and other members of - (i) the Citizenship Board;
- (ii) the Judicial Service Commission;
- (iii) the various Service Commissions;
- (iv) the Land Management Board;
- (v) the Mineral Management Board;
- (vi) Parliamentary Service Board, (b) the chairman and members of the Council of Chiefs.

Existing law

268. (1) The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

(2) For the purposes of this section, the expression "existing law" means the written and unwritten law including customary law of Swaziland as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.

Enactments not yet in force

269. Where immediately before the commencement of this Constitution any existing law that had not been brought into force or was to come into force on a date subsequent to the commencement of this Constitution, that law may be brought into force in accordance with its terms or shall come into force on such subsequent date as the case may be.

Existing commissions and committees of inquiry

270. (1) Notwithstanding anything in this Constitution to the contrary any commission or committee of inquiry in existence immediately before the commencement of this Constitution, may continue in existence until the submission of its report or until it is otherwise dissolved in accordance with law.

(2) For the avoidance of doubt, the report and findings of a commission or committee of inquiry established before the commencement of this Constitution under any enactment shall have the same effect as the report or finding of a commission of inquiry established under this Constitution.

Pending matters

271. (1) Where any matter or thing has been commenced before the commencement of this Constitution by a person or authority that has power for the purpose under the existing law, that matter or thing may be carried on and completed by the person or authority having power for the purpose after the commencement of this Constitution, and it shall not be necessary for the person or authority to commence the matter or thing afresh.

(2) This section shall have effect subject to the provisions of this Constitution and to any law made by Parliament.

Oaths deemed to have been taken

272. Notwithstanding any provisions of this Constitution, any person who immediately before the commencement of this Constitution held or was acting in any office established under or by virtue of the constitution then in force and who holds or is acting in an equivalent office under this Constitution, shall be deemed to have taken and subscribed any necessary oath under this Constitution, in accordance with this Constitution.

Proceedings pending before courts

273. Legal proceedings, including civil proceedings against the Government, pending before any court immediately before the commencement of this Constitution may be proceeded with and completed.

Official seals, etc

274. The public seal, the seals of the superior courts as well as any prescribed forms in use under any enactment in force immediately before the commencement of this Constitution shall continue to be used until provision is otherwise made for them.

Prerogative of mercy

275. The prerogative of mercy of the King under section 78 may be exercised in respect of any criminal offence committed before the commencement of this Constitution as it may in respect of a criminal offence committed after the commencement of this Constitution.

Devolution of rights and liabilities

276. Subject to the provisions of section 274 -

(a) any right, prerogative, privilege or function which under the existing law vested in the king shall vest in the king or other person or authority as is specified under this Constitution;

(b) any right, privilege, obligation, liability, or function vested in or subsisting against the Government by or under an existing law shall continue to so vest or subsist.

Succession to property

277. (1) Subject to the provisions of Chapter XII, all properties and all assets which immediately before the commencement of this Constitution were vested in any authority or person for the purposes of, or in the right of the Government or in the Government shall, on the commencement of this Constitution, vest in the Government.

(2) Any property which was liable, immediately before the commencement of this Constitution, to estreat or to be forfeited to the Government shall be liable to estreat or to be forfeited to the Government under this Constitution.

Succession to contracts

278. Where there is subsisting immediately before the commencement of this Constitution, a contract which has been entered into by or on behalf of Government, then on and after the commencement of this Constitution, all rights, liabilities and obligations of the Government under the contract shall be vested in or, as the case may be, subsist against the Government, and the contract shall otherwise continue to be of full force and effect.

International agreements etc

279. Where Swaziland or the Government was a party immediately before the commencement of this Constitution to any treaty, agreement or convention, such treaty, agreement or convention shall not be affected by the commencement of this Constitution, and Swaziland or the Government as the case may be, shall continue to be party to it.

FIRST SCHEDULE SUMMONING AND PROCEDURE OF JOINT SITTINGS OF SENATE AND HOUSE OF ASSEMBLY

Sections 36, 115, 116, 117, 245, 246, 247

1. (1) The King shall summon a joint sitting of the Senate and the House of Assembly –

(a) whenever the King is informed by the Prime Minister that it is necessary in order that a joint sitting may deliberate and vote upon the question of approval, extending approval, or revocation of a declaration of a state of emergency under section 37;

(b) in the circumstances mentioned in section 115(3), 116(1) or 117(1);

(c) whenever the King is informed by the President of the Senate or the Speaker of the House of Assembly that a member of the Senate or the House of Assembly, as the case may be, has given notice of the introduction of a bill to amend the Constitution in terms of section 245(2);

(d) whenever it is necessary, in order that a joint sitting of the Senate and the House of Assembly may deliberate and vote upon a bill to amend the Constitution in accordance with section 246(1) or 247(1).

(2) Subject to sub-paragraph (5), the summons of a joint sitting – (a) shall be by message to the Senate and the House of Assembly through the President or the Speaker, as the case may be;

(b) shall state the business which the sitting is summoned to transact; and (c) shall appoint a day for the joint sitting, being not more than fourteen days after the date of the message in the case of a sitting for the purpose mentioned in sub-paragraph (1) (a) and not more than twenty one days after the message in any other case.

(3) The prorogation of Parliament shall not affect any business which a joint sitting of the Senate and the House of Assembly has, at the date of the prorogation, been summoned to transact in accordance with the provisions of this paragraph or, which is then under consideration by a joint sitting.

(4) Subject to the provisions of sub-paragraph (5), any business pending for consideration or under consideration by a joint sitting when Parliament is dissolved shall lapse at the date of the dissolution.

(5) The provisions of section 135 (which relates to the recall of the chambers of Parliament after a dissolution) shall apply for the purpose of authorising the recall of members of those chambers in a joint sitting as they apply for authorising the recall of the chambers of Parliament.

2. The members of the Senate and the House of Assembly shall meet together in joint sitting on the day appointed and on any succeeding day or days that may be necessary and may deliberate and shall vote together upon the business the joint sitting was summoned to transact.

3. Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of deliberating and voting upon a bill in the circumstances mentioned in section 116(1) the following provisions shall apply-

(a) the members of the Senate and the House of Assembly may deliberate and shall vote together upon such admissible amendments to the bill as may be proposed in the joint sitting;

(b) if the bill, with such admissible amendments, if any, as are agreed to by the joint sitting, is affirmed by the joint sitting, the bill as so affirmed shall be deemed to have been duly passed;

(c) for the purposes of this paragraph -(i) if the bill has not been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill;

(ii) if the bill has been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill and such other amendments as are relevant to the matters with respect to which the chambers have not agreed;

(iii) the decision of the person presiding in the joint sitting as to the amendments that are admissible under the provisions of this sub-paragraph shall be final.

4. (1) Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of considering a bill referred back by the King in accordance with section 117(1) the following provisions shall apply –

(a) if the whole bill has been referred back, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any amendment to any provision of the bill which may be proposed in the joint sitting;

(b) if the bill has been referred back for consideration of provisions of the bill specified by the King, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any admissible amendment which may be proposed in the joint sitting;

(c) if the bill is affirmed with such amendments (if any) as are mentioned in the preceding sub-paragraphs and are agreed by the joint sitting, it shall be deemed to be duly passed.

(2) For the purposes of sub-paragraph (1) (b) there shall be admissible only amendments to the provisions specified by the King and such other amendments as are relevant to the matters contained in the King's message, and the decision of the person presiding in the joint sitting as to the amendments that are admissible shall be final.

5. The Speaker of the House of Assembly and the President of the Senate shall, in that order, preside alternately at joint sittings of the Senate and the House of Assembly and for the purpose of this paragraph the sitting or sittings necessary to dispose respectively of any motion for the purpose of section 36, of the business relating to any bill referred to a joint sitting in accordance with section 116(1) or 117(1), or of the business relating to any bill to amend the Constitution shall be regarded as a single sitting.

6. A joint sitting shall not be disqualified for the transaction of business by reason of any vacancy in the membership of either chamber.

7. If objection is taken by a member of either chamber who is present that there are present in that sitting (besides the person presiding) fewer than seventy-five members of the chambers of Parliament and, after such interval as may be prescribed in the rules of procedure applying to a joint sitting, the member presiding ascertains that there are still fewer than seventy-five members of the chambers of Parliament present, the member presiding shall thereupon adjourn the joint sitting.

8. (1) Save as otherwise provided in this Constitution, any question proposed for decision in a joint sitting of the Senate and the House of Assembly shall be determined by a majority of the votes of the members of Parliament present and voting.

(2) A President elected from among persons who are Senators or a Speaker elected from among persons who are members of the House (whether or not that President or Speaker is presiding in a joint sitting) shall have an original but not a casting vote.

(3) A President or Deputy President of the Senate elected from among persons who are not Senators or a Speaker or a Deputy Speaker of the House of Assembly elected from among persons who are not members of the House shall have no vote.

(4) The Attorney-General shall have no vote.

(5) Subject to the provisions of sections 36(4) 36(7) and 246(1) or 244(1), if upon any question before a joint sitting the votes of the persons entitled to vote are equally divided the motion shall be lost.

(6) If the rules of procedure of a chamber of Parliament make provision under which a member who votes upon a question in which that member has a direct pecuniary interest shall be deemed not have voted, those rules of procedure shall have effect for determining whether a member of that chamber has voted in a joint sitting.

9. Subject to the provisions of this Schedule, the rules of procedure for the time being of the House of Assembly shall apply, with the necessary modifications, for regulating any proceedings of a joint sitting under this Constitution which correspond to proceedings of the House of Assembly.

SECOND SCHEDULE OATHS

Sections 45(4), 73, 90(9), 128(1), 143, 178 and 231(6)

(Oath or affirmation of allegiance)

I, do swear (or solemnly affirm) that I will be faithful and bear true allegiance to King, his heirs and successors, according to law.

So help me God. (To be omitted in affirmation.)

(Oath or Affirmation for due execution of office)

I..... do swear (or solemnly affirm) that I will well and truly serve King, his heirs and successors, in the office of (here insert the description of the office).

So help me God. (To be omitted in Affirmation)

(Judicial oath or Affirmation)

I..... do swear (or solemnly affirm) that I will well and truly serve
King....., his heirs and successors, in the office of (here insert the description of the
judicial office) and I will do right to all manner of people according to the law without fear or favour, affection
or ill will.

So help me God. (To be omitted in Affirmation)