

CONSTITUTION OF KWAZULU-NATAL, 2005

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PREAMBLE

IN HUMBLE SUBMISSION TO ALMIGHTY GOD, we the people of the KwaZulu-Natal -

RECOGNISING and striving to heal the injustices of the past;

RECOGNISING the need for peace, reconciliation and justice;

RECOGNISING the need to respect those who have worked and sacrificed to build and develop our Province;

RECOGNISING the sanctity of human rights and dignity;

RECOGNISING that every individual is equally protected by the law;

RECOGNISING that individual freedom must be accompanied by obligations of social responsibilities and duties to our fellow citizens and to society;

RECOGNISING the need to protect and advance the interests of the vulnerable and disadvantaged;

INSPIRED by a desire to progress away from a history of conflict and violence toward a free, peaceful, safe and prosperous constitutional democracy for the present generation and posterity;

WE THEREFORE through our elected representatives adopt this Constitution for KwaZulu-Natal so as to –

Advance and protect democratic values, entrench a culture of respect for human rights, advance the need for moral regeneration, protect the family, ensure a co-operative, responsible and accountable government, safeguard the rule of law and separation of powers and ensure strong checks and balances to promote good governance;

Promote the integrated and sustainable development of KwaZulu-Natal and a better quality of life for all of its people and to protect the Province's environment, history and culture; and

Promote a prosperous open society.

RECOGNISING that the National Constitution is the supreme law of the Republic of South Africa and the need to respect and obey all it's provisions.

WE PRAY that God will give our leaders wisdom, knowledge and understanding to govern and serve our people; and that God will heal our land and protect our people.

Nkosi Sikelel' iAfrika. God Bless South Africa. God Seën Suid-Afrika.

CHAPTER 1

FOUNDING PROVISIONS

Province of KwaZulu-Natal

1. KwaZulu-Natal is a Province of the Republic of South Africa as established by the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the national Constitution).

Boundaries of KwaZulu-Natal

2. The boundaries of KwaZulu-Natal are determined by the national Constitution.

Adoption, status and interpretation of this Constitution

3. (1) This Constitution is adopted for KwaZulu-Natal in terms of the national Constitution.

(2) The legislative and executive powers and functions of KwaZulu-Natal recorded in this Constitution emanate exclusively from the national Constitution.

(3) The provisions of this Constitution must not be interpreted as conferring any legislative or executive authority on KwaZulu-Natal, which is inconsistent with the national Constitution.

(4) In the event of an inconsistency between different texts of this Constitution, the English text prevails.

Application of this Constitution

4. (1) This Constitution applies to KwaZulu-Natal.

(2) Subject to the national Constitution, this Constitution is the highest law in KwaZulu-Natal, and the obligations imposed by it must be performed diligently and without delay.

KwaZulu-Natal Coat of Arms, provincial symbols and honours

5. Provincial legislation may provide for -

- (1) a coat of arms for the Province of KwaZulu-Natal;
- (2) provincial symbols other than a coat of arms; and
- (3) the conferral of provincial honours.

CHAPTER 2

PROVINCIAL LEGISLATIVE STRUCTURE AND PROCEDURES

Legislative authority

6. (1) The legislative authority of KwaZulu-Natal is vested in the Provincial Legislature.
- (2) The Provincial Legislature is bound only by the national Constitution and this Constitution, and must act in accordance with, and within the limits imposed by, these Constitutions.
- (3) The Provincial Legislature may -
 - (a) replace, amend or repeal this Constitution;
 - (b) pass legislation for KwaZulu-Natal in terms of the national Constitution and in accordance with this Constitution; and
 - (c) pass legislation for KwaZulu-Natal with regard to any matter assigned to KwaZulu-Natal by national legislation.
- (4) The Provincial Legislature may -
 - (a) by a resolution recommend to the National Assembly that it passes legislation concerning any matter outside the Provincial Legislature's authority, or in respect of which an Act of Parliament prevails over provincial legislation;
 - (b) by a resolution recommend to the National Council of Provinces that it passes legislation concerning any other matter; and
 - (c) by a resolution adopted with a supporting vote of at least two thirds of its members request Parliament to change the name of the Province.

Bills to replace, amend or repeal this Constitution

7. A Bill to replace, amend or repeal this Constitution-
- (1) must be passed by the Provincial Legislature with a supporting vote of at least two thirds of its members;
 - (2) may include only constitutional provisions; and
 - (3) must be submitted by the Speaker of the Legislature to the Constitutional Court for certification.

Composition of Provincial Legislature

8. (1) The Provincial Legislature consists of not more than 80 elected members.
- (2) The number of members must be determined in terms of a formula prescribed by national legislation.

Election of Provincial Legislature

9. The Provincial Legislature consists of persons elected as members in terms of an electoral system that -
- (1) is prescribed by national legislation;
 - (2) is based on the Province's segment of the national common voters roll;
 - (3) provides for a minimum voting age of 18 years; and
 - (4) results, in general, in proportional representation.

Membership of Provincial Legislature

10. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Provincial Legislature, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -

- (i) the Premier and other members of the Executive Council of KwaZulu-Natal; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of the Provincial Legislature, and have been declared compatible with those functions by national legislation;
 - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;
 - (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic; or
 - (e) anyone who, after 3 February 1997, has been or is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of the Provincial Legislature in terms of subsection (1)(a) or (b) may be a candidate for the Provincial Legislature, subject to any limits or conditions determined by national legislation.
- (3) A person loses membership of the Provincial Legislature if that person-
- (a) ceases to be eligible;
 - (b) resigns as a member;
 - (c) is absent from the Provincial Legislature without permission in circumstances for which the rules and orders of the Provincial Legislature prescribe loss of membership; or

- (d) ceases to be a member of the party that nominated that person as a member of the legislature, unless that member has become a member of another party in accordance with schedule 6A of the National Constitution.
- (4) Vacancies in the Provincial Legislature must be filled in terms of national legislation.

Oath or affirmation of members of Provincial Legislature

11. Members of the Provincial Legislature must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 1 of Schedule 1, before they begin to perform their functions as members.

Duration of Provincial Legislature

12. (1) The Provincial Legislature is elected for a term of five years.
- (2) (a) When the Provincial Legislature is dissolved in terms of section 13 or when its term expires, the Premier must, by proclamation, call and set dates for an election, which must be held within 90 days of the date when the Provincial Legislature was dissolved or when its term expired.
- (b) Subject to sub-section (2)(a) a proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the Provincial Legislature.
- (3) If the result of an election of the Provincial Legislature is not declared within the period referred to in section 190 of the national Constitution, or if an election is set aside by a court, another election must be held in terms of section 108(3) of the national Constitution.
- (4) The Provincial Legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next Provincial Legislature.

Dissolution of Provincial Legislature before its term expires

13. (1) The Premier must dissolve the Provincial Legislature if –
 - (a) the Provincial Legislature has adopted a resolution to dissolve with a supporting vote of a majority of all its members; and
 - (b) three years have passed since the Provincial Legislature was elected.
- (2) An Acting Premier must dissolve the Provincial Legislature if there is a vacancy in the office of Premier and the Provincial Legislature fails to elect a new Premier within 30 days after the vacancy occurred.

Sittings and recess periods of Provincial Legislature

14. (1) After an election, the first sitting of the Provincial Legislature takes place at a time and on a date determined by a Judge designated by the Chief Justice, but not more than 14 days after the election result has been declared.
- (2) The Provincial Legislature may determine the time and duration of its other sittings and its recess periods.
- (3) The Premier may summon the Provincial Legislature to an extraordinary sitting at any time to conduct special or urgent business.
- (4) The Provincial Legislature may determine where it, and any of its committees, ordinarily will sit.

Speaker of Provincial Legislature

15. (1) The Provincial Legislature must elect a Speaker from amongst its members at the first sitting after its election, or when necessary to fill a vacancy.
- (2) (a) A Judge designated by the Chief Justice must preside over the election of the Speaker.
 - (b) The procedure set out in Schedule 2 to this Constitution applies to the election of the Speaker.
- (3) The Provincial Legislature may -

- (a) elect a Deputy Speaker from among its members; and
 - (b) elect other presiding officers from among its members to assist the Speaker and the Deputy Speaker.
- (4) (a) The Provincial Legislature may remove the Speaker, Deputy Speaker or any other presiding officer by resolution.
- (a) A majority of the members of the Provincial Legislature must be present when the resolution is adopted in terms of sub-section (4)(a).

Quorum and decisions of Provincial Legislature

16. (1) Except where this Constitution provides otherwise –
- (a) a majority of the members of the Provincial Legislature, must be present before a vote may be taken on a Bill or an amendment to a Bill;
 - (b) at least one third of the members must be present before a vote may be taken on any other question before the Provincial Legislature; and
 - (c) all questions before the Provincial Legislature are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of the Provincial Legislature has no deliberative vote, but -
- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
 - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Provincial Legislature.

Powers of Provincial Legislature

17. (1) In exercising its legislative authority, the Provincial Legislature may -
 - (a) consider, pass, amend or reject any Bill before it; and
 - (b) initiate or prepare legislation, except money Bills.
- (2) Subject to subsection (4), the Provincial Legislature must provide for mechanisms -
 - (a) to ensure that all provincial organs of state are accountable to it; and
 - (b) to oversee -
 - (i) the exercise of provincial executive authority, including the implementation of legislation; and
 - (ii) any provincial organ of state.
- (3) The Provincial Legislature may -
 - (a) determine and control its own internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public participation.
- (4) The Provincial Legislature must in its rules and orders provide for -
 - (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation in the proceedings of the Provincial Legislature and its committees of minority parties represented, in the Provincial Legislature in a manner consistent with democracy;

- (c) the conferral on its committees of such powers as are necessary for them to execute their mandate;
- (d) co-ordination between the Provincial Legislature and its committees, and the National Council of Provinces;
- (e) the receipt of petitions, representations or submissions from any interested person or institution; and
- (f) financial and administrative assistance to each party represented in the Provincial Legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the Provincial Legislature effectively.

Leader of Opposition in Provincial Legislature

18. The Rules and orders of the Provincial Legislature must provide for the recognition of the leader of the largest opposition party in the Legislature as the Leader of the Opposition.

Evidence or information before Provincial Legislature

19. The Provincial Legislature or any of its committees may -
- (1) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
 - (2) require any natural or juristic person or provincial organ of state to report to it;
 - (3) compel, in terms of provincial legislation or the rules and orders of the Provincial Legislature, any person or provincial organ of state to comply with a summons or requirement in terms of subsection (1) or (2); and
 - (3) receive petitions, representations or submissions from any interested person or institution.

Privilege of members of Provincial Legislature and permanent delegates of KwaZulu-Natal to National Council of Provinces

20. Members of the Provincial Legislature and the permanent delegates of KwaZulu-Natal to the National Council of Provinces -
- (1) have freedom of speech in the Provincial Legislature and in its committees, subject to its rules and orders; and
 - (2) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
 - (a) anything that they have said in, produced before or submitted to the Provincial Legislature or any of its committees; or
 - (b) anything revealed as a result of anything that they have said in, produced before or submitted to the Provincial Legislature or any of its committees.

Public access to proceedings of Provincial Legislature

21. (1) The proceedings of the Provincial Legislature and its committees take place in public, but reasonable steps may be taken –
- (a) to regulate public access, including access of the media, to the Provincial Legislature and its committees; and
 - (b) to provide for the searching, of any person and, where appropriate, the refusal of entry to, or the removal of any person.
- (2) The public, including the media, may not be excluded from a sitting of a committee of the Provincial Legislature unless it is reasonable and justifiable to do so in an open and democratic society.
- (3) The Provincial Legislature must facilitate public participation in its activities and those of its committees.

Introduction of Bills in Provincial Legislature

22. (1) Only a Member of the Executive Council, a committee or member of the Provincial Legislature may introduce a Bill in the Provincial Legislature.
- (2) If the Bill is a money Bill, only the Member of the Executive Council responsible for financial matters may introduce it in the Provincial Legislature.

Money Bills

23. (1) A Bill is a money Bill if it –
- (a) appropriates money;
 - (b) imposes provincial taxes, levies, duties or surcharges;
 - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against a Provincial Revenue Fund.
- (2) A money Bill may not deal with any other matter except -
- (a) a subordinate matter incidental to the appropriation of money;
 - (b) the imposition, abolition or reduction of provincial taxes, levies, duties or surcharges;
 - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against a Provincial Revenue Fund.
- (3) A provincial Act must provide for a procedure by which the Provincial Legislature may amend a money Bill.

Assent to Bills by Premier

24. (1) The Premier must within 45 days after a Bill has been passed by the Provincial Legislature -
- (a) assent to and sign the Bill; or
 - (b) if the Premier has reservations about the constitutionality of the Bill, refer it back to the Provincial Legislature for reconsideration.
- (2) If, after reconsideration, the Bill fully accommodates the Premier's reservations, the Premier must, within 45 days of the date of that reconsideration, assent to and sign the Bill; if not, the Premier must, within 45 days of the date of that reconsideration
- (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it within 14 days.

Applications by members to Constitutional Court

25. (1) Members of the provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.
- (2) An application –
- (a) must be supported by at least 20 per cent of the members of the legislature; and
 - (b) must be made within 30 days of the date on which the Premier assented to and signed the Act.
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if -

- (a) the interests of justice require this; and
 - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

Publication and commencement of provincial Acts

26. (1) A Bill assented to and signed by the Premier-
- (a) becomes a provincial Act;
 - (b) must be published promptly in the *Official Gazette* of the Province; and
 - (c) takes effect when it is published or on a date determined in terms of the Act.
- (2) Provincial legislation may provide for the dissemination and further publication of particulars of provincial Acts.

Safekeeping of provincial Acts

27. (1) The signed copy of a provincial Act is conclusive evidence of its provisions.
- (2) After publication, a provincial Act must be entrusted to the Constitutional Court for safekeeping.

CHAPTER 3

PROVINCIAL EXECUTIVE STRUCTURE AND PROCEDURES

Executive authority

28. (1) The executive authority of KwaZulu-Natal is vested in the Premier.
- (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by -
- (a) implementing provincial legislation;
 - (b) implementing, to the extent that KwaZulu-Natal has the administrative capacity to assume effective responsibility, all national legislation within the functional areas listed in Schedule 4 or 5 of the national Constitution except where the national Constitution or an Act of Parliament provides otherwise;
 - (c) administering national legislation outside the functional areas listed in Schedules 4 and 5 of the national Constitution, the administration of which has been assigned to the Executive Council in terms of an Act of Parliament;
 - (d) developing and implementing provincial policy;
 - (e) co-ordinating the functions of the provincial administration and its departments;
 - (f) preparing and initiating provincial legislation; and
 - (g) performing any other function assigned to the Executive Council in terms of the national Constitution or an Act of Parliament.
- (3) The provincial executive must act in accordance with the national Constitution and this Constitution.

Seat of Provincial Executive

29. The Provincial Executive may determine where it, and any of its committees, ordinarily or in any particular case, will sit.

Assignment of functions to Municipal Council

30. (1) A Member of the Executive Council may assign any power or function that is to be exercised or performed in terms of an Act of Parliament, or a provincial Act, to a Municipal Council.
- (2) An assignment -
- (a) must be in terms of an agreement between the relevant Member of the Executive Council and the Municipal Council;
 - (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
 - (c) takes effect upon proclamation by the Premier in the *Official Gazette* of the Province.

Powers and functions of Premier

31. (1) The Premier has the powers and functions entrusted to that office by the national Constitution, this Constitution and any legislation.
- (2) The Premier of a province is responsible for -
- (a) assenting to and signing Bills;
 - (b) referring a Bill back to the provincial legislature for reconsideration of the Bill's constitutionality;
 - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
 - (d) summoning the legislature to an extraordinary sitting to conduct special business;

- (e) appointing commissions of enquiry; and
- (f) calling a referendum in the province in accordance with national legislation.

Election of Premier

32. (1) The Provincial Legislature must elect a Premier from among its members at its first sitting after its election, or when necessary to fill a vacancy.
- (2) A judge designated by the Chief Justice must preside over the election of the Premier.
- (3) The procedure set out in Schedule 2 of this Constitution applies to the election of the Premier.
- (4) An election to fill a vacancy in the office of the Premier must be held at a time and on a date determined by the Chief Justice, but not later than 30 days after the vacancy occurs.

Assumption of office by Premier

33. The Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Term of office and removal of Premier

34. (1) The Premier's term of office begins when the Premier assumes office and ends when a vacancy occurs or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.
- (3) The Provincial Legislature, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of -

- (a) a serious violation of the national Constitution, this Constitution or the law;
 - (b) serious misconduct; or
 - (c) inability to perform the functions of office.
- (4) Anyone who has been removed from the office of Premier in terms of subsection (3)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

Acting Premier

35. (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier –
- (a) a Member of the Executive Council designated by the Premier;
 - (b) a Member of the Executive Council designated by the other members of the Executive Council; or
 - (c) the Speaker, until the Provincial Legislature designates one of its other members.
- (2) An Acting Premier has the responsibilities, powers and functions of the Premier.
- (3) Before assuming the responsibilities, powers and functions of the Premier, the Acting Premier must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Composition and appointment of Executive Council

36. (1) The Executive Council consists of the Premier, as head of the Executive Council, and -

- (a) no fewer than eight and no more than twelve members of the Executive Council appointed by the Premier from among the members of the Provincial Legislature; and
 - (b) one additional member of the Executive Council who is eligible to be, but is not, a member of the Provincial Legislature: Provided that the Premier deems the appointment of such an additional member of the Executive Council expedient.
- (2) The Premier appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

Accountability and responsibilities of members of Executive Council

37. (1) The members of the Executive Council are responsible for the functions of the executive assigned to them by the Premier.
- (2) Members of the Executive Council are accountable collectively and individually to the Provincial Legislature for how they exercise their powers and carry out their functions.
- (3) Members of the Executive Council must -
- (a) act in accordance with the national Constitution and this Constitution; and
 - (b) provide the Provincial Legislature with full and regular reports concerning matters under their control.
- (4) The member of the Executive Council referred to in section 36(1)(b) -
- (a) may attend, and may speak in, the Provincial Legislature, and is entitled to the privilege set out in section 20 of this Constitution;
 - (b) may not vote in the Provincial Legislature.

Continuation of Executive Council after elections

38. When an election of the Provincial Legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next Provincial Legislature assumes office.

Oath or affirmation of members of Executive Council

39. Before members of the Executive Council begin to perform their functions, they must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Conduct of members of Executive Council

40. (1) Members of the Executive Council must act in accordance with the code of ethics prescribed by national legislation.
- (2) Members of the Executive Council may not -
- (a) undertake any other paid work;
 - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
 - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

Transfer of functions to member of Executive Council

41. The Premier by proclamation in the *Official Gazette* of the Province may transfer to a member of the Executive Council -
- (a) the administration of any legislation entrusted to another member; or
 - (b) any power or function entrusted by legislation to another member.

Temporary assignment of functions to member of Executive Council

42. The Premier may temporarily assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

Motions of no confidence in Executive Council or Premier

43. (1) If the Provincial Legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Executive Council, excluding the Premier, the Premier must reconstitute the Executive Council.
- (2) If the Provincial Legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Premier, the Premier and the other members of the Executive Council must resign.

Provincial intervention in local government

44. (1) When a municipality cannot or does not fulfil an executive obligation in terms of the national Constitution or legislation, the provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary -
 - (i) to maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) to maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (2) If a provincial executive intervenes in a municipality in terms of subsection 1(b) -

- (a) it must submit a written notice of the intervention to-
 - (i) the Cabinet member responsible for local government affairs;
and
 - (ii) the provincial legislature and the National Council of Provinces,
within 14 days after the intervention began;
 - (b) the intervention must end if-
 - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
 - (c) the Council must while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)-
- (a) the provincial executive must immediately submit a written notice of the dissolution to-
 - (i) the Cabinet member responsible for local government affairs;
and
 - (ii) the provincial legislature and the National Council of Provinces;
and
 - (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.

- (4) If a municipality cannot or does not fulfil an obligation in terms of the National Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue raising measures are approved, including dissolving the Municipal Council and-
- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
 - (b) approving a temporary budget or revenue raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or Persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must-
- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which-
 - (i) is to be prepared in accordance with national legislation; and
 - (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
 - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue raising measures, necessary to give effect to the recovery plan, and-
 - (i) appoint and administrator until a newly elected Municipal Council has been declared elected; and
 - (ii) approve a temporary budget or revenue raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or

- (c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
- (6) If the provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to-
- (a) the Cabinet member responsible for local government affairs; and
 - (b) the provincial legislature and the National Council of Provinces, within seven days after the intervention began.
- (7) The implementation of this section including the processes established by this section may be regulated by national legislation.

Executive decisions

45. (1) A decision by the Premier must be in writing if it -
- (a) is taken in terms of legislation; or
 - (b) has legal consequences.
- (2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member.
- (3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (4) Provincial legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be -
- (a) tabled in the provincial legislature; and
 - (b) approved by the provincial legislature.

CHAPTER 4

TRADITIONAL MONARCH

Status, recognition, institution and office of Monarch

46. (1) There is a Monarch for the Province of KwaZulu-Natal.
- (2) The person currently holding office as the King of the Zulu nation, (the King of *AmaZulu*, the *Ingonyama* or *Isilo*) is, at the taking effect of this Constitution, the Monarch for the Province of KwaZulu-Natal.
- (3) Before assuming office under this Constitution, the Monarch must, in a special ceremony dedicated to this purpose, swear or affirm faithfulness to the Republic of South Africa and the Province of KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 3 of Schedule 1.
- (4) (a) Provincial legislation and customary law must determine the relationship between the Monarch and –
- (i) the Provincial House of Traditional Leaders; and
 - (ii) *Amakhosi* in the Province.
- (b) The Monarch must do everything pertaining to the office of the Monarch in accordance with –
- (i) the national Constitution;
 - (ii) this Constitution;
 - (iii) national legislation;
 - (iv) provincial legislation; and
 - (v) customary law.

- (5) The Monarch may be consulted by the Executive Council on any matter relating to the government of the Province.

Succession to office of Monarch

47. (1) The institution of the Monarchy, as recognised under the national Constitution and this Constitution, is hereditary in succession to the office of the Monarch and is determined, by –
- (a) the customary law applicable to the institution of the Monarchy of *AmaZulu*;
 - (b) national legislation; or
 - (c) provincial legislation.
- (2) (a) A vacancy in the office of the Monarch caused by death or abdication must be filled as soon as practicable in accordance with –
- (i) the customary law referred to in sub-section (1)(a);
 - (ii) national legislation; or
 - (iii) provincial legislation.
- (b) In case of a vacancy in the office of the Monarch -
- (i) the Royal Family must inform the Premier of the particulars of the person identified as successor to the office of the Monarch; and
 - (ii) the Premier must, in the *Official Gazette* of the Province, publish a notice for general information declaring who has been so identified as the successor to the office of the Monarch.

Identification of Regent

48. (1) Should the Monarch –
- (a) be younger than 21 years of age; or
 - (b) in the event of the death or incapacity of the Monarch,

the role, responsibilities and functions of the Monarch may, subject to customary law, national legislation or provincial legislation, be exercised by the Regent.
- (2) In the circumstances set out in subsection (1), the Regent must be identified in accordance with customary law and the Royal Family must, as soon as practicable, inform the Premier of the particulars of the person so identified as Regent.
- (3) The Premier must, in the *Official Gazette* of the Province, publish a notice for general information declaring who has been identified as Regent.
- (4) Before assuming office a Regent must, in a special ceremony dedicated to this purpose, swear or affirm faithfulness to the Republic of South Africa and the Province of KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 3 of Schedule 1.
- (5) (a) The Regency is exercised in terms of this Constitution and in the name of the Monarch.
- (b) The Regency exercised in terms of this section terminates on the day before the date –
- (i) of publication of a notice referred to in section 47(2)(b)(ii);
 - (ii) on which the Monarch turns 21; or
 - (iii) on which the Monarch is no longer incapacitated.

- (6) A Regent may receive the remuneration and benefits of the office of the Monarch.

Role, responsibilities, powers and functions of Monarch

49. (1) The Monarch must -
- (a) uphold the national Constitution, this Constitution and the laws of KwaZulu-Natal;
 - (b) recognise the unique and diverse heritage and culture of the people of KwaZulu-Natal;
 - (c) strive to represent a symbol of unity to the people of KwaZulu-Natal; and
 - (d) promote peace, stability and nation building.
- (2) The Monarch performs those powers, responsibilities and functions as may be conferred upon, or assigned to, him or her by -
- (a) this Constitution;
 - (b) customary law;
 - (c) national legislation; and
 - (d) provincial legislation.
- (3) The Monarch may, in addition to any traditional or ceremonial role, responsibilities or functions conferred on or assigned to, him or her by law -
- (a) subject to the rules and orders of the Provincial Legislature, open or address sessions of the Provincial Legislature;
 - (b) subject to a resolution of the Provincial House of Traditional Leaders, open or address sessions of the Provincial House of Traditional Leaders;

- (c) subject to a resolution of the Executive Council and any directive or condition imposed by the Executive Council -
 - (i) confer honours and distinctions;
 - (ii) meet foreign dignitaries; or
 - (iii) represent KwaZulu-Natal culturally and socially both within the Republic of South Africa and abroad;
 - (d) subject to a resolution of the Executive Council, open or address sessions or meetings of a provincial intergovernmental body or structure;
 - (e) subject to a resolution of a Municipal Council, open or address sessions of the Municipal Council; and
 - (f) subject to a resolution of a Local House of Traditional Leaders, open or address sessions of the Local House of Traditional Leaders.
- (4) As a symbol of unity to the people of KwaZulu-Natal the Monarch may not -
- (a) participate in party political activities; or
 - (b) express alignment with, support for, or opposition to, any political party.

Liaison with Monarch

50. The Provincial Legislature and the Executive Council may facilitate liaison and relations between the Monarch and -
- (a) the Provincial Legislature;
 - (b) the Executive Council; and
 - (c) Municipal Councils.

Civil List of Monarch

51. (1) There is a Civil List of the Monarch.
- (2) The Civil List of the Monarch -
- (a) represents an allowance paid by the Provincial Government to provide for the maintenance and expenses of the Royal Household; and
 - (b) must be approved annually in terms of an appropriation by an Act of the Provincial Legislature.
- (3) The Premier, or a member of the Executive Council designated by the Premier, is responsible as executing authority for the administration of the Civil List of the Monarch and must appoint an accounting officer in a provincial department to see to and manage the administration of the Civil List of the Monarch in accordance with applicable law.

CHAPTER 5

PROVINCIAL ADMINISTRATION

Head office of provincial administration

52. (1) The Premier, together with the other members of the Executive Council, may determine the head office of the provincial administration of the KwaZulu-Natal government.
- (2) For the purpose of ensuring effective and efficient service delivery the Premier, together with the responsible member of the Executive Council, may determine or direct that the head of a provincial department establishes and maintains a satellite or regional office at any appropriate location within the Province.

CHAPTER 6

CONSTITUTIONAL INSTITUTIONS

Commissioner for Children

53. A provincial Act may provide for the establishment of, and the powers, functions and duties of a provincial Commissioner for Children.

Cultural Councils

54. A provincial Act may provide for the establishment of Cultural Councils with the aim of dealing with matters relating to the culture and traditions of the communities of the Province of KwaZulu-Natal.

CHAPTER 7

GENERAL PROVISIONS

Transitional arrangements

55. Schedule 3 applies to the transition to the new constitutional order in KwaZulu-Natal established by this Constitution, and to matters incidental to that transition

Short title and commencement

56. (1) This Act is called the Constitution of KwaZulu-Natal, 2005, and takes effect on a date determined by the Premier by proclamation in the *Official Gazette* of the Province.
- (2) The Premier may determine different dates in respect of the taking effect of different provisions of this Constitution.
- (3) Unless the context otherwise indicates, a reference in a provision of this Constitution to a time when this Constitution becomes law must be construed as a reference to the time when the provision took effect.

SCHEDULE 1

OATHS AND SOLEMN AFFIRMATIONS

(Sections 11, 33, 35, 39, 46 and 48)

Oath or solemn affirmation of members of Provincial Legislature

1. (1) Members of the Provincial Legislature, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/ solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other laws of the Republic, and I solemnly promise to perform my function as a member of the Provincial Legislature to the best of my ability.

(In the case of an oath: *So help me God.*)

- (2) Persons filling a vacancy in the Provincial Legislature may swear or affirm in terms of sub-item (1) before the presiding officer of the Provincial Legislature.

Oath or solemn affirmation of Premier, Acting Premier and members of the Executive Council

2. The Premier or Acting Premier of the Province and each Member of the Executive Council, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear / solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other laws of the Republic, and I undertake to hold my office as Premier/ Acting Premier/ Member of the Executive Council of KwaZulu-Natal with honour and dignity, to be a true and faithful councillor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the function of my office conscientiously and to the best of my ability.

(In the case of an oath: *So help me God.*)

Oath or solemn affirmation of Monarch or Regent

3. The Monarch or a Regent, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/ solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other laws of the Republic, and I undertake and solemnly promise to hold my office as the Monarch/ Regent of the Monarch of KwaZulu-Natal with honour and dignity, to recognise the unique and diverse heritage and culture of the people of KwaZulu-Natal, to strive to represent a symbol of unity to the people of KwaZulu-Natal, to promote peace, stability and nation-building; not to participate in any way in party political activities; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the role, and function of my office conscientiously and to the best of my ability.

(In the case of an oath: *So help me God.*)

SCHEDULE 2
ELECTION PROCEDURES

(Sections 15 and 32)

Application

1. The procedures set out in this Schedule apply whenever the Provincial Legislature meets to elect the Premier of KwaZulu-Natal or the Speaker (or Deputy Speaker) of the Provincial Legislature.

Nomination

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

Formal requirements

3. (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.

(2) The form on which a nomination is made must be signed by two members of the Provincial Legislature, if the Premier of the Province or the Speaker (or Deputy Speaker) of the Provincial Legislature is to be elected.

(3) A person who is nominated must indicate acceptance of the nomination by signing the nomination form or any other form of written confirmation.

Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

Single candidate

5. If only one candidate is nominated, the person presiding must declare the candidate elected.

Election procedure

6. If more than one candidate is nominated –
 - (a) a vote must be taken at the meeting by secret ballot;
 - (b) each member present at the meeting may cast one vote;
and
 - (c) the person presiding must declare elected the candidate who receives a majority of the votes.

Elimination procedure

7. (1) If no candidate received a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.
 - (2) When applying sub-item (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidates are to be eliminated.

Further meetings

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
 - (2) If a further meeting is held in terms of sub-item (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

Rules

9. The following must be in accordance with the rules drawn up by the Chief Justice –
 - (a) the procedure for meetings to which this Schedule applies;

- (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
- (c) the form on which nominations must be submitted; and
- (d) the manner in which voting is to be conducted.

SCHEDULE 3
TRANSITIONAL ARRANGEMENTS

(Section 55)

Interpretation of existing legislation

1. Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when this Constitution becomes law, to the Provincial Parliament, Premier, Provincial Cabinet or Provincial Minister, must be construed as a reference to the Provincial Legislature, Premier, Executive Council, or member of the Executive Council under this Constitution.

Provincial Legislature

2. (1) Anyone who is a member or office-bearer of the Provincial Legislature when this Constitution becomes law, becomes and holds office as a member or office-bearer of the Provincial Legislature in terms of this Constitution.

(2) The Provincial Legislature as constituted in terms of sub-item (1) must be regarded as having been elected under this Constitution for a term that expires on 13 April 2009.

(3) For the duration of its term that expires on 13 April 2009, but subject to section 12(4) of this Constitution, the Provincial Legislature consists of 80 members.

(4) The rules and orders of the Provincial Legislature in force when this Constitution becomes law continue in force, subject to any amendment or repeal.

Oaths and affirmations

4. A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the national Constitution, is not obliged to repeat the oath of office or solemn affirmation under this Constitution.

Delegates to National Council of Provinces

5. The Provincial Legislature may, until an Act of Parliament is enacted in terms of section 65(2) of the national Constitution, provide in its rules and orders for the conferral of authority on its delegation to the National Council of Provinces to deliberate, act and cast votes on its behalf in the Council.

Executive Council

6. (1) Anyone who is the Premier when this Constitution becomes law, continues in and holds office in terms of this Constitution as the Premier.

- (2) Anyone who is a member of the Executive Council when this Constitution becomes law, continues in and holds office in terms of this Constitution as a member of the Executive Council.

Enactment of legislation required by this Constitution

7. Where this Constitution requires the enactment of legislation or rules and orders of the Provincial Legislature, that legislation and those rules and orders must be enacted or adopted, as the case may be, by the relevant authority within a reasonable time after this Constitution becomes law.