South Africa'S Quest For Power-Sharing

Abstract

In the years of transition from the authoritarian apartheid system to a new constitutional democracy, South Africa has chosen decentralisation to solve its deep-seated economic, political and societal discrepancies. This paper argues that federal principles, enshrined in both the Interim Constitution and the 1996 Constitution, played a key role in the constitutional transition to democracy and strongly contributed to the achievement of the negotiations between the different parties. However, South Africa's (quasi) federal system is now highly centralized, with a declining autonomy for its constituent units.

Introduction

The constitutional history of South Africa has been influenced by several events, which left a mark in the characteristics of today's Constitution, and play an important role in understanding and interpreting its features. South Africa has been plagued by several decades of Dutch and British (1652-1910) colonialism and eventually by the legal segregation of races: *apartheid* (1948-1991). An ill-famed legacy, which represents an unneglectable burden to take into consideration in the new constitution-making and devolution process, which accompanied the new constitutional dawn.[1] The current 1996 South African Constitution is the final result of a transition to democracy triggered by the abolition of the *apartheid*.

The term *apartheid* was coined in the South African Union (since 1961 the Republic of South Africa) to designate the policy of racial segregation and the institutional and social system in which that policy has been translated. Practised since the birth (1910) of the South African State, with measures such as the Natives Land Act of 1913, which prohibited the indigenous from buying land outside the reserves (so-called *Bantustans*, equal to 13% of the South African territory), the policy of *apartheid* was theorized from the 1930s, especially on the initiative of the National Party (NP), and found a particular development after the advent of the latter to the government (1948). With a series of legislative measures (starting with the Population registration act of 1950, which established the systematic racial classification of the population) a complex segregationist system was built, which from the 1960s also saw the granting of a formal 'autonomy' to the *Bantustans*. Condemned several times by the UN, subject since the mid-1980s to economic sanctions, the policy of *apartheid* aroused a growing opposition (since 1961 also in the form of armed struggle), to the point of determining the crisis of the racist regime. At the end of the difficult and complex dialogue started in 1990 between F.W. de Klerk, leader of the white minority, and N. Mandela, historical leader of the African National Congress (ANC), principal opposition force of the Republic of South Africa, the first elections by universal suffrage in the history of the country were held in April 1994, which sanctioned the end of *apartheid*.[2]

The Constitutional Transition

The South African constitutional transition was marked by a two-stage constitution-making process, which meant that two consecutive constitutions were to be adopted. The first step consisted in the un-elected Multi-Party Negotiating Forum (MPNF) negotiating and drafting the Interim Constitution (IC),[3] which legally had to be adopted by the *apartheid* legislature in terms of the 1983 Constitution and became binding immediately after the first democratic election of April 1994.[4] In a second step, a democratically elected Constitutional Assembly drafted the definitive 1996 Constitution.[5]

South Africa came from a long tradition of parliamentary supremacy. The dawn of constitutionalism in 1994 meant a historical shift in the country's history. That the South Africa struggle in the 90s resulted in a substantive constitutional transformation, cannot genuinely be challenged. On 27 April 1994, the supremacy of the South African legislative branch ceased to exist at all levels of government and the IC[6] became the supreme law of the 'Rainbow Nation'. The new constitutional text bound all legislative, executive and judicial organs of the state at all levels of government and all its fourteen structures of government ceased to exist: the six so-called 'self-governing' territories, and the four so-called 'independent' states, imploded and, together with the previous four provinces, all became part of a united national territory and re-divided into nine new provinces.[7]

As an important safeguard mechanism, the IC eventually required the CC to certify the permanent constitution's compliance with several basic constitutional principles listed in the IC itself.[8] Said principles solicited, *inter alia*, constitutional supremacy, separation of powers, three tiers of government, power-sharing between the tiers, an independent judiciary, etc.[9] On 4 December 1996, the second draft was finally certified by the Constitutional Court.[10] The final Constitution was signed by the President, Nelson Mandela, on 10 December 1996 and came into effect on 4 February 1997,[11] superseding the IC.

Seeking Unity in Diversity

It is argued that the core need for a constitutional transition derives from objectively pursuing *peace*. Peace can be achieved through different means, yet increasingly we have witnessed transitions towards peace through the introduction of constitutionalism, and how decentralisation cultivates such an idea of governance by acting itself as an instrument of conflict-resolution. South Africa would be a leading example when it comes to this. Which objectives the new Constitution tries to nurture in the specific case, always depends on the historical context on a case-by-case basis. Due to the country's segregated past, the South African 1996 Constitution mainly sought the establishment of a *united and racially integrated country*. This concept is introduced at the very beginning of the 1996 Constitution, in the Preamble: 'We, the people of South Africa, [r]ecognise the injustices of our past; [h]onour those who suffered for justice and freedom in our land; [r]espect those who have worked to build and develop our country; and [b]elieve that South Africa belongs to all who live in it, united in our diversity.'

The Role of Decentralisation

Where does decentralisation fit in all of this? Decentralisation is a tool for the reaching of the above-mentioned vision.[12] Justice Chaskalson reminds us that the IC 'itself makes provision for the complex issues involved in bringing together again in one country, areas which had been separated under apartheid, and at the same time establishing a constitutional state based on respect for fundamental human rights, with a decentralised form of government in place of what had previously been authoritarian rule enforced by a strong central government.'[13]
One of *apartheid*'s biggest inequities was a broad and persistent effort to deny to the majority of the population all meaningful participation in the political process. Accordingly, one of the aims of introducing decentralisation in South Africa was diminishing the gap between democratic institutions and the people. Especially, if the polity in question is extensively diverse. The 1996 Constitution, for instance, is clear about the role of local government in the new constitutional order, i.e. 'to provide democratic and accountable government for local communities.'[14]

The Roots of South African Federalism

The nature of South Africa's federal constitutional elements finds its origins in its demographic assortment and the turbulent history of South Africa, branded by a frequent shift in power, which has resulted in a very unique and diverse polity. In 2016, out of the roughly 55,6 million people, black Africans reached 80.66 per cent of the population, whereas 8.75 per cent was covered by Coloureds, 8.12 per cent by whites and 2.47 per cent by Indians and Asians.[15]
Before the IC was enacted, South Africa was *de facto* a strongly centralised system, in which a small white minority had control over every aspect of governance. Accordingly, despite the existence of the *Bantustans* or homelands, the formation of the nine provinces marked a strong process of devolution.[16] In fact, interestingly enough, in the course of the consolidation of apartheid and its affirmation, the idea of federalism was associated with policies of racial segregation of whites, made operative by means of homelands, nothing more than territorial delimitation (*gerrymandering*) with the aim of racial exclusion, according to the strategy of divide and rule.[17]

A negotiated solution

Constitutional design within multi-ethnic states must take into account the best constitutional engineering with regard to ethnic or minorities management. In South Africa, the debate on this issue was very intense during the negotiations: the main question was precisely on the structure of the state, whether to configure it as a type of unitary or federal state.

Political and constitutional theory and political preferences were closely linked to the needs of the various parties, also seen from a historical point of view.[18] In this sense, the formation of a decentralised form of government was the product of a rope pull battle between different forces, and was regarded as the key compromise in the negotiation process between the ANC and the incumbent NP regime. Not only was decentralization a central problem during the course of the negotiations, but it also was, probably, the most important problem of the internal negotiation process and it was noted that 'both the structure of the state and the quality of democracy [...] is dependent upon a resolution of this debate'.[19]
On the one hand, the ANC pushed towards a strong centralised government in order to transform a racially oppressed society into a united – also as in territorially non-fragmented – entity. For the ANC, the unitary state did not preclude the inclusion of forms of decentralization, which, however, had to be integrated, excluding autonomous territorial entities. Therefore, they saw the solution in opting for a unitary form of government with some decentralisation as a tool for more efficient administration and for encouraging the participation of local communities.[20] The ANC was opposed to a strong form of federalism for purely historical reasons (the employment of federalism as a tool for segregation), however, it soon became evident that some degree of decentralisation would be necessary, since the varied social and ethnic composition of South Africa could not be ignored.[21]
On the other hand, the NP was, of course, in favour of strong decentralisation, but not for purely ethnic reasons. In fact, being the white minority, except in the provinces of the Western and Northern Cape, dispersed in a heterogeneous way for the rest of the territory, federalism or decentralisation was considered a clear anti-majority instrument. At the same time, the NP's idea aimed at guaranteeing the properties of whites, since the segregationist geographic pattern would not have undergone many changes without intervention in this sector. The NP well understood that, through guaranteeing ownership of land, the white minority would continue to maintain its privileges.[22]
This battle resulted in a weak form of federalism, showing a *de jure* federal system with strong unitary elements.[23]

Ethnic Accommodation and Weak Federalism

In fact, the reality of South Africa after the end of apartheid was much more complex than the opposition between ANC and NP; alongside the opposition between blacks and whites, there were other claims of 'minor' parties with more ethnic bases.[24] The ethnic composition of South African society could not have supported a type of unitary state, despite the legitimate claims of the ANC. In these cases, the question was linked to the need to provide ethnic accommodation, for instance, to the Zulu ethnic group, but without the future South African order being pervaded by ethnicism as the only political dimension.[25] Eventually, the dissatisfaction among these other parties led them to abandon the negotiations: in fact, ANC and NP were the only two parties to complete the negotiations, and to approve the IC. The important upheavals and violence that followed in the period after the approval of the IC made it clear that reaching an agreement on the claims of the 'excluded' political forces was not only necessary, but vital for the entire constitution-making process. During the negotiations, discussion of federalism became central precisely in terms of ethnic accommodation,[26] which must take into account the genesis of the territorial articulation of South Africa. Alongside those who believe that the ethnic element was not the basis for demarcating the boundaries of the provinces, given the ethno-linguistic heterogeneity, it cannot be said that it is irrelevant; in fact, on closer inspection, most of the provinces are inhabited by a predominant ethnic group.[27] As Fessha stated, 'the majority of ethnic groups in South Africa thus have a "mother province" with pockets of their "cousins and nieces" scattered in other provinces'.[28] Therefore, according to Anderson, even if the approach of the South African constituent fathers was neutral in the input phase, given the concentration of ethno-linguistic groups in certain territories, the outcome led to an ethnoterritorial federation (in the case of KwaZulu above all), due to ethnic homogeneity.[29]
The system of the demarcation of the provinces has had the function of meeting the demands of self-government of the minorities and, in these terms, has had considerable importance in relation to the existing multiculturalism in South Africa, that is, what was 'welcomed' by the Constitution of 1996.[30] Ultimately, the ability of the representatives of the parties has been that of knowing how to bring together, within a democratic-representative system, the ethnic instances, but without these becoming the ideological bases of the parties themselves.[31]

South Africa's Current Structure: Cooperative Federalism

South Africa's decentralised government is indeed a difficult creature to define as it shows the characteristics of an intertwined and complementary system. The constitutional principle of devolution, included in the IC, reads as follows: 'one sovereign state structured at national, provincial and local levels, each of such levels being allocated appropriate and adequate powers to function effectively'.[32] In a first moment, a system of two spheres of government was established by the IC – the national government and the nine provinces. The IC recognised a third sphere, local government, yet its powers did not derive from the Constitution itself, but were rather determined by provincial legislation.[33] In this regard, the third sphere dwelt within the provincial sphere of government. In a second moment, however, the 1996 Constitution elevated local government alongside both the other two spheres and thus creating a three-ordered government.[34]

Therefore, in the first stage of the transition, the IC did not yet establish a 'federal' system.[35] Some exclusive powers were given to the provinces under the sway, however, of extensive powers by the (central) legislative to override them. Therefore, it is clear that the autonomous powers of the provincial legislatures over their designated areas of competences were not truly exclusive. In this regard, the provincial powers were not protected by the IC itself. In other words, the IC has to be considered as a unitary constitution with some decentralised tendencies.[36]

Roughly two years later, the newly drafted and certified 1996 Constitution established South Africa's current multilevel government, with powers shared vertically between three levels of government: the national government, the provincial governments and the local government.[37]

The legislative on the national level encompasses two houses, the National Assembly and the National Council of Provinces (NCOP), in which all provinces are represented. Each province has a provincial legislature, while local governments turn themselves in local councils.[38] Another federal element can be found in the protection of the existence of decentralised tiers, their nature and functions, by the Constitution itself. The central government cannot simply abolish any of them, nor can it unilaterally change the nature of a particular province or municipality. All this would require a constitutional amendment, which in turn would be subject to review by the Constitutional Court. Additionally, a majority of provinces in the NCOP is required for any legislation to be passed, while six of them are needed for constitutional amendments. Additionally, the presence of 'self-rule' of provinces and local governments with entrenched powers and functions and access to revenue sources shows strong federal traits.

Most provincial functions are concurrent with the national government, although the national government may still easily trump concurrent provincial powers through a qualified override clause (s. 146), which sets an easy obstacle for national legislation. Even exclusive provincial powers are deemed to be trumped by national legislation even if on more limited grounds (s. 44(2)). Exclusive provincial powers (sch. 5) remain thus very limited, with the adoption of a provincial constitution being the only veritable exclusive power (s. 142). Their exclusive responsibility spreads to basic economic matters and tourism, while they share some functions with the national government when it comes to health, education, housing, transport, agriculture and policing.[39]

Local governments, instead, which are responsible for basic service delivery,[40] are constitutionally entrenched, but not exclusively (s 156). Both national and provincial governments may in fact regulate local governments legislature (s 155(7) read with schs. 4B and 5B). Accordingly, to use Steytler's words, the Constitutional Court has incentivised the formation of an 'hourglass federation', where provinces are crammed thin between the national and local governments.[41]

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Further Reading

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Steytler, Nico, and Johann Mettler. "Federal Arrangements as a Peacemaking Device During South Africa's Transition to Democracy." *Publius: The Journal of Federalism* 31, no. 4 (2001): 93-106.

[1] Heinz Klug, *The Constitution of South Africa: A Contextual Analysis*, Constitutional Systems of the World (Oxford, Portland: Hart Publishing, 2010), 6.
[2] John Edward Spence, "Introduction," in *Change in South Africa*, ed. John Edward Spence (London: The Royal Institute of International Affairs, Pinter, 1994), 1; Alex Callinicos, "South Africa: End of Apartheid and After," *Economic and Political Weekly* 29, no. 36 (1994).
[1] In introducing an article, which examines how federal arrangements were used during South Africa's transition to democracy to deal with a conflict posed by two significant ethnic-based groupings, right-wing Afrikaners and Zulu nationalists, Steylter and Mettler remind that '[f]ederal arrangements are often used as a way of keeping deeply divided societies together. In particular, where divisions, be they ethnic, linguistic, or religious, develop in violent conflict or the threat of civil war, constitutional arrangements for self-rule and shared-rule have been put forward as a key for peace. The federal distribution of power is the used to satisfy sectoral demands for self-determination.' See Nico Steytler and Johann Mettler, "Federal Arrangements as a Peacemaking Device During South Africa's Transition to Democracy," *Publius: The Journal of Federalism* 31, no. 4 (2001): 93.
[2] Executive Council of the Western Cape, para 7 per Chaskalson P.
[3] Cf. section 152(1)(a) 1996 Constitution.
[4] Statistics South Africa. "Community Survey 2016, Statistical Release P0301." (2016), 21 (table 2.2). To the total population a number of undocumented inhabitants (precise number remains unknown) coming from neighbouring countries should be added. These races can be broken down into eleven constitutionally recognised languages, the major ones being the following: *IsiZulu* (22.7 per cent), *IsiXhosa* (16.0 per cent), *Afrikaans* (13.5 per cent), English (9.6 per cent), *Sepedi* (9.1 per cent), *Setswana* (8.0 per cent) and *Sesotho* (7.6 per cent). Cf. "Census 2011: Census in Brief." Report No. 03-01-41 (2011), 24 (figure 2.3).
[5] Steytler, 330.
[6] Bertus de Villiers, *Democratic Prospects for South Africa* (Cape Town: HSRC Publishers, 1992), 27-39.
[7] Some opposed vertical power sharing as it was considered a tool to maintain the privileges of whites.
[8] Derek Powell, "Transition to Cooperative Federalism: The South African Experience," in *Occasional Papaer Series* (Forum of Federations, 2010), 12.
[9] (ANC) African National Congress, "Constitutional Guidelines for a Democratic South Africa," ed. ANC (Lusaka, 1989); "Constitutional Principles and Structures for a Democratic South Africa," ed. Dullah Omar Institute University of the Western Cape (1991). Reflections in this sense also of Karthy Govender, "The People Shall Govern!," in *The Freedom Charter and Beyond -Founding Principles for a Democratic South African Legal Order*, ed. Nico Steytler (Plumstead: Wyvern Publications, 1992), 97; Heinz Klug, "South Africa's New Constitution: The Challenges of Diversity and Identity," *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 28, no. 4 (1995): 424-25.
[10] David Welsh, "Federalism and the Divided Society: A South African Perspective," in *Evaluating Federal Systems*, ed. Bertus de Villiers (Cape Town: Juta, 1994), 244.
[11] National Party, *Constitutional Rule in a Participatory Democracy: The National Party's Framework for a New*

Democratic South Africa, 1991, paras. 2, 8.2, 9, 10, 15-18.

[12] Ronald L. Watts, "Is the New Constitution Federal or Unitary?," in *Birth of a Constitution*, ed. Bertus de Villiers (Cape Town: Juta, 1994), 86.

[13] Christina Murray and Richard Simeon, "Recognition without Empowerment: Minorities in a Democratic South Africa," *International Journal of Constitutional Law* 5, no. 4 (2007): 422.

[14] Welsh, 246 ff.

[15] Klug, *The Constitution of South Africa: A Contextual Analysis*, 30; Bertus de Villiers. "The Future of Provinces in South Africa – the Debate Continues." *Konrad-Adenauer-Stiftung*. (2007), 4.

[16] In the Eastern Cape isiXhosa is the first language 78.8%, in Kwazulu-Natal isiZulu is 77.8%, in the Northern Cape Afrikaans 53.3%, in the North West seTswana 63.4, in the Free State Sesotho 64.4%, in the Western Cape Afrikaans 63.4 and in Limpopo siPedi 52.9%. In Gauteng and Mpumalanga there is no predominance of a language group. Cf. Census 2011, *Census in brief|Statistics South Africa*, Pretoria, 2012, p. 30.

[17] Yonatan Tesfaye Fessha, *Ethnic Diversity and Federalism: Constitution Making in South Africa and Ethiopia* (Burlington, VT: Ashgate, 2010), 113.

[18] Liam D. Anderson, *Federal Solutions to Ethnic Problems: Accomodating Diversity* (London: Routledge, 2013), 252.

[19] Solomon A. Dersso, *Taking Ethno-Cultural Diversity Seriously in Constitutional Design: A Theory of Minority Rights for Addressing Africa's Multi-Ethnic Challenge* (Leiden: Brill, 2012), 169.

[20] Jaap De Visser, Nico Steytler, and Yonatan Tesfaye Fessha, "The Role of Ethnicity in the Demarcation of Internal Boundaries in South Africa and Ethiopia," in *Federalism, Regionalism and Territory*, ed. Stelio Mangiameli (Milano: Giuffré, 2013), 280; Yonatan Tesfaye Fessha and Jaap De Visser, "Drawing Non-Racial, Non-Ethnics Boundaries in South Africa," in *Kenyan-South African Dialogue on Devolution*, ed. Nico Steytler and Yash Ghai (Cape Town: Juta, 2015), 94; Fessha, 114-15.

[21] See *First Certification*, para 45(f), summarising CPs I, XVIII, XIX, XX, XXI and XXI, not paraphrasing them.

[22] Cf. s. 174(3) and 175(1) read with Schedule 6 IC.

[23] See section 40(1) 1996 Constitution. For further background, see Nico Steytler, "Republic of South Africa," in *A Global Dialogue on Federalism: Constitutional Origins, Structure, and Change in Federal Countries*, ed. John Kincaid and Alan G. Tarr (Montreal, Kingston: McGill-Queen's University Press, 2005), passim; Christina Murray, "Republic of South Africa," in *Legislative, Executive, and Judicial Governance in Federal Countries*, ed. Katy Le Roy and Cheryl Saunders (Montreal, Kingston: McGill-Queen's University Press, 2006), passim; Jaap De Visser, "Republic of South Africa," in *Local Government and Metropolitan Regions in Federal Systems*, ed. Nico Steytler (Montreal, Kingston: McGill-Queen's University Press, 2009), passim; Chris Tapscott, "Republic of South Africa: An Uncertain Path to Federal Democracy," in *Political Parties and Civil Society in Federal Countries*, ed. Klaus Detterbeck, Wolfgang Renzsch, and John Kincaid (Don Mills: Oxford University Press, 2015), passim; Derek Powell, "Constructing a Developmental State in South Africa: The Corporatization of Intergovernmental Relations," in *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics*, ed. Johanne Poirier, Cheryl Saunders, and John Kincaid (Don Mills: Oxford University Press, 2015), passim.

[24] Using Devenish's words, 'the interim constitution introduced a quasi-federal dispensation. This model was to be further developed and refined in the 1996 Constitution, which to a lesser or greater extent was based on the German exemplar, expressly involving co-operative federalism.' See, George E. Devenish, "Federalism Revisited: The South African Paradigm," *Stellenbosch Law Review* 17, no. 1 (2006): 129.

[25] In *Government of the Republic of South Africa v Malevu*, the sitting judge of the Supreme Court held that even though the IC, according to s. 61, 62, 125, 126 and 159, stipulated a system of power-sharing between the national and provincial government resembling to that of a federal system, it created what is fundamentally a centralised state where the national government remained supreme and the parliament retained sovereignty over the provinces (see *Government of the Republic of South Africa v Malevu* 1995 (8) BCLR 995 (D), 995).

[26] Art. 40(1) 1996 Constitution.

[27] Andrew Feinstein, "Decentralisation: The South African Experience," Global Partners Governance,

http://www.gpgovernance.net/wp-content/uploads/2015/07/Decentralisaion-the-south-african-experience-feinstein1.pdf (accessed 6 June, 2018).
[28] ibid.
[29] ibid., 2.
[30] Steytler, "The Constitutional Court of South Africa: Reinforcing an Hourglass System of Multi-Level Government," 328 and 32 f.

[1] Cf. *Certification of the Constitution of the Republic of South Africa, 1996* (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996) ('*First Certification'*), para 16; Pierre de Vos and Warren Freedman, eds., *South African Constitutional Law in Context*, Public Law (Cape Town: Oxford University Press, 2014), 21.
[2] Cf. Ibid., 20; Christina Murray, "A Constitutional Beginning: Making South Africa's Final Constitution," *University of Arkansas at Little Rock Law Review* 23, no. 3 (2001): 813.
[3] Cf. Lourens W. H. Ackermann, "The Legal Nature of the South African Constitutional Revolution," *New Zealand Law Review*, no. 4 (2004): 636; de Vos and Freedman, 20; Sujit Choudhry and Katherine Glenn Bass. "Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Judicial Independence." *Center for Constitutional Transitions at NYU Law and International Institute for Democracy and Electoral Assistance (IDEA)*. (2014), 47.
[4] Constitution of the Republic of South Africa of 1993, Act No. 200.
[5] See the words of Chaskalson at *Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others* (CCT27/95) [1995] ZACC 8; 1995 (10) BCLR 1289; 1995 (4) SA 877 (22 September 1995), para 7. Additionally, the new constitutional order presents a set of fundamental legal principles – especially human rights – that are not merely hortatory but define the it in a substantive way. This is inherited by the apartheid state, which did not only deny all meaningful participation in the political process to a big majority of the population, but also sought to legislate the lives of those people on the sole criterion of race. It is therefore, not surprising that fundamental human rights, from human dignity and quality to a long list of freedoms, lied at the heart of the new constitutional order. See section 1 1996 Constitution.
[6] Cf. Celia Davies. "Interim Constitutions in Post-Conflict Settings." *International Institute for Democracy and Electoral Assistance (IDEA)*. (2015), 23 f.
[7] Ackermann, 637; Nico Steytler, "The Constitutional Court of South Africa: Reinforcing an Hourglass System of Multi-Level Government," in *Courts in Federal Countries: Federalists or Unitarists?*, ed. Nicholas Aroney and John Kincaid (Toronto, Buffalo, London: University of Toronto Press, 2017), 330.
[8] See *Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996* (CCT37/96) [1996] ZACC 24; 1997 (1) BCLR 1; 1997 (2) SA 97 (4 December 1996) (henceforth '*Second Certification*').
[9] Constitution of the Republic of South Africa, 1996.