



DEMOCRATIC GOVERNANCE AND RIGHTS UNIT
UNIVERSITY OF CAPE TOWN

Submission to Parliament:

**Judges' Remuneration & Conditions of
Employment Amendment Bill [B12-2011]**

Introduction

1. The Democratic Governance and Rights Unit (“DGRU”) is an applied research unit based in the Department of Public Law at the University of Cape Town. The mission of the DGRU is to advance, through research and advocacy, the principles and practices of constitutional democratic governance and human rights in Africa. The DGRU’s primary focus is on the relationship between governance and human rights, and it has established itself as one of South Africa’s leading research centres in the area of judicial governance, conducting research on the judicial appointments process and on the future institutional modality of the judicial branch of government.

2. DGRU recognises judicial governance as a special focus because of its central role in adjudicating and mediating uncertainties in constitutional governance. The DGRU has an interest in ensuring that the judicial branch of government is strengthened, is independent, and has integrity. DGRU's focus on judicial governance has led to it making available to the Judicial Service Commission research reports on candidates for judicial appointment, and to DGRU researchers attending, monitoring and commenting on the interviews of candidates for judicial appointment.¹

3. As a consequence of its research and advocacy work on constitutional governance and its particular focus on judicial governance, the DGRU has had contractual relations with the Office of the Chief Justice, whereby the DGRU has provided two research reports in recent months, pertaining to comparative models for the institutionalisation of the Office of the Chief Justice, and the strengthening of the judicial branch of government more generally. Through this relationship, the DGRU is well acquainted with the intricate programs that the Chief Justice has undertaken to strengthen the governance of the judiciary. The DGRU is also aware of the delicate stage of these programmes, and is concerned that any disruption to them would impact negatively on the process of judicial governance. It is for this reason that the Director of the DGRU, Professor Richard Calland, has publically expressed the need to find a constitutionally-principled way for the term of office of Chief Justice Ngcobo to be extended, in order to enable him to continue to lead the programme of reform that he has initiated since he was appointed Chief Justice.

4. DGRU attempted to join the litigation brought by the Centre for Applied Legal Studies (CALs), the Council for the Advancement of the South African Constitution (CASAC), Freedom Under Law and the Justice Alliance of South Africa, whereby the extension of the tenure of the Chief Justice was challenged in the Constitutional Court. The DGRU applied to be admitted as *amicus curiae*, and prepared a written submission to assist the court. The Constitutional Court indicated that it would take DGRU's submissions into account in preparing its judgement, but did not ask to hear oral argument from DGRU's legal representatives and DGRU was not formally admitted to the proceedings.

5. This submission is substantially based on the heads of argument prepared by counsel retained by DGRU, Advocate T Masuku and Advocate K Mathipa, which were submitted to the Constitutional Court.

¹ These reports are available at <http://www.dgru.uct.ac.za/research/researchreports/>

Purpose of this submission

6. The aim of this submission is to assist Parliament in finding a constitutionally-principled and enduring solution to the constitutional predicament that has arisen from the decision of the President to extend the term of office of the current Chief Justice.

7. For the record, we agree with the contention that Section 8 of the Judges Remuneration and Conditions of Employment Act 47 of 2001 (“the Judges’ Act”) is unconstitutional in its current form.

8. We also submit that Sections 4(1) and (2) of the Judges’ Act are also constitutionally problematic, and that the Judge’s Remuneration & Conditions of Employment Amendment Bill [B12-2011] (“the Bill”) does not alleviate all of these concerns, and may too be vulnerable to a constitutional challenge.

The current legislative scheme

9. Section 176(1) of the Constitution provides that:

“A Constitutional Court judge holds office for a non-renewable term of 12 years, or until her or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends the term of office of a Constitutional Court judge.”

10. Section 4(1) of the Judges’ Act provides that:

“A Constitutional Court judge whose term of 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years’ active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years’ active service, whereupon he must or she must be discharged from active service as a Constitutional Court judge.”

11. Section 4(2) of the Judges’ Act provides that:

“A Constitutional Court judge, who, on attaining the age of 70 years, has not yet completed 15 years’ active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years’ active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.”

12. And Section 8(a) of the Judges’ Act provides that:

“A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years.”

Analysis of the current legislative scheme

13. Section 176(1) of the Constitution has two components. The first is that it establishes a non-renewable term of 12 years or an age limit of 70 years, whichever occurs first. The second component provides for an exception to the non - renewable term of office of a Constitutional Court judge.

14. An extension of the term of office of a Constitutional Court judge whose term of office has come to an end is an exception to the rule of non-renewable term of judicial office set out in section 176(1). Section 176(1) provides for a non renewable term of 12 years or the age limit of 70, whichever comes first. That is the position regarding the term of office of a Constitutional Court judge. However, section 176(1) contains an exception to that non renewable term office. That much is clear if one has due regard to the word “except”.

15. The power to extend the term of a Constitutional Court judge found in s 176(1) of the Constitution is at the heart of the issue of judicial independence. Judicial independence requires that judges enjoy a secure tenure of office that cannot easily be changed by the executive or the legislature. That is the reason why section 176(1) determined that “A Constitutional Court judge holds office for a non-renewable term of 12 years, or until he

or she attains the age of 70, whichever occurs first...” The power to extend the term of office of a Constitutional Court judge was given in terms of the Sixth Amendment,² and was intended to afford Parliament the power to extend the term of office of office of a Constitutional Court judge as an exception to the rule.

16. The power of Parliament to pass a law extending the term of office of a Constitutional Court judge was intended to be exercised as an exception and to ensure that the essential content of section 176(1) in respect of term of office was essentially unchanged. The extension of the term of office of a Constitutional Court judge cannot be a matter of course, but must be fully justified and subjected to the normal rigorous legislative process of Parliament to receive approval. This means that the extension of the term of office of a judge has to be debated and subjected to a vote by Parliament. It has to go through the normal rigorous parliamentary process of deliberation and discussion, including the constitutional requirement to involve the public in the legislative process.
17. In this respect, DGRU associates itself with the primary submission made by CALS and CASAC to the Constitutional Court that the only constitutionally permissible way for the term of a constitutional court judge is through an Act of Parliament itself (and that parliament was not constitutionally permitted to delegate that authority to the President). If Parliament agrees with the executive that it is necessary to extend the term of office of a particular judge, then it passes the law extending the term of office of that particular judge or particular judges. The legislation extending the term of office of a particular judge or particular judges would die when the extended term of office has been served.
18. This approach to interpreting section 176(1) explains why Parliament, in amending section 176(1), did not tamper with the fixed terms of 12 years and age limit of 70. If Parliament had intended that the envisaged Act would permit a wholesale change to the tenure of Constitutional Court judges, it would have said so when amending section 176(1). Instead, what Parliament did was to amend section 176(1) to enable it to pass legislation that would operate as an exception to the non renewable fixed term rule.
19. We submit that the term of office of a Constitutional Court judge, including that of the Chief Justice, should be set by a constitutional rule – i.e. in the constitution itself.

² Constitution Sixth Amendment Act, 2001.

The extension of the term of office of judges in terms of Sections 4(1) and 4(2) of the Judges' Act

20. Parliament purported to pass a law to extend the term of office of Constitutional Court judges in terms of section 4(1) and 4(2) of the Judges' Act. These provisions extended, for all judges of the Constitutional Court, the term of office to 15 years or until the age of 75 - unless they have already served fifteen years active service, for example by serving as a High Court judge, when their 12 years of service as a Constitutional Court judge expired, or they reach the age of 70 (meaning that the term will vary according to the particular circumstances of each judge). It also means that the term of office for all Constitutional Court judges may be extended to 15 years or the age limit of 75, whichever comes first – in other words, the 'ceiling', regardless of the actual term of the specific judge, changed for all judges.

21. Judges of the Constitutional Court may no longer be discharged from office upon the completion of 12 years or reaching the age of 70 in terms of section 176(1). In other words, the original constitutional rule has purportedly been replaced by the exception enacted by section 4 of the Judges' Act. The potential extension of the term of office of Constitutional Court judges in terms of section 4(1) and 4(2) is susceptible to constitutional challenge in that it has effectively amended the fixed term of office in section 176(1). Subsections 4(1) and 4(2) of the Judges Act do not operate as an exception to the term of office set out in section 176(1) of the Constitution. Instead, they replace section 176(1).

22. The Judges Act creates two regimes for extending the term of office of Constitutional Court judges. The first regime is in section 4(1) and 4(2) of the Act, and is binding on all present and future Constitutional Court judges. The second is in section 8(a) of the Judges Act, which essentially regulates the further extension of the term of office of a Chief Justice. The Chief Justice is therefore potentially a beneficiary of two extensions - the section 4(1) or 4(2) extensions, and the section 8(a) extension. This is exactly what has happened in this case. Chief Justice Ngcobo has completed his first term of office by virtue of having completed 15 years. Section 8(a) of the Judges Act provides for a further extension of the term of office of the Chief Justice, which is triggered when the President makes a request to that Chief Justice to continue serving in that capacity, and the Chief Justice accedes to the request.

Extension of the term of office of the Chief Justice in terms of section 8(a) of the Judges' Act

23. We submit that the fact that the term of office of the Constitutional Court judges in section 176(1) has not been amended means that they have legal and constitutional effect. Prior to its amendment, s 176(1) stated that "A Constitutional Court judge is appointed for a non-renewable term of 12 years, but must retire at the age of 70" ("the original s 176(1)"). This is the constitutional rule, and has not been amended through a constitutional amendment. Section 176(1) imposes a definite term of office that can only be changed through a constitutional amendment. It is this constitutional rule to which an exception was made.
24. Parliament amended section 176 in the Sixth Amendment but retained the substance of s 176(1). The amendment gave Parliament the power to extend "the term of office of a Constitutional Court judge." In the Constitutional litigation, and the hearing itself on 18 July 2011, an issue was whether it was constitutionally permissible to have a rule that would apply differently depending on the individual judge. Should the rule apply equally to all Constitutional Court judges, including therefore the Chief Justice, or would it be permissible for it to apply differentially, albeit on the basis of a rationally justifiable reason for the differential. It is likely that the Court will rule and/or provide guidance in its judgement on this point.
25. DGRU's position is that section 176 of the Constitution does permit a differential treatment, but that such a differential approach is undesirable, since it may create uncertainty. We submit that there should be as much clarity as possible about the term of the judges of the Constitutional Court and that ideally that clarity should be provided by a provision of the Constitution.

Implications of this approach for the Bill

26. If the approach to interpreting section 176(1) of the Constitution above is constitutionally correct and sound, then the implications are profound. It means that Parliament is obliged to pass a law that operates as an exception to the constitutional rule of a fixed, non-renewable term of office. This further means that Parliament must pass a law extending the term of office of Chief Justice Ngcobo (however generally undesirable an Ad Hominem statute may be).

27. Parliament has, in the provisions of the Judges' Act, created a general rule effectively amending section 176(1) of the Constitution, but without expressly saying so or following the prescribed legislative procedure for amending the Constitution. Since the Judges' Act was not treated as a constitutional amendment of the terms of office in section 176(1), it is possible that the procedure for passing this legislation was deficient in that it was not the one prescribed for amending the Constitution.
28. Thus, it is our submission that the current legislative scheme, formed by Section 176 (1) of the Constitution and Sections 4(1) and (2) and 8(a) of the Judges' Act, presents a constitutionally unsound and potentially unstable scheme, which may give rise to future unwelcome constitutional predicaments and thereby be open to further Constitutional challenge.

Does the Bill remedy these concerns?

29. Section 2 of the Bill proposes substituting Section 8(a) of the Judges' Act with the following provision:

“A Chief Justice of South Africa who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or 4(2) before he or she has completed seven years' active service as such Chief Justice must, subject to the provisions of paragraph (c), from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa to the date on which he or she completes a period of seven years' active service as such Chief Justice or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as Chief Justice of South Africa.”

30. We do not intend, in this submission, to deal with the provisions relating to the extension of tenure of the President of the Supreme Court of Appeal.
31. We submit that the proposed change set out in the Bill remains constitutionally problematic. The baseline rule for the tenure of Constitutional Court judges remains that set out in s 176(1). The Act of Parliament contemplated by s 176(1) is an exception to that rule, not the rule itself. The proposed Bill would effectively amend the term of office prescribed by s 176(1) of the Constitution, in relation to one member of the

Constitutional Court, the Chief Justice. As we have argued, an amendment to the fixed tenure set out in s 176(1) can only be done by constitutional amendment.

32. It is acknowledged that the exception provided for in s 176(1) allows Parliament to extend tenure via legislation, and the Bill does provide for the increase in tenure of a Chief Justice who has not yet served seven years as Chief Justice, which would therefore be achieved through an Act of Parliament were the Bill to pass. However, the Bill singles out the office of Chief Justice alone for extension. There is no basis in s 176(1) of the Constitution for separate regulation of the office of the Chief Justice (an issue that, as noted, the Constitutional Court is likely to deal with in its judgment).

33. Thus, in our submission, the Bill is built on faulty constitutional grounds in purportedly creating a dispensation that will apply to all future Chief Justices and Presidents of the Supreme Court of Appeal. In our submission, s 176(1) does not permit an amendment of the fixed term of 12 years or age 70 in this way. The bill is hence constitutionally impermissible, absent an amendment to s 176(1), as s 176(1) requires a law extending tenure to be an exception, not a general rule. The Bill does not cure the fundamental constitutional flaws in the existing legislative scheme, but instead creates a new term of office for the Chief Justice.

34. If the Bill is passed, it may be subject to a constitutional challenge on the basis that it constitutes an unlawful amendment of the terms of office set out in s 176(1). Section 176(1) envisages a case-by-case legislative intervention. Unless Parliament amends s 176(1), it cannot pass an Act which applies generally to all Constitutional Court judges. Any law passed under the current legislative scheme must create an exception, and not a general rule. It is possible that it is constitutionally permissible to create an exception to the general rule in terms of one category of Constitutional Court judge – namely, the Chief Justice – but this may not be so and may be open to Constitutional challenge.

35. Since the Chief Justice is the highest judicial officer in the land, and as head of the Constitutional Court and the judiciary generally, ultimately responsible for the custodianship of the Constitution and the rule of law, we submit that it is undesirable to have an uncertainty hanging over the Chief Justice. Instead, a clear rule for the Chief Justice's term of office should be provided for in the Constitution itself.

36. Thus, until the Constitution is amended through the prescribed procedure laid down in section 74 (3) of the Constitution, and the term of office set out in section 176(1) specifically amended, the current legislative changes are constitutionally problematic and will continue to expose the judiciary to constitutional challenges that are likely to erode public confidence in the judicial and ultimately weaken its capacity and effectiveness to perform its supreme constitutional obligations, namely, to uphold the Constitution and the rule of law.
37. Accordingly, if the government believes that the term of Constitutional Court judges should be different from that provided for in section 176(1), and/or that the term of office of the Chief Justice should be separately provided for (as proposed in the Bill), then a Constitutional amendment should be tabled, and then debated and passed by Parliament.
38. We are fortified in our submission that the term of the Chief Justice should be separately provided for because of three factors:
- 38.1 Initially, after 1994, the Constitutional Court was presided over by the President of the Court. The Chief Justice was the President of the Supreme Court of Appeal. Subsequently, the Constitution was amended so that the Chief Justice was also head of the Constitutional Court. As the duties and responsibilities of the Chief Justice are substantial,³ it is no longer appropriate to treat the Chief Justice in the same way as the other members of the Constitutional Court. Other considerations are likely to apply in relation to his or her term of office. For example, it is unlikely to be desirable or in the public interest to have a Chief Justice serve less than a certain number of years, given the need for a degree of continuity in the office.
- 38.2 To avoid a situation whereby it is claimed that the Constitution does not provide for the differential treatment of different members or classes of the Constitutional Court, the Constitution needs to be absolutely clear and to itself deal with the two categories of judge separately and differently: the Chief Justice and the other ten Constitutional Court judges.

³ See Appendix 1 for a list of duties provided for in the Constitution and Legislation.

38.3 The Chief Justice is already treated differently from the other judges of the Constitutional Court because he or she is appointed not through the usual Judicial Service Commission (JSC) process, but directly by the President after consulting the JSC and the leaders of political parties represented in the National Assembly⁴.

Proposal

39. In conclusion, we submit that:

39.1 The Constitution should be amended to create certainty in relation to the term of office of the Chief Justice specifically, and that it should set irrespective of how many years the judge has been in active service (e.g. the term of office of the Chief Justice is 7 years or until the age of 75, whichever comes first);

39.2 The Constitution should be amended to provide for the term of office of other Constitutional Court judges and that, moreover, the term should be set irrespective of how many years they have been in active service as judges (e.g. the term of a Constitutional Court judge is 15 years or until reaching the age of 75, whichever comes first).

40. It is submitted further that judicial independence cannot be protected if the term of office of the Chief Justice (as indeed of all the Constitutional Court judges) is open to constitutional attack and uncertainty. It is, however, more important that the constitutional integrity of the laws intended to protect the tenure of office of the judges of the Constitutional Court are properly enacted by the relevant organs of government. The judiciary, as with all other branches of government, must ensure that the integrity of the office of the Chief Justice (and all the Constitutional Court judges) is not subject to legal doubt.

41. Constitutional amendments should not be entertained lightly, but because of the need for certainty, an enduring solution to the current predicament, and the importance of

⁴ Section 174(3) of the Constitution.

Constitutional Court judges and the Chief Justice to constitutional integrity and legitimacy, we believe that a constitutional amendment would be justified in this case.

Additional Submission: Section 2 of the Bill

42. Finally, we wish to comment on one other aspect of the Bill. Section 2 proposes the following substitution for section 8(c) of the Act:

“A Chief Justice of South Africa or a President of the Supreme Court of Appeal who continues to perform active service in terms of paragraph (a) or (b) may at any time-

(i) Be discharged by the President from active service as Chief Justice of South Africa or President of the Supreme Court of Appeal if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties”.

43. We endorse the view of our colleague, Professor Pierre de Vos, that this provision is constitutionally impermissible.⁵ As we note above, judicial independence requires that judges have security of tenure of office, which cannot easily be changed by the executive or legislature. To vest the power to discharge a Chief Justice, without input or oversight from any other body, seems a clear infringement of judicial independence, notwithstanding that this power of removal is only contemplated in cases of permanent mental or physical infirmity.

44. It is worth contrasting the proposed provision with existing provisions governing the removal of judges from office. Section 177 of the Constitution requires a finding by the Judicial Service commission that a judge suffers from incapacity, and the National Assembly adopts a resolution, by two thirds majority, calling for the judge’s removal.⁶ On adoption of such a resolution, the President must remove the judge from office.⁷

⁵ See <http://constitutionallyspeaking.co.za/what-now-for-the-chief-justice/>

⁶ Section 177(1)(a) and (b) of the Constitution. Other grounds for removal are gross incompetence and gross misconduct, but there are not relevant for present purposes as they are not mentioned in the Bill.

⁷ Section 177(2).

The procedures under which the Judicial Service commission must make its findings are set out in the Judicial Service Commission Act.

45. This represents a carefully structured constitutional and legislative system, which ensures that it is possible to remove from office judges who are no longer capable of performing their judicial function, but provides for rigorous safeguards to protect judicial independence, by providing for multiple layers of checks and balances before a removal may be made. There is no good reason for this system to change, simply because a Chief Justice is serving an extended seven year term.
46. If our main submissions are correct, then the Bill as a whole ought not to be passed, and this complaint would become moot. But in the event that the Bill is passed, we urge that this provision be excluded, and that the normal procedures for the removal of a judge be applied to a Chief Justice serving an extended tenure.

CONCLUSION AND WAY FORWARD

47. If the committee is minded to accept that a Constitutional amendment is appropriate it is inconceivable that such an amendment can be passed before midnight on 14 August 2011, the point at which the term of office of the current Chief Justice expires. Since it is vital that the Chief Justice be able to continue the judicial reform process he has begun and that it is not in the public interest or in the interests of constitutional democracy in South Africa for his service to be discontinued at this point, we submit that a solution must be found.
48. The question of whether an order of invalidity in relation to section 8 of the Judges' Act should be suspended was a matter of argument in the Constitutional Court hearing and so the Court is likely to rule on the matter. The applicants contended that the respondents had failed to provide the Court with the necessary information to justify a departure from the usual rule that a declaration of invalidity should not be suspended. However, since there is general agreement that Chief Justice Ngcobo should remain in office, not least because of the reform process that is mid-stream and which he is leading, in our submission there are good grounds for such a suspension.

49. If the Constitutional Court either suspends a declaration of invalidity in respect of section 8 or indicates its receptiveness to doing so in the event that parliament is unable to complete the relevant legislative process by the deadline of 14 August, then the issue will be dealt with by the suspension, or a party to the proceedings could make a further application for suspension.
50. Alternatively, we submit that parliament could pass a specific piece of legislation extending the term of the Chief Justice, as contemplated in the Bill, but with the full intention of repealing the legislation upon the passage of the proposed Constitutional Amendment.
51. We are grateful for the opportunity to provide these submissions to parliament and which to conclude with an observation about the way in which the challenge presented by the Constitutional predicament has been met by all the relevant parties: a number of civil society bodies have used the Constitution to raise important issues of constitutional democracy; the Court was able to set the matter down expeditiously, and a full day of argument occurred; and the court has indicated that it will provide a judgment as soon as possible, perhaps as early as the end of the month; the government has, for its part, responded to the challenge with respect for the rule of law and the separation of powers and to the right of civil society to challenge the President's decision; an attempt has been made to find a constitutionally-principled solution, with the tabling of the Bill; and, now, parliament is expeditiously processing the Bill, including hearing the views of the public and interested civil society organisations and academic institutions. We are confident that an outcome will emerge that will be all the more legitimate because of this admirable approach to Constitutional dialogue.

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21 July 2011

APPENDIX 1

The following table is provided by, and used with the permission of, the Office of the Chief Justice.

TABLE 1: THE RESPONSIBILITIES OF THE CHIEF JUSTICE IN TERMS OF THE CONSTITUTION

SPECIFIC RESPONSIBILITIES	SECTION OF CONSTITUTION
Chief Justice must determine the time and date of first sitting of the National Assembly	51
Chief Justice must preside over the election of the Speaker of Parliament	52
Chief Justice must preside over election of the Chairperson of the National Council of Provinces	64
Chief Justice must preside over the election of the President	86
Chief Justice must preside at the first sitting of the Provincial Legislature	111
Chief Justice must preside over the election of the Provincial Speaker	111
Chief Justice must preside over the election of Premiers	128
Chief Justice as Head of the Constitutional Court	167
Chief Justice advises the President on appointments of Constitutional Court Judges	174
Chief Justice provides concurrence on the appointment of acting Judges by the Minister	175
Chief Justice is the Chairperson of the Judicial Services Commission	178
Chief Justice administers oath to President/Acting President	Schedule 2 item 1
Chief Justice administers oath to Deputy President	Schedule 2 item 2
Chief Justice administers oath to Ministers and Deputy Ministers	Schedule 2 item 3

Chief Justice administers oath to members of National Assembly, permanent delegates to the National Council of Provinces and members of Provincial Legislatures	Schedule 2 item 4
Chief Justice administers oath to Premiers, Acting Premiers and Members of the Executive Councils	Schedule 2 item 5
Chief Justice administers oath to Judges or Acting Judges	Schedule 2 item 6
Chief Justice administers oath to new Chief Justice	Schedule 2 item 6
Chief Justice must make rules for election procedures for constitutional office bearers of the National Assembly, National Council of Provinces and Provincial Legislatures	Schedule 3 Part A item 9

TABLE 2: THE RESPONSIBILITIES OF THE CHIEF JUSTICE IN TERMS OF DOMESTIC PRINCIPAL LEGISLATION

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
Constitutional Court Complementary Act 13 of 1995	Chief Justice consent for civil proceedings against Constitutional Court Judge required	5
	Chief Justice makes Constitutional Court rules	16
Correctional Services Act 111 of 1998	Chief Justice appoints three Judges as members of National Council for Correction Services	83
Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002	Minister DoJCD, in consultation with Chief Justice, designates High Court for institution of prosecutions	5
	Minister DoJCD, in consultation with Chief Justice, designates High Court/Magistrates Court in respect of offences	37
Independent Commission for the Remuneration of Public Office-bearers Act 29 of 1997	Chief Justice or designate to provide any information as requested by the Independent Commission for the Remuneration of Public Office-bearers to perform its functions	8
Judges' Remuneration and Conditions of Employment Act 47 of 2001	Commission must consult with Chief Justice or designate in respect of salaries/allowances/benefits of Constitutional Court and other Judges	6

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
	Chief Justice to be consulted in respect of permission for performance of service by Constitutional Court Judges discharged from active service	7
	Regulations: Chief Justice to be consulted by President when making regulations	13
Judicial Service Commission Act 9 of 1994	Chief Justice chairperson of the Judicial Services Commission	2
	Chief Justice chairperson of the Judicial Conduct Committee	8
	Minister, in consultation with Chief Justice, may approve receipt of royalties by Judges writing legal text books	11
	Minister, in consultation with Chief Justice, compiles Code of Judicial Conduct, and Chief Justice reviews every three years	12
	Minister, in consultation with Chief Justice, must appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests and make regulations regarding the Register	13
	Minister, in consultation with Chief Justice, must approve list of remedies/services for complaints by Chairperson/Member of Committee	17
	Judicial Service Commission Act 9 of 1994	Chief Justice must appoint Acting Chairperson to preside in an appeal (in the event of absence of the Chairperson)
Chief Justice may appoint any Judge as temporary committee member to participate in a consideration of an appeal, should there not be at least three other members available		18

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
	Chief Justice must appoint Judicial Conduct Tribunal if requested by Commission after consulting with Head of Court before appointing a Judge to a tribunal and give written notice of composition, mandate, seat and starting date of tribunal	19-22
	Chief Justice, in concurrence with Minister, must approve non-judicial members as suitable to serve on a commission	23
	Chief Justice must make rules regulating tribunal proceedings	24
	Chief Justice must provide concurrence for disclosure of contents of tribunal and holding hearings in public	29
	Chief Justice must receive tribunal report for safe-keeping	33
	Minister must consult Chief Justice on funds required by commission	36
	Chief Justice must direct the performance of functions of the Secretary of the Commission and the Registrar of Judges' Registrable Interests	37-38
Labour Appeal Court Sitting as Special Tribunal Act 30 of 1995	Minister may, after consultation with Chief Justice, appoint rules committee to amend rules for special tribunal	4
Local Government: Municipal Demarcation Act 27 of 1998	Chief Justice is member of selection panel for the Municipal Demarcation Board and Chief Justice to designate Judge to be on selection panel	8
National House of Traditional Leaders Act 22 of 2009	Chief Justice administers oath to members of National House of Traditional Leaders	22
Pan South African Language Board Act 59 of 1995	Chief Justice presides at first meeting of the Board to elect Chair	6

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
Promotion of Access to Information Act 2 of 2000	Chief Justice must, in consultation with the Judicial Services Commission and Magistrates' Commission, develop content of training courses to build pool of trained and specialised presiding officers	91A
	Chief Justice must, in consultation with the Judicial Services Commission, Magistrates' Commission and Minister, implement above training courses	91A
Promotion of Administrative Justice Act 3 of 2000	Chief Justice must, in consultation with the Judicial Services Commission and Magistrates' Commission, develop content of training courses to build pool of trained and specialised presiding officers	9A
	Chief Justice must, in consultation with the Judicial Services Commission, Magistrates' Commission and Minister, implement above training courses	9A
Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000	Chief Justice must, in consultation with the Judicial Services Commission and Magistrates' Commission, develop content of training courses to build pool of trained and specialised presiding officers	31
	Chief Justice must, in consultation with the Judicial Services Commission, Magistrates' Commission and Minister, implement above training courses	31
Restitution of Land Rights Act 22 of 1994	Chief Justice to designate two Judges to consider application for leave to appeal to the Supreme Court of Appeal from the Land Claims Court	37
South African Judicial Education Institute Act 14 of 2008	Chief Justice Chairperson of council	7
	Chief Justice to designate Constitutional Court Judge as member	7
	Chief Justice to designate two Judge Presidents and two other Judges as members	7
	Chief Justice to designate discharged Judge as member	7
	Chief Justice to replace the above designated Judge members	7

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
	Chief Justice determines meeting times and places	8
	Chief Justice may issue guidelines with concurrence of Minister	8
South African Police Service Act 68 of 1995	The Minister of the SAPS must, after consultation with the Chief Justice and the Minister of the DoJCD, appoint a retired Judge to investigate complaints	17L
Special Investigating Units and Special Tribunals Act 74 of 1996	President, after consultation with Chief Justice, to appoint President of Tribunal	7
	President may only appoint serving Judge as member after consultation with Chief Justice	7
PRE-1994 NATIONAL LEGISLATION		
Attorneys Act 53 of 1979	Chief Justice to approve rules made by provincial attorneys' councils and, Presidential approval, if they adversely affect the interests of the public	74
	Minister may make rules in respect of the Act after consultation with Chief Justice and presidents of various law societies	81
	Minister may, with the concurrence of the Chief Justice and after consultation with the presidents of various law societies, make regulations in respect of the Attorney's Fidelity Fund	81
	Chief Justice may, after consultation with the Judges-President of the several provincial divisions and with the presidents of the several societies, make rules of court	82
Consumer Affairs (Unfair Business Practices) Act 71 of 1988	Chief Justice to designate Judge as president of special court that sits as appeal court in respect of the Act [to be replaced by Consumer Protection Act 68 of 2008]	13
Independent Electoral Commission Act 150 of 1993	Chief Justice to designate two Judges as members of the Special Electoral Court [to be replaced by Electoral Commission Act 51 of 1996]	32

LEGISLATION	SPECIFIC RESPONSIBILITIES	SECTION
	Chief Justice to designate Judge to fill vacancy on the Special Electoral Court [to be replaced by Electoral Commission Act 51 of 1996]	32
Magistrates Act 90 of 1993	President to designate Judge as chairperson of Magistrates Commission in consultation with Chief Justice	3
Magistrates Act 90 of 1993	Magistrates Commission must consult with Chief Justice or his/her designated person in respect of salaries, allowances and benefits of Magistrates	12
Magistrates' Courts Act 32 of 1944	Minister may, after consultation with Chief Justice, exempt a Magistrate from statutory obligation to dispose of non-finalised proceedings after vacation of office, if such Magistrate is unfit or incapacitated [to be replaced by Magistrates' Courts Amendment Act 120 of 1993]	9
Prize Jurisdiction Act 3 of 1968	Chief Justice has powers to make rules for the adjudication of prize proceedings or the regulation of any matter relating thereto	5
Recognition of Foreign Legal Qualifications and Practice Act 114 of 1993	Minister must, after consultation with Chief Justice, appoint Judge to panel	4
PROVINCIAL LEGISLATION: MPUMALANGA		
Mpumalanga Provincial House and Local Houses of Traditional Leaders Act 6 of 2005	Chief Justice designates Judge to administer oath to members of Mpumalanga Provincial House of Traditional Leaders	31
OTHER		
Rules of the Constitutional Court	The Chief Justice of South Africa has, under section 171 of the Constitution of the Republic of South Africa, 1996, and section 16 of the Constitutional Court Complementary Act, 1995 (Act 13 of 1995), as amended, prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from 1 December 2003.	

