STATUTORY INSTRUMENTS

1968 No. 1377

AFRICA

The Swaziland Independence Order 1968

Made - - - -	*26th August* 1968
Laid before Parliament	*30th August* 1968
Coming into Operation	*Immediately before 6th September* 1968

At the Court at Balmoral, the 26th day of August 1968

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation and commencement.

1.—(1) This Order may be cited as the Swaziland Independence Order 1968.

(2) This Order shall come into operation immediately before 6th September 1968 :

Provided that the King may at any time after 30th August 1968 exercise any of the powers conferred upon him by section 5(3) of this Order or section 58 of the Constitution to such extent as may be necessary or expedient to enable the Constitution to function from 6th September 1968.

Interpretation.

2.—(1) In this Order—

" the Constitution " means the Constitution of the Kingdom of Swaziland set out in the Schedule to this Order ;

" the existing House of Assembly " means the House of Assembly established by the existing Orders ;

" the existing laws " means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty in Council, any Acts of the Parliament of Swaziland, proclamations, rules, regulations, orders or other instruments having effect as part of the law of Swaziland at the commencement of this Order but does not include any Order revoked by this Order ;

" the existing Orders " means the Orders revoked by section 3(1) of this Order ;

" the existing Senate " means the Senate established by the existing Orders.

(2) The provisions of sections 137 to 144 of the Constitution shall apply for the purpose of interpreting sections 1 to 19 of this Order

(a) 1890 c. 37.

and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

Revocations.

3.—(1) The Swaziland Constitution Order 1967(a), the Swaziland Constitution (Amendment) Order 1967(b) and the Swaziland Constitution (Amendment) Order 1968(c) are revoked with effect from the commencement of this Order.

(2) The Emergency Powers Order in Council 1939(d) and the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965(e) and any Order in Council amending those Orders shall cease to have effect as part of the law of Swaziland at the commencement of this Order.

(3) The Swaziland (Appeals to Privy Council) Order 1967(f) is revoked with effect from the commencement of this Order.

Establishment of Constitution.

4. Subject to the provisions of this Order, the Constitution shall come into effect in Swaziland at the commencement of this Order.

Existing laws.

5.—(1) The revocation of the existing Orders shall be without prejudice to the continued operation of any existing laws made, or having effect as if they had been made, under any of those Orders; and any such laws shall have effect on and after the commencement of this Order as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Swaziland Independence Act 1968(g) and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Act of Parliament or by any authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Order by or under the existing Orders, that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Swaziland Independence Act 1968 and this Order) as if it had been made under the Constitution by Act of Parliament or, as the case may require, by the authority or person.

(3) The King may, by order published in the Gazette, at any time before 6th March 1969 make such amendments to any existing law (other than the Swaziland Independence Act 1968 or this Order) as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under subsection (3) of this section may provide that any grant, lease or other disposition of minerals and mineral oils subsisting on 5th September 1968 shall be deemed, with effect from 6th September 1968, to include such provisions (being provisions which on 5th September 1968 attach to that grant, lease or disposition by virtue of any law) as may be specified in that order.

(a) S.I. 1967/241 (1967 I, p. 857).
(b) S.I. 1967/975 (1967 II, p. 2950).
(c) S.I. 1968/727 (1968 II, p. 2105).
(d) See S.I. 1952 I, at p. 621.
(e) S.I. 1965/1203 (1965 II, p. 3422).
(f) S.I. 1967/246 (1967 I, p. 944).
(g) 1968 c. 56.

(5) An order made under this section may be amended or revoked by Act of Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Order or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

Existing offices.

6.—(1) The persons who immediately before the commencement of this Order hold office as Prime Minister or other Minister or Assistant Minister shall, as from the commencement of this Order, hold the like offices as if they had been appointed thereto in accordance with the provisions of the Constitution and shall be deemed to have taken and subscribed any necessary oath under the Constitution.

(2) Where any other office has been established by or under the existing Orders or any existing law and the Constitution establishes a similar or an equivalent office any person who, immediately before the commencement of this Order, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed, as from the commencement of this Order, to have been appointed to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken and subscribed any necessary oaths under the Constitution:

Provided that any person who under the existing Orders or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution at the expiration of that period or upon the attainment of that age.

(3) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and the removal from office of persons holding or acting in any office.

Senate.

7.—(1) The persons who, immediately before the commencement of this Order, are members of the existing Senate having been elected as such by the existing House of Assembly shall be deemed, as from the commencement of this Order, to have been elected as Senators in pursuance of section 39 of the Constitution; and the persons who, immediately before the commencement of this Order, are members of the existing Senate having been appointed as such by the King shall be deemed, as from the commencement of this Order, to have been appointed as Senators in pursuance of section 38 of the Constitution; and those persons shall, subject to the provisions of subsection (3) of this section, hold their seats in the Senate in accordance with the Constitution.

(2) The persons who, immediately before the commencement of this Order, are Speaker and Deputy Speaker of the existing Senate shall be deemed, as from the commencement of this Order, to have been elected as President and Deputy President of the Senate, respectively, in pursuance of section 47 of the Constitution and shall hold their offices in accordance with the Constitution.

(3) Any person deemed by subsection (1) of this section to be a member of the Senate established by the Constitution who is not

a citizen of Swaziland on 6th September 1968 shall not be required until 6th March 1969 to vacate his seat in the Senate on the grounds that he is not a citizen of Swaziland, but he shall vacate his seat on that date if he is not then such a citizen.

House of Assembly.

8.—(1) The persons who, immediately before the commencement of this Order, are elected members of the existing House of Assembly shall be deemed, as from the commencement of this Order, to have been elected as members of the House of Assembly in pursuance of section 41 of the Constitution; and the persons who, immediately before the commencement of this Order, are nominated members of the existing House of Assembly shall be deemed, as from the commencement of this Order, to have been nominated as members of the House of Assembly in pursuance of section 42 of the Constitution; and those persons shall, subject to the provisions of subsection (3) of this section, hold their seats in the House of Assembly in accordance with the Constitution.

(2) The persons who, immediately before the commencement of this Order, hold the offices of Speaker and Deputy Speaker of the existing House of Assembly shall be deemed, as from the commencement of this Order, to have been elected as Speaker and Deputy Speaker, respectively, in pursuance of section 48 of the Constitution and shall hold those offices in accordance with the Constitution.

(3) Any person deemed by subsection (1) of this section to be a member of the House of Assembly established by the Constitution who is not a citizen of Swaziland on 6th September 1968 shall not be required until 6th March 1969 to vacate his seat in the House of Assembly on the grounds that he is not a citizen of Swaziland, but he shall vacate his seat on that date if he is not then such a citizen.

Constituencies.

9. Until such time as it is otherwise provided under section 55 of the Constitution, the respective boundaries of the constituencies established by that section shall be those prescribed in the Electoral Provisions Regulations 1966 made under section 2 of the Swaziland (Electoral Provisions) Order 1966(a).

Oaths of members of Parliament.

10. Any person who, by virtue of the provisions of section 7 or 8 of this Order, is from the commencement of this Order a member of the Senate or of the House of Assembly established by the Constitution shall be deemed to have taken and subscribed any necessary oath under the Constitution.

Rules of procedure.

11. The rules of procedure of the existing Senate and of the existing House of Assembly in force immediately before the commencement of this Order shall, until it is otherwise provided by the Senate or the House of Assembly respectively in pursuance of section 78 of the Constitution, be the rules of procedure of the Senate and the House of Assembly established by the Constitution, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Dissolution of Parliament.

12. Notwithstanding anything contained in section 59(2) of the Constitution (but subject to subsection (3) of that section) Parliament unless sooner dissolved shall stand dissolved on 6th July 1972.

(a) S.I. 1966/1179 (1966 III, p. 3054).

Pending proceedings.

13.—(1) All proceedings commenced or pending before the High Court or the Court of Appeal immediately before the commencement of this Order may be carried on before the High Court or the Court of Appeal, as the case may be, established by the Constitution.

(2) Any decision given before the commencement of this Order by the High Court or the Court of Appeal shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by the Constitution.

Transitional provisions relating to existing Commissions.

14. Any power that, immediately before the commencement of this Order, is vested in a Commission established by any of the existing Orders and that, under that Order, is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority from the commencement of this Order in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the commencement of this Order may be carried on before the appropriate Commission established by the Constitution.

Remuneration of certain officers.

15. Until such time as a salary and allowances are prescribed by Act of Parliament, there shall be paid to the holder of any office to which section 131 of the Constitution applies a salary and allowances calculated at the same rate as the salary and allowances payable immediately before the commencement of this Order to the holder of the office corresponding thereto.

Rights, property, etc.

16. For the avoidance of doubt it is hereby declared that the revocation of the existing Orders shall not affect any right, liability, obligation, property or assets vested in the Government of the Kingdom of Swaziland or any person by virtue of section 89 of the Constitution set out in the Schedule to the Swaziland Constitution Order 1967 or by virtue of section 10A or 10B of that Order as inserted by section 2 of the Swaziland Constitution (Amendment) Order 1968.

Compulsory retirement to facilitate appointment of local candidates.

17.—(1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this section applies and whose retirement would in the opinion of those authorities cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) Any notice given under subsection (1) of this section requiring any officer to retire from the public service shall—

(*a*) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify

the date upon which he shall so retire which shall not be earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire ; and

(*b*) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(3) This section applies to any officer who holds a pensionable public office (other than the office of judge of the Court of Appeal, judge of the High Court, Attorney-General or Director of Audit) and is for the time being an entitled officer for the purposes of the Swaziland (Compensation and Retiring Benefits) Order 1968(**a**) or the Non-Designated Expatriate Pensionable Officers' (Retirement Benefits) Act, 1968(**b**).

Appeals in respect of certain decisions affecting pensions benefits.

18.—(1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:—

(*a*) a decision of the appropriate Commission to give such concurrence as is required by subsection (1) or (2) of section 124 of the Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer ;

(*b*) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer ; or

(*c*) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any such decision as is referred to in the preceding subsection is taken by any authority, the authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the Prime Minister in writing of that application and the Prime Minister shall thereupon appoint an Appeals Board consisting of—

(*a*) one member selected by the Prime Minister ;

(*b*) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant ; and

(**a**) S.I. 1968/1376 (1968 II, p. 3817). (**b**) Swaziland Act No. 15 of 1968.

(*c*) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the chairman of the Board.

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose—

(*a*) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

(*b*) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

(*c*) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When the Appeals Board has completed its consideration of the case, then—

(*a*) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (*a*) of subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(*b*) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision but—

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he had so retired; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(6) In this section—

"pensions benefits" has the meaning assigned to that expression in section 123 of the Constitution; and

"legal representative" means a person lawfully in or entitled to be in Swaziland and entitled to practise as an advocate or attorney in Swaziland.

(7) This section applies to any officer who holds a pensionable public office and is for the time being an entitled officer for the purposes of the Swaziland (Compensation and Retiring Benefits) Order 1968 or the Non-Designated Expatriate Pensionable Officers' (Retirement Benefits) Act 1968.

Alteration of this Order.

19.—(1) This Order may be altered by Act of Parliament in the same manner as the provisions of the Constitution, other than provisions mentioned in Schedule 4 to the Constitution, may be so altered:

Provided that this section and sections 4, 7, 8, 9, 12, 15, 17 and 18 of this Order may be altered only in the manner in which the provisions of the Constitution mentioned in Part I of Schedule 4 to the Constitution may be altered.

(2) Section 134(3) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in section 134 of the Constitution to any provision of the Constitution and to the alteration thereof.

N. E. Leigh.

THE SCHEDULE TO THE ORDER

CHAPTER I

THE KINGDOM AND ITS CONSTITUTION

Section
1. The Kingdom and its territory.
2. The Constitution.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. Fundamental rights and freedoms of the individual.
4. Protection of right to life.
5. Protection of right to personal liberty.
6. Protection from slavery and forced labour.
7. Protection from inhuman treatment.
8. Protection from deprivation of property.
9. Protection against arbitrary search or entry.
10. Provisions to secure protection of law.
11. Protection of freedom of conscience.
12. Protection of freedom of expression.
13. Protection of freedom of assembly and association.
14. Protection of freedom of movement.
15. Protection from discrimination on the grounds of race, etc.
16. Derogations from fundamental rights and freedoms under emergency powers.
17. Enforcement of protective provisions.
18. Declarations of emergency.
19. Interpretation and savings.

CHAPTER III

CITIZENSHIP

Section
20. Persons who become citizens on 6th September 1968.
21. Persons born in Swaziland after 5th September 1968.
22. Persons born outside Swaziland after 5th September 1968.
23. Persons entitled to be registered as citizens.
24. Citizenship by naturalisation.
25. Commonwealth citizens.
26. Provision by Act of Parliament.
27. Interpretation.

CHAPTER IV

THE MONARCHY

28. The office of King.
29. Succession to the throne of Swaziland.
30. The Regent.
31. The King's emoluments and Civil List.
32. Remuneration of Regent and of authorised person.
33. Immunities of King and Ndlovukazi.
34. Immunities of authorised person.
35. Protection of King and of Ndlovukazi in respect of legal proceedings.
36. Oaths by King, etc.

CHAPTER V

PARLIAMENT

PART 1

Composition of Parliament

37. Establishment of Parliament.
38. Composition of Senate.
39. Method of election of Senators.
40. Composition of House of Assembly.
41. Elected members of House of Assembly.
42. Nominated members of House of Assembly.
43. Qualifications for membership of Parliament.
44. Disqualifications for membership of Parliament.
45. Tenure of seats of members of Parliament.
46. Vacation of seats on sentence, etc.
47. President and Deputy President of Senate.
48. Speaker and Deputy Speaker of House of Assembly.
49. Acting President and Speaker.
50. Clerks to Senate and House of Assembly and their staffs.
51. Qualifications of voters.
52. Disqualifications of voters.
53. Right to vote at elections.
54. Delimitation Commission.
55. Constituencies.
56. Decision of questions as to membership of Parliament.
57. Interpretation.

PART 2

Summoning, prorogation and dissolution

Section
58. Sessions of Parliament, etc.
59. Prorogation and dissolution of Parliament.
60. Recalling the Senate and House of Assembly in case of emergency.
61. Elections.

CHAPTER VI

LEGISLATION AND PROCEDURE IN PARLIAMENT

62. Power to make laws.
63. Oaths to be taken by members of Parliament.
64. Presiding in Senate.
65. Presiding in House of Assembly.
66. Quorum in Senate and House of Assembly.
67. Voting in Parliament.
68. Right of Ministers, etc., to address other chamber of Parliament.
69. Unqualified persons sitting or voting.
70. Mode of exercise of power to make laws.
71. Introduction of bills, etc.
72. Limitation on powers of Senate with respect to appropriation bills.
73. Limitation on powers of Senate with respect to other money bills.
74. Limitation on powers of Senate with respect to urgent bills.
75. Procedure where chambers disagree on bills.
76. Reference back of bills by King.
77. Interpretation, and functions of Speaker.
78. Regulation of procedure in Parliament.

CHAPTER VII

THE EXECUTIVE

79. Executive authority of Swaziland.
80. Ministers.
81. Tenure of office of Ministers.
82. Cabinet.
83. Assignment of responsibilities to Ministers.
84. Exercise of Prime Minister's functions during absence or illness.
85. Exercise of King's functions.
86. King to be consulted and informed concerning matters of government.
87. Assistant Ministers.
88. Oaths by Ministers.
89. Secretary to Cabinet.
90. Direction of government departments.
91. Attorney-General.
92. Prerogative of Mercy.

CHAPTER VIII

LAND AND MINERALS

Section
93. Power to dispose of Government land.
94. Swazi nation land.
95. Minerals and mineral oils.
96. Interpretation.

CHAPTER IX

THE JUDICATURE

PART 1

The High Court

97. Establishment of High Court.
98. Appointment of judges of High Court.
99. Tenure of office of judges of High Court.
100. Removal of judges.
101. Acting Chief Justice.
102. Acting puisne judge.
103. Oaths by judges of High Court.
104. Jurisdiction of High Court.

PART 2

The Court of Appeal

105. Establishment of Court of Appeal.
106. Appointment of judges of Court of Appeal.
107. Tenure of office of Judge President and of Justices of Appeal.
108. Acting judges of Court of Appeal.
109. Oaths by judges of Court of Appeal.
110. Appointment of assessors.
111. Jurisdiction of Court of Appeal.
112. Practice and procedure on appeals.

PART 3

Judicial Service Commission

113. Judicial Service Commission.
114. Appointment, etc., of judicial officers.

CHAPTER X

THE PUBLIC SERVICE

115. Public Service Commission.
116. Appointment, etc., of public officers.
117. Appointment and removal of Ambassadors, etc.
118. Appointment, etc., of permanent secretaries and certain police officers.
119. Appointment of Attorney-General.
120. Removal from office of Attorney-General and Director of Audit.

Section
121. The Police Force.
122. The Prison Service.
123. Pensions laws and protection of pensions rights.
124. Power of Commissions in relation to pensions, etc.
125. Right of action for wrongful dismissal, etc.

CHAPTER XI

FINANCE

126. Consolidated Fund.
127. Withdrawals from Consolidated Fund or other public funds.
128. Authorisation of expenditure.
129. Authorisation of expenditure in advance of appropriation.
130. Contingencies Fund.
131. Remuneration of certain officers.
132. Public debt.
133. Director of Audit.

CHAPTER XII

ALTERATION OF THE CONSTITUTION

134. Mode of altering this Constitution.

CHAPTER XIII

MISCELLANEOUS

135. Swazi National Council.
136. Subordinate legislation.
137. References to public office, etc.
138. Acting appointments.
139. Removal from office.
140. Resignations.
141. Re-appointments and concurrent appointments.
142. Saving for jurisdiction of courts.
143. Power to amend and revoke instruments, etc.
144. Interpretation.

SCHEDULE 1 TO THE CONSTITUTION

SUMMONING AND PROCEDURE OF JOINT SITTINGS OF SENATE AND HOUSE OF ASSEMBLY

SCHEDULE 2 TO THE CONSTITUTION

OATHS

SCHEDULE 3 TO THE CONSTITUTION

MATTERS WHICH SHALL CONTINUE TO BE REGULATED BY SWAZI LAW AND CUSTOM

SCHEDULE 4 TO THE CONSTITUTION

SPECIALLY ENTRENCHED PROVISIONS AND ENTRENCHED PROVISIONS

THE CONSTITUTION OF THE KINGDOM OF SWAZILAND

CHAPTER I

THE KINGDOM AND ITS CONSTITUTION

The Kingdom and its territory.

1.—(1) Swaziland is a sovereign independent Kingdom.

(2) The territory of Swaziland comprises all the areas that immediately before 6th September 1968 were comprised in the former protected state of Swaziland together with such other areas as may from time to time be declared by Act of Parliament to form part of Swaziland.

The Constitution.

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

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

3. Whereas every person in Swaziland is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

4.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

5.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for Swaziland or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Swaziland;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while he is being conveyed through Swaziland in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Swaziland or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Swaziland in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court; and where he is not brought before a court within forty-eight hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court without undue delay shall rest upon any person alleging that the provisions of this subsection have been complied with.

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

(5) If any person arrested or detained as mentioned in paragraph (*b*) of subsection (3) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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

Protection from slavery and forced labour.

6.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

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

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

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

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

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment.

7.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Swaziland immediately before 6th September 1968.

Protection from deprivation of property.

8.—(1) No property shall be compulsorily taken possession of, and no interest in or right over property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit;

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right to direct access to the High Court for—

(*a*) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if any law for the time being in force in Swaziland so provides in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Swaziland.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last foregoing subsection to the extent that the law in question authorises—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable conditions relating to the form in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law (including the common law) shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(*a*) to the extent that the taking of possession or acquisition of any property is permitted by the law in question—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants or because of the risk that the property is likely to spread an infectious or dangerous disease;

(vi) in consequence of any law with respect to prescription or the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged insolvent or a body corporate in liquidation for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory

acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by any legislature in Swaziland.

Protection against arbitrary search or entry.

9.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

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

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

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

(*b*) that authorises an officer or agent of the Government or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be ; or

(*c*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court,

except so far as, in respect of paragraph (*b*) or paragraph (*c*) of this subsection, that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

10.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;

(*c*) shall be given adequate time and facilities for the preparation of his defence ;

(*d*) shall be permitted to defend himself before the court in person or by a legal representative of his own choice ;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same

conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) All proceedings of every court for the determination of the existence or extent of any civil right or obligation shall be held in public.

(10) All proceedings of every adjudicating authority, other than a court,—

(*a*) for the determination of the existence or extent of any civil right to trade or carry on a business or occupation; or

(*b*) for the determination of the existence or extent of any civil right or obligation which on 6th September 1968 it is within the original jurisdiction of the High Court to determine,

shall be held in public.

(11) Notwithstanding the provisions of subsections (9) and (10) of this section a court or other adjudicating authority—

(*a*) may, unless it is otherwise provided by Act of Parliament, exclude from its proceedings persons other than the parties and

their legal representatives to such extent as the court or other adjudicating authority may consider necessary or expedient—

(i) in circumstances where publicity may prejudice the interests of defence, public safety, public order, justice, or public morality or would prejudice the welfare of persons under the age of eighteen years or the protection of the private lives of the persons concerned in the proceedings ; or

(ii) in interlocutory proceedings ;

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

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

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

(*b*) paragraph (*d*) of subsection (2) of this section to the extent that the law in question prohibits legal representation before a Swazi court or before any court or authority hearing appeals from such a court ;

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

(*d*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

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

Protection of freedom of conscience.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

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

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

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

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression.

12.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

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

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

(ii) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(*b*) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

13.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

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

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

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

(*b*) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) Without prejudice to the generality of subsection (2) of this section, nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the registration of trade unions, employers organisations, companies, partnerships or co-operative societies including provision relating to the procedure for registration, prescribing qualifications for registration and authorising refusal of registration on the grounds that the prescribed qualifications are not fulfilled:

Provided that in the case of trade unions or employers associations the grounds for refusal of registration provided for by virtue of this paragraph are only that—

(i) the qualifications relating to the maximum or minimum number of members are not fulfilled ;

(ii) the persons whom it is the purpose of the trade union or employers association to represent are already adequately represented by a registered trade union or employers association ; or

(iii) the rules of the trade union or employers association contain discriminatory provisions (as defined in section 15 of this Constitution) ; or

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

Protection of freedom of movement.

14.—(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland, the right to leave Swaziland and immunity from expulsion from Swaziland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

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

(*a*) for imposing restrictions on the movement or residence within Swaziland of any person or on any person's right to leave Swaziland that are reasonably required in the interests of defence, public safety or public order ;

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

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

(*d*) for imposing restrictions on the freedom of movement of any person who is not a citizen of Swaziland ;

(*e*) for imposing restrictions on the acquisition or use by any person of any property in Swaziland that are reasonably required in the interests of defence, public safety, public order, public morality or public health ;

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

(*g*) for the removal of a person from Swaziland to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which he has been convicted ; or

(*h*) for the imposition of restrictions on the right of any person to leave Swaziland that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (*a*) of subsection (3) of this section so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the

necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

15.—(1) Subject to the provisions of subsections (4), (5), (6) and (9) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (7), (9) and (10) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) with respect to persons who are not citizens of Swaziland or companies which are not registered in Swaziland;

(*b*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*c*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Subsection (1) of this section shall not apply to the Poll Tax Proclamation(**a**), the African Tax Proclamation(**b**), the African Tax (Consolidation) Proclamation 1963(**c**), as in force on 5th September 1968, or to any order made under the Swazi Administration Proclamation(**d**) which is in force on that date:

Provided that if any such Proclamation or order is amended on or after 6th September 1968 in such a way as to increase the discrimination made in the Proclamation or order or to impose a new discrimination, the provisions of this subsection shall cease to apply to that Proclamation or order.

(6) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place

(**a**) Revised laws of Swaziland 1959, c. 108.
(**b**) Revised laws of Swaziland 1959, c. 109. (**c**) Proclamation No. 13 of 1963.
(**d**) Revised laws of Swaziland 1959, c. 60.

of origin, political opinions, colour or creed) to be required of any person who is appointed to any public office, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by any law for public purposes.

(7) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) of this section.

(8) Subject to the provisions of subsection (9) of this section, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by section 9(2), section 11(5), section 12(2), section 13(2), section 13(3) or paragraph (*a*) or (*b*) of section 14(3), as the case may be.

(10) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under any law for the time being in force in Swaziland.

Derogations from fundamental rights and freedoms under emergency powers.

16.—(1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 15 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Swaziland during that period.

(2) When a person is detained by virtue of a power exercised in the absolute discretion of any authority and conferred by any such law as is referred to in subsection (1) of this section (not being a person who is detained because he is a person who, not being a citizen of Swaziland, is a citizen of a country with which Swaziland is at war or has been engaged in hostilities against Swaziland in association with or on behalf of such a country or otherwise assisting or adhering to such a country) the following provisions shall apply, that is to say:—

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys ;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal ; and

(*e*) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Enforcement of protective provisions.

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

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made in pursuance of subsection (1) of this section ;

(*b*) to determine any question which is referred to it in pursuance of subsection (3) of this section,

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

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

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

(5) No appeal shall lie, without the leave of the Court of Appeal, from any determination by the High Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

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

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

Declarations of emergency.

18.—(1) The King may, by proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect—

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

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

unless, before the expiration of that period, it is approved by a resolution passed at a joint sitting of the Senate and the House of Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration approved by a resolution passed at a joint sitting of the Senate and the House of Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date upon which it was so approved or until such earlier date as may be specified in the resolution:

Provided that approval of the declaration may be extended for periods of not more than six months at a time by a resolution passed at a joint sitting of the Senate and the House of Assembly.

(4) A declaration approved under this section may at any time be revoked by a resolution passed at a joint sitting of the Senate and the House of Assembly.

(5) A resolution for the purpose of subsections (2) or (3) of this section shall not be passed at a joint sitting unless it is supported by a majority of all the members of the Senate and the House of Assembly.

(6) The provisions of Schedule 1 to this Constitution shall apply with respect to the summoning and procedure of a joint sitting of the Senate and the House of Assembly for the purpose of this section.

Interpretation and savings.

19.—(1) In this Chapter, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means a court of law having jurisdiction in Swaziland, but does not include, save in sections 4 and 6 of this Constitution, a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means—

(*a*) a naval, military or air force;

(*b*) the Swaziland Police Force; or

(*c*) the Swaziland Prison Service;

"legal representative" means a person lawfully in or entitled to be in Swaziland and entitled to practise as an advocate or attorney in Swaziland;

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

"a period of public emergency" means any period during which Swaziland is at war or a declaration of a state of emergency is in force under section 18 of this Constitution;

"property" means property, movable or immovable, corporeal or incorporeal, of any description whatever including Swazi nation land and minerals and mineral oils in Swaziland, and any right or interest held, in relation to minerals or mineral oils in Swaziland, by any person under any grant, lease or other disposition lawfully made.

(2) Nothing contained in section 10(2) or 16(2) of this Constitution shall be construed as entitling a person to legal representation at public expense.

(3) Nothing contained in sections 12, 13 or 15 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(4) In relation to any person who is a member of a disciplined force of Swaziland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(5) In relation to any person who is a member of a disciplined force that is not a disciplined force of Swaziland and who is present in Swaziland in pursuance of arrangements made between the Government of Swaziland and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) No measures taken in relation to a person who is a member of a disciplined force of a country with which Swaziland is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER III

CITIZENSHIP

Persons who become citizens on 6th September 1968.

20. Every person who, on 5th September 1968, is a citizen of the former protected state of Swaziland by virtue of any of the provisions of Chapter XI of the former Constitution shall, on 6th September 1968, be a citizen of Swaziland.

Persons born in Swaziland after 5th September 1968.

21. Every person born in Swaziland on or after 6th September 1968 shall, if his father is a citizen of Swaziland, become a citizen of Swaziland at the time of his birth.

Persons born outside Swaziland after 5th September 1968.

22. Every person born outside Swaziland on or after 6th September 1968 shall, if his father is a citizen of Swaziland and is domiciled in Swaziland, become a citizen of Swaziland at the time of his birth.

Persons entitled to be registered as citizens.

23.—(1) Subject to the provisions of this section, any of the following persons shall be entitled, upon making application in such manner as may be prescribed by Act of Parliament, to be registered as a citizen of Swaziland—

(*a*) any woman who is married to a person who is a citizen of Swaziland;

(*b*) any woman whose marriage has been terminated by death or dissolution if the person to whom she was married was a citizen of the former protected state of Swaziland or a citizen of Swaziland or would but for his death have been a citizen of the former protected state of Swaziland by virtue of section 127(*a*) or (*b*) of the former Constitution;

(*c*) any person one of whose parents is a citizen of Swaziland or was, at the date of the death of such parent, a citizen of Swaziland or a citizen of the former protected state of Swaziland;

(*d*) any person who is certified, by writing under the hand of the Nggwenyama or the Secretary to the Swazi National Council, to have "khonta'd", that is to say, to have been accepted as a Swazi in accordance with Swazi law and custom;

(*e*) any person born in Swaziland on or after 6th September 1968 who was stateless at the time of his birth and is stateless at the time of the application and who is not entitled to acquire as of right the citizenship of his father or his mother.

(2) A person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under subsection (1) of this section, but an application may be made on his behalf by his parent or guardian.

(3) A person registered as a citizen of Swaziland under this section shall be a citizen by registration from the date on which he is so registered.

Citizenship by naturalisation.

24.—(1) Subject to the provisions of this section, the Minister responsible for citizenship may, upon application made by any person who

has attained the age of twenty-one years, grant a certificate of naturalisation to that person if satisfied—

(*a*) that he has been ordinarily and lawfully resident in Swaziland—

(i) throughout the period of twelve months immediately preceding the date of the application ; and

(ii) during the seven years immediately preceding the said period of twelve months, for periods amounting in the aggregate to not less than four years or, in the case of a Commonwealth citizen, for periods amounting in the aggregate to not less than three years ; and

(*b*) that he is of good character ; and

(*c*) that he has an adequate knowledge of at least one of the following languages—

(i) English ;

(ii) siSwati ; and

(*d*) that he intends, if the certificate is granted, to continue to reside in Swaziland.

(2) Provision may be made by Act of Parliament empowering the Minister responsible for citizenship to grant a certificate of naturalisation to any person who has not completed the periods of residence specified in subsection (1)(*a*) of this section, but is otherwise qualified under that subsection, if the Minister thinks fit in the circumstances of any particular case.

(3) A certificate of naturalisation shall not be granted to any person under this section until he has taken the oath of allegiance set out in Schedule 2 to this Constitution or such other oath as may be prescribed.

(4) A person to whom a certificate of naturalisation is granted shall be a citizen by naturalisation from the date on which the certificate is so granted.

Commonwealth citizens.

25.—(1) Every person who under this Constitution or any other law is a citizen of Swaziland or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948(**a**), continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965(**b**) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Act of Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia, The Gambia, Singapore, Guyana, Lesotho, Botswana, Barbados, Mauritius and Southern Rhodesia.

Provision by Act of Parliament.

26.—(1) Subject to the provisions of this Chapter, provision may be made by Act of Parliament relating to the acquisition of citizenship of Swaziland by registration or naturalisation.

(**a**) 1948 c. 56. (**b**) 1965 c. 34.

(2) Provision may be made by Act of Parliament for depriving of his citizenship of Swaziland any person who is such a citizen by registration or naturalisation.

(3) Provision may be made by Act of Parliament for the renunciation by any person of his citizenship of Swaziland.

Interpretation.

27.—(1) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock, be construed as a reference to the mother of that person.

(2) Any reference in this Chapter to a citizen by registration shall include a reference to any person who is a citizen by virtue of section 20 of this Constitution and acquired citizenship of the former protected state of Swaziland under section 128 of the former Constitution and any reference in this Chapter to a citizen by naturalisation shall include a reference to any person who is a citizen by virtue of section 20 of this Constitution and acquired citizenship of the former protected state of Swaziland under section 129 of the former Constitution.

(3) For the purposes of this Chapter, a person born aboard a registered aircraft, or aboard an unregistered aircraft of the Government of any country, shall be deemed to have been born in the place in which the aircraft was registered or, as the case may be, in that country.

(4) Any reference in this Chapter to the national status or domicile of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status or domicile of the father at the time of the father's death; and where that death occurred before 6th September 1968 such a reference to the national status shall be construed as a reference to the national status the father of a person would have had if he had died on 6th September 1968.

CHAPTER IV

THE MONARCHY

The office of King.

28.—(1) The King of Swaziland is the Head of State.

(2) The King shall do all things that belong to his office in accordance with the provisions of this Constitution and of all other laws for the time being in force.

Succession to the throne of Swaziland.

29. When an announcement is made to the Swazi nation in accordance with Swazi law and custom that the office of King is vacant by reason of the death of the holder thereof or any other cause, such person as, in accordance with Swazi law and custom, is declared to be King shall become King.

The Regent.

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

(2) If the Regent is unable for any reason to perform the functions of such office, a person shall be authorised, in accordance with Swazi law and custom (hereinafter referred to as "an authorised person"), to perform on her behalf her functions under subsection (1) of this section.

The King's emoluments and Civil List.

31.—(1) The King shall be paid such emoluments and shall have such Civil List as may be prescribed by Act of Parliament.

(2) The emoluments of the King and his Civil List shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the King's continuance in office.

Remuneration of Regent and of authorised person.

32.—(1) The Ndlovukazi shall, in respect of any period during which she acts as Regent, be entitled to such remuneration as may be prescribed by Act of Parliament.

(2) An authorised person shall be entitled to such remuneration as may be prescribed by Act of Parliament.

(3) Any remuneration prescribed under subsection (1) or (2) of this section shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the Ndlovukazi's continuance in office as Regent or, as the case may be, during the period in which an authorised person is acting under section 30(2) of this Constitution.

Immunities of King and Ndlovukazi.

33.—(1) The King shall be entitled to immunity from taxation in respect of his emoluments and Civil List, all income accruing to him in his private capacity and all property owned by him in his private capacity.

(2) The Ndlovukazi shall be entitled to immunity from taxation in respect of her emoluments or any income accruing to her in her private capacity and all property owned by her in her private capacity.

(3) The King and the Ndlovukazi shall be entitled to immunity from compulsory acquisition of all property owned by them in their private capacities.

Immunities of authorised person.

34. An authorised person shall be entitled to immunity from taxation in respect of any remuneration to which he is entitled under section 32 of this Constitution, and all income accruing to him in his private capacity during any period in which he is performing on behalf of the Ndlovukazi her functions as Regent, and, in so far as the taxation relates to the period concerned, all property owned by him in his private capacity.

Protection of King and of Ndlovukazi in respect of legal proceedings.

35.—(1) Whilst any person holds the office of King, he shall be entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by him in his private capacity, to immunity from criminal proceedings in respect of all things done or omitted to be done by him either in his official capacity or in his private capacity and to immunity from being summoned to appear as a witness in any civil or criminal proceeding.

(2) The Ndlovukazi shall be entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by her in her private capacity, to immunity from criminal proceedings in respect of all things done or omitted to be done by her in her official capacity or in her private capacity and to immunity from being summoned to appear as a witness in any civil or criminal proceedings.

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which that person has held the office of King or Ndlovukazi shall not be taken into account in calculating the period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) or (2), as the case may be, of this section may be brought against that person.

(4) For the avoidance of doubt it is hereby declared that any right, interest or function vested in the Nggwenyama in relation to Swazi nation land or minerals or mineral oils in Swaziland is so vested in him, in his capacity as Nggwenyama, and not as King or in his private capacity.

Oaths by King, etc.

36.—(1) The King shall, at his installation as King, take and subscribe the oath for the due execution of his office which is set out in Schedule 2 to this Constitution.

(2) The Ndlovukazi shall, before commencing to act as Regent, take and subscribe the oath of allegiance and the oath for the due execution of the office of Regent which are set out in Schedule 2 to this Constitution.

(3) The oaths referred to in the foregoing provisions of this section shall be administered to the King or the Ndlovukazi by the Chief Justice (or, in the absence of the Chief Justice, by a judge of the Court of Appeal or some other judge of the High Court) in the presence of such of the judges of the Court of Appeal, such of the other judges, if any, of the High Court and such Ministers of the Government as are able to attend.

CHAPTER V

PARLIAMENT

PART 1

Composition of Parliament

Establishment of Parliament.

37. There shall be a Parliament which shall consist of a Senate and a House of Assembly.

Composition of Senate.

38.—(1) Subject to the provisions of this section, the Senate shall consist of twelve members (in this Constitution referred to as "Senators") who shall be elected or appointed in accordance with this section.

(2) If any person who is not a Senator is elected to be President or Deputy President of the Senate he shall, by virtue of holding the office of President or Deputy President, as the case may be, be a member of the Senate in addition to the twelve members aforesaid.

(3) Six Senators shall be elected by the members of the House of Assembly entitled to vote in the manner prescribed by section 39 of this Constitution.

(4) The remaining six Senators shall be appointed by the King, acting in his discretion, in accordance with subsection (5) of this section.

(5) The Senators appointed by the King shall be persons who, in the opinion of the King after consultation with such bodies as he may consider appropriate,—

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

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

(6) Notwithstanding any other provision of this section, the power of the King to appoint six Senators shall not be so exercised as to deny a majority in the Senate to the party or coalition of parties which is in the majority in the House of Assembly and, accordingly, that power shall be exercised after the election of the Senators referred to in subsection (3) of this section.

Method of election of Senators.

39. The Senators elected by the members of the House of Assembly shall be elected, in such manner as may be prescribed by or under any law, in accordance with the system of proportional representation by means of the single transferable vote.

Composition of House of Assembly.

40.—(1) Subject to the provisions of this section, the House of Assembly shall consist of twenty-four elected members, six nominated members and the Attorney-General.

(2) If any person who is not a member of the House is elected to be Speaker or Deputy Speaker thereof he shall, by virtue of holding the office of Speaker or Deputy Speaker, as the case may be, be a member of the House of Assembly in addition to the members specified in subsection (1) of this section.

Elected members of House of Assembly.

41. Swaziland shall, in accordance with the provisions of section 55 of this Constitution, be divided into eight constituencies and each constituency shall elect three members to the House of Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

Nominated members of House of Assembly.

42. The nominated members of the House of Assembly shall be appointed by the King, acting in his discretion, after consultation with such bodies as he may consider appropriate and after taking account of any interests not already adequately represented in the House:

Provided that the power of appointment shall not be so exercised as to deprive the party or coalition of parties which has a majority among the elected members of the House of that majority.

Qualifications for membership of Parliament.

43. Subject to the provisions of section 44 of this Constitution, a person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member

of the House of Assembly if, and shall not be qualified to be so elected or appointed unless, he—

(*a*) is ordinarily resident in Swaziland ;

(*b*) is a person qualified for registration as a voter ; and

(*c*) has been so registered in any constituency.

Disqualifications for membership of Parliament.

44.—(1) No person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly who—

(*a*) is, by virtue of his own act, under acknowledgment of allegiance, obedience or adherence to a foreign power or state ;

(*b*) is a member of the armed forces of Swaziland or is holding or acting in any public office, or is holding or acting in any other office established by or under any law that may be prescribed ;

(*c*) is a party to, or is a partner in a firm or a director or manager of a company which is a party to, any subsisting Government contract, and has not made the appropriate disclosure of the nature of the contract and his interest, or the interest of the firm or company, therein:

Provided that the provisions of this paragraph shall not apply in the case of a Senator or a nominated member of the House of Assembly if he is appointed as such without his consent being obtained prior to the appointment ;

(*d*) is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law for the time being in force in any country ;

(*e*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland ;

(*f*) is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any country, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, including a suspended sentence, imposed on him by such a court or substituted by the competent authority for some other sentence imposed on him by such a court ;

(*g*) has at any time been, for an offence which is a criminal offence under the law of Swaziland, under a sentence of imprisonment for a term of or exceeding six months (other than a suspended sentence which has not been enforced) imposed on him by a court in any country or substituted by competent authority for some other sentence imposed on him by such a court:

Provided that if two years or more have elapsed since the termination of the sentence of imprisonment, the person shall not be disqualified for membership of Parliament by reason only of such sentence ;

(*h*) is disqualified for membership of the Senate or House of Assembly under any law for the time being in force relating to offences connected with elections ; or

(*i*) in the case of an elected member of the House of Assembly, holds, or is acting in, any office, the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the purposes of paragraph (*c*) of subsection (1) of this section the appropriate disclosure of the nature of and interest in a Government contract shall be—

(*a*) in the case of an elected Senator, disclosure to the elected members of the House of Assembly through the Speaker of the House before the election is held under section 39 of this Constitution;

(*b*) in the case of an appointed Senator or a nominated member of the House of Assembly, disclosure to the King before the appointment is made;

(*c*) in the case of an elected member of the House of Assembly, disclosure during the period commencing with the notification of the writ for the election in the Gazette and ending three days before the date of the election, by publication of a notice in English in the Gazette and in English and siSwati in a newspaper circulating in Swaziland.

Tenure of seats of members of Parliament.

45. A Senator or a member of the House of Assembly shall vacate his seat as such if, but only if,—

(*a*) Parliament is dissolved;

(*b*) he resigns his seat by writing under his hand addressed to the President or Speaker of the chamber;

(*c*) he is absent from two consecutive meetings of the Senate or, as the case may be, the House of Assembly, without having obtained before the termination of either meeting from the President or Speaker, or other person presiding, permission to be or to remain absent therefrom;

(*d*) in the case of a Senator or nominated member who was appointed without his consent being obtained prior to the appointment, he is at the time of his appointment a party to, or is a partner in a firm or a director or manager of a company which is a party to, a subsisting Government contract and has not within one week after his appointment been exempted by the King, by writing under his hand, from vacating his seat;

(*e*) he becomes a party to any Government contract, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to them to be just to do so, the Senate may by resolution exempt a Senator and the House of Assembly may by resolution exempt a member of the House from vacating his seat under the provisions of this paragraph, if the member, before becoming a party to the contract or before or as soon as practicable after becoming otherwise interested in the contract (whether as a partner in a firm or as a director or manager of a company), discloses to the President of the Senate or the Speaker of the House, as the case may be, the nature of the contract and his interest, or the interest of the firm or company, therein;

(*f*) he ceases to be qualified for registration as a voter;

(*g*) he ceases to be ordinarily resident in Swaziland;

(*h*) he becomes a member of the other chamber of Parliament;

(*i*) any circumstances arise that, if he were not a Senator or a member of the House of Assembly, would cause him to be disqualified for election or appointment thereto by virtue of paragraph (*a*), (*b*), (*d*), (*e*), (*h*) or (*i*) of section 44(1) of this Constitution; or

(*j*) the circumstances mentioned in section 46 of this Constitution arise.

Vacation of seats on sentence, etc.

46.—(1) Subject to the provisions of this section, if a Senator or an elected member or a nominated member of the House of Assembly is, for an offence which is a criminal offence under the law of Swaziland, sentenced by a court in any country to death or to imprisonment (by whatever named called) for a term of or exceeding six months, including a suspended sentence, he shall forthwith cease to perform his functions as a Senator or member of the House, and his seat therein shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the President of the Senate or the Speaker of the House, as the case may be, may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate one hundred and eighty days shall not be granted without the approval of the Senate or House signified by resolution.

(2) If at any time before the Senator or member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted, his seat in the Senate or House of Assembly shall not become vacant under the provisions of this section, and he may again perform his functions as a Senator or member of the House of Assembly.

President and Deputy President of Senate.

47.—(1) When the Senate first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the President of the Senate; and if the office of President falls vacant at any time before the next dissolution of Parliament, the Senate shall elect as soon as practicable another person to that office.

(2) At any time after the election of a President the Senate may, if it thinks fit, elect a person to be the Deputy President of the Senate; and if the office of Deputy President falls vacant at any time before the next dissolution of Parliament, the Senate may, if it thinks fit, elect another person to that office.

(3) The President or Deputy President may be elected either from among the Senators who are not Ministers or Assistant Ministers or from among persons who are not Senators:

Provided that a person who is not a Senator shall not be elected as President or Deputy President if he would be disqualified to be a Senator by virtue of paragraph (*d*), (*e*), (*f*), (*g*) or (*h*) of section 44(1) of this Constitution.

(4) A person shall vacate the office of President or Deputy President—

(*a*) if, having been elected from among the Senators, he ceases to be a Senator otherwise than by a dissolution of Parliament or if he is appointed to be a Minister or an Assistant Minister or if he is required, by virtue of section 46 of this Constitution, to cease to perform his functions as a Senator ;

(*b*) in the case of a President or Deputy President who was elected from among persons who were not Senators, if any circumstances arise which would cause him to be disqualified to be President or Deputy President under the proviso to subsection (3) of this section ;

(*c*) when the Senate first sits after any dissolution of Parliament ;

(*d*) if he is removed from office by a resolution of the Senate supported by the votes of not less than two-thirds of all the Senators ; or

(*e*) in the case of the Deputy President, if he is elected as President.

(5) A person holding the office of President or Deputy President may resign his office by writing under his hand addressed to the Senate and the office shall become vacant when the writing is received by the Clerk to the Senate.

(6) During any period when a person holding the office of the Deputy President is acting as President of the Senate in accordance with section 49 of this Constitution he shall not perform the functions of Deputy President.

Speaker and Deputy Speaker of House of Assembly.

48.—(1) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House of Assembly ; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall elect as soon as practicable another person to that office.

(2) At any time after the election of a Speaker the House of Assembly may, if it thinks fit, elect a person to be the Deputy Speaker of the House of Assembly ; and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House may, if it thinks fit, elect another person to that office.

(3) The Speaker or Deputy Speaker may be elected either from among the members of the House (other than the Attorney-General or Ministers or Assistant Ministers) or from among persons who are not members of the House :

Provided that a person who is not a member of the House shall not be elected as Speaker or Deputy Speaker if he would be disqualified to be a member of the House by virtue of paragraph (*d*), (*e*), (*f*), (*g*) or (*h*) of section 44(1) of this Constitution.

(4) A person shall vacate the office of Speaker or Deputy Speaker of the House of Assembly—

(*a*) if, having been elected from among the members of the House, he ceases to be a member otherwise than by the dissolution of Parliament or if he is appointed to be a Minister or Assistant

Minister or Attorney-General or if he is required, by virtue of section 46 of this Constitution, to cease to perform his functions as a member of the House;

(*b*) in the case of a Speaker or Deputy Speaker who was elected from among persons who were not members of the House, if any circumstances arise which would cause him to be disqualified to be Speaker or Deputy Speaker under the proviso to subsection (3) of this section;

(*c*) when the House first sits after any dissolution of Parliament;

(*d*) if he is removed from office by a resolution of the House supported by the votes of not less than two-thirds of all the members thereof; or

(*e*) in the case of the Deputy Speaker, if he is elected as Speaker.

(5) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the House and the office shall become vacant when the writing is received by the Clerk to the House.

(6) During any period when a person holding the office of the Deputy Speaker is acting as Speaker of the House of Assembly in accordance with section 49 of this Constitution he shall not perform the functions of Deputy Speaker.

Acting President and Speaker.

49.—(1) During any period when the office of President or Speaker is vacant or the holder of the office of President or Speaker is absent from Swaziland or is for any other reason unable to perform the functions of his office, the Senate or the House of Assembly, as the case may be, may elect a person (not being a Minister, an Assistant Minister or the Attorney-General) from among the members of the chamber to act as President or Speaker until a President or Speaker has been elected or, as the case may be, the President or Speaker has resumed the functions of his office.

(2) During any period when the office of Deputy President or Deputy Speaker is vacant or the holder of the office of Deputy President or Deputy Speaker is absent from Swaziland or is acting as President or Speaker or is for any other reason unable to perform the functions of his office, the Senate or the House of Assmbly, as the case may be, may elect a person (not being a Minister, an Assistant Minister or the Attorney-General) from among the members of the chamber to act as Deputy President or Deputy Speaker until a Deputy President or Deputy Speaker has been elected or, as the case may be, the Deputy President or Deputy Speaker has resumed the functions of his office.

(3) The provisions of sections 47(4) and 47(5) of this Constitution shall apply in relation to a person elected under this section to act as President or Deputy President of the Senate as they apply in relation to the holder of the office of President or Deputy President; and the provisions of sections 48(4) and 48(5) of this Constitution shall apply in relation to a person elected under this section to act as Speaker or Deputy Speaker as they apply in relation to the holder of the office of Speaker or Deputy Speaker.

Clerks to Senate and House of Assembly and their staffs.

50.—(1) There shall be a Clerk to the Senate and a Clerk to the House of Assembly.

(2) The offices of the Clerk to the Senate and the Clerk to the House of Assembly and of the members of their staffs shall be offices in the public service.

(3) Nothing in this section shall be construed as preventing the appointment of one person to the offices of Clerk to the Senate and Clerk to the House of Assembly or the appointment of one person to any office on the staff of the Clerk to the Senate and any office on the staff of the Clerk to the House of Assembly.

Qualifications of voters.

51.—(1) Subject to the provisions of section 52 of this Constitution, a person shall be qualified to be registered as a voter for the purpose of elections of elected members of the House of Assembly if, and shall not be so qualified unless, he has attained the age of twenty-one years and is a citizen of Swaziland.

(2) A person shall be entitled to be registered in one constituency only.

Disqualifications of voters.

52. No person shall be qualified to be registered as a voter, or to vote, if—

(*a*) he is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;

(*b*) he is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any country, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

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

Right to vote at elections.

53.—(1) Any person who is registered as a voter shall be entitled to vote at any election of a member to the House of Assembly and, in the case of any general election, be entitled to cast one vote for each of any three candidates for election:

Provided that (except in so far as may otherwise be prescribed) no such person shall be entitled so to vote if on the date prescribed for polling he is for any reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for a constituency who is not registered as a voter in that constituency.

Delimitation Commission.

54.—(1) There shall be a Delimitation Commission which shall be appointed by the Judicial Service Commission in the circumstances specified in section 55(3) of this Constitution and which shall consist of a chairman and two other members.

(2) The chairman and the other members of the Commission shall be appointed by the Judicial Service Commission.

(3) The chairman shall be appointed from among the judges of the High Court.

(4) No person shall be qualified to be appointed as one of the other members of the Commission if—

(*a*) he is a Senator or member of the House of Assembly or is nominated for election to the House of Assembly ;

(*b*) he is the holder of an office in any organisation that sponsors or supports, or that has at any time sponsored or supported, a candidate for election as a member of a Legislative Council established for Swaziland by Order of Her Majesty in Council or of the Senate or House of Assembly established by this Constitution or the former Constitution ;

(*c*) during the period of five years immediately preceding the date of the appointment—

(i) he has been a member of a Legislative Council or of a Senate or House of Assembly established as aforesaid ;

(ii) he has been nominated for election to a Legislative Council or Senate or House of Assembly established as aforesaid ; or

(iii) he has been the holder of an office in such an organisation as is referred to in paragraph (*b*) of this subsection ; or

(*d*) he is a public officer, other than a judge of the High Court or the Court of Appeal:

Provided that a person shall not be so disqualified by reason only that he has been Speaker of a Legislative Council established as aforesaid or has been Speaker of the House of Assembly or Speaker of the Senate established as aforesaid having been elected as such from outside the House of Assembly or, as the case may be, the Senate.

(5) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(*a*) when an order of the Commission is published in the Gazette in accordance with the provisions of section 55(5) of this Constitution ; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (4) of this section.

(6) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

(7) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

(8) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(9) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Comission shall require the concurrence of a majority of all its members.

Constituencies.

55.—(1) For the purpose of the election of elected members of the House of Assembly Swaziland shall be divided into eight constituencies having such boundaries as may be prescribed by order made by the Delimitation Commission.

(2) All constituencies shall contain as nearly equal numbers of adult inhabitants as appears to the Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient in order to take account of the following factors, that is to say—

(*a*) the density of population, and in particular the need to ensure the adequate representation of sparsely populated rural areas;

(*b*) the means of communication;

(*c*) geographical features; and

(*d*) the boundaries of existing administrative areas.

(3) The Judicial Service Commission shall appoint a Delimitation Commission in the following circumstances, that is to say—

(*a*) whenever a census of the population of Swaziland has been held in pursuance of any law and the report of that census has been published;

(*b*) whenever provision has been made altering the number of constituencies or the number of seats of elected members in the House of Assembly; or

(*c*) on the expiration of not less than five nor more than ten years after the Commission last reviewed the boundaries of the constituencies in accordance with the provisions of this section.

(4) Whenever the Delimitation Commission has been appointed in any of the circumstances specified in subsection (3) of this section it shall forthwith carry out a review of the boundaries of the constituencies into which Swaziland is divided and may (and in the circumstances specified in subsection (3)(*b*) shall), by order, alter the boundaries in accordance with the provisions of this section to such extent as it thinks desirable in the light of those circumstances and that review.

(5) Every order made by the Delimitation Commission under this section shall be published in the Gazette and shall come into effect upon the next dissolution of Parliament after it was made.

(6) For the purposes of subsection (2) of this section the number of inhabitants of any part of Swaziland shall be ascertained by reference to the latest census of the population held in pursuance of any law.

Decision of questions as to membership of Parliament.

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

(*a*) any person has been validly elected as a Senator by the members of the House of Assembly;

(*b*) any person has been validly appointed as a Senator by the King;

(*c*) any person has been validly elected as an elected member of the House;

(*d*) any person has been validly appointed as a nominated member of the House by the King;

(*e*) any person who has been elected as President or Deputy President of the Senate or as Speaker or Deputy Speaker of the House from among persons who were not members thereof was qualified to be so elected; or

(*f*) the seat in the Senate or House of any member thereof has become vacant.

(2) An application to the High Court may be made for the determination of any question—

(*a*) under subsection (1)(*a*) of this section, by any elected member of the House of Assembly or by the Attorney-General;

(*b*) under subsection (1)(*b*) of this section, by any Senator or by the Attorney-General;

(*c*) under subsection (1)(*c*) of this section, by any person who was a candidate at or entitled to vote in the election to which the application relates or by the Attorney-General;

(*d*) under subsection (1)(*d*) of this section, by any elected or nominated member of the House or by the Attorney-General;

(*e*) under subsection (1)(*e*) of this section, by any Senator or elected or nominated member of the House, as the case may be, or by the Attorney-General;

(*f*) under subsection (1)(*f*) of this section, by any Senator or elected or nominated member of the House, as the case may be, or by the Attorney-General, or, in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter in elections of elected members of the House,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) Provision may be made by Act of Parliament with respect to—

(*a*) the circumstances and manner in which and the conditions upon which any application may be made to the High Court for the determination of any question under this section; and

(*b*) the powers, practice and procedure of the High Court in relation to any such application,

but, subject to any provision in that behalf made by Act of Parliament under this subsection, the practice and procedure of the High Court in relation to any such application shall be regulated by rules made by the Chief Justice.

(4) The determination by the High Court of any question under this section shall not be subject to appeal.

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

Interpretation.

57.—(1) In this Part of this Chapter "Government contract" means a contract with the Government for or on account of the public service the consideration for which exceeds two hundred rand or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds two hundred rand.

(2) For the purpose of this Part of this Chapter—

(*a*) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms;

(*b*) references to a sentence of imprisonment shall not include a sentence of imprisonment in lieu of a fine.

PART 2

Summoning, prorogation and dissolution

Sessions of Parliament, etc.

58.—(1) Each session of Parliament shall be held at such place within Swaziland and begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or fourteen days from the holding of a general election of elected members of the House of Assembly if Parliament has been dissolved) as the King may appoint.

(2) Subject to the provisions of subsection (1) of this section, the sittings of each chamber of Parliament shall be held at such time and place as that chamber may, by its rules of procedure or otherwise, determine.

Prorogation and dissolution of Parliament.

59.—(1) The King may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date when the House of Assembly first meets after any dissolution of Parliament and shall then stand dissolved.

(3) At any time when Swaziland is at war the period of five years specified in subsection (2) of this section may be extended by Act of Parliament for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his power to dissolve Parliament, the King shall act in accordance with the advice of the Prime Minister:

Provided that—

(*a*) if the Prime Minister recommends a dissolution and the King considers that the government of Swaziland can be carried on without a dissolution and that dissolution would not be in the interests of Swaziland, he may refuse to dissolve Parliament;

(*b*) if the House of Assembly passes a resolution of no confidence in the Government of Swaziland and the Prime Minister does not within three days thereafter either resign or advise a dissolution, the King may dissolve Parliament; and

(*c*) if the office of Prime Minister is vacant and the King considers that there is no prospect of his being able within a reasonable time

to find a person who is the leader of a party or a coalition of parties that will command the support of a majority of the members of the House of Assembly, he shall dissolve Parliament.

Recalling the Senate and House of Assembly in case of emergency.

60. If, between a dissolution of Parliament and the next ensuing general election of elected members of the House of Assembly, an emergency arises of such a nature that in the opinion of the King, after consultation with the Prime Minister, it is necessary for the two chambers of Parliament to be summoned before that general election can be held, the King may, after consultation with the Prime Minister, by proclamation published in the Gazette, summon the preceding chambers of Parliament as constituted immediately before the said dissolution, and those chambers shall thereupon be deemed (except for the purposes of section 61 of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election of elected members of the House of Assembly is held.

Elections.

61.—(1) A general election of elected members of the House of Assembly shall be held at such time within three months after every dissolution of Parliament as the King shall appoint by proclamation published in the Gazette.

(2) Where the seat of any elected member of the House of Assembly becomes vacant for any cause other than a dissolution of Parliament the King shall, unless Parliament is sooner dissolved, issue a writ for the holding of an election to fill that vacancy returnable not later than six months after the occurrence of the vacancy.

CHAPTER VI

Legislation and Procedure in Parliament

Power to make laws.

62.—(1) Subject to the provisions of this Constitution, the King and Parliament may make laws for the peace, order and good government of Swaziland.

(2) Subsection (1) of this section shall not apply to the matters specified in Schedule 3 to this Constitution, which shall continue to be regulated by Swazi law and custom:

Provided that, with the consent of the Swazi National Council signified in writing under the hand of the Secretary of that Council, the King and Parliament may make laws with respect to any such matter that is specified in the writing.

Oaths to be taken by members of Parliament.

63.—(1) Every member of either chamber of Parliament shall, before taking his seat in that chamber, take and subscribe before the chamber the oath of allegiance that is set out in Schedule 2 to this Constitution or such other oath as may be prescribed, but a member may before taking and subscribing that oath take part in the election of the President or Speaker of the chamber.

(2) Any person elected as President or Deputy President or Speaker or Deputy Speaker of a chamber of Parliament shall, if he has not

already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the chamber before entering upon the duties of his office.

Presiding in Senate.

64.—(1) There shall preside at any sitting of the Senate—

(*a*) the President of the Senate ;

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

(*c*) in the absence of the President and a Deputy President authorised as aforesaid to preside, such other Senator as the Senate may elect for the purpose of presiding at the sitting.

(2) References in this section to circumstances in which the President or Deputy President is absent include references to circumstances in which the office of President or Deputy President is vacant.

Presiding in House of Assembly.

65.—(1) There shall preside at any sitting of the House of Assembly—

(*a*) the Speaker of the House of Assembly ;

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

(*c*) in the absence of the Speaker and a Deputy Speaker authorised as aforesaid to preside, such member as the House may elect for the purpose of presiding at the sitting.

(2) References in this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

Quorum in Senate and House of Assembly.

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

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

Voting in Parliament.

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

(2) A President elected from among persons who are Senators or a Speaker elected from among persons who are members of the House of Assembly or a member of either chamber of Parliament presiding in that chamber shall have an original but not a casting vote.

(3) A President or Deputy President of the Senate elected from among persons who are not Senators or a Speaker or Deputy Speaker of the House of Assembly elected from among persons who are not members of the House shall have no vote.

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

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

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

Right of Ministers, etc., to address other chamber of Parliament.

68. A Minister or an Assistant Minister who is a member of the House of Assembly or the Attorney-General shall be entitled to attend all meetings of the Senate and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Senate; and a Minister or an Assistant Minister who is a Senator shall be entitled to attend all meetings of the House of Assembly and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the House.

Unqualified persons sitting or voting.

69.—(1) Any person who sits or votes in either chamber knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding one hundred rand, or such other sum as may be prescribed, for each day on which he so sits and votes in that chamber.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Attorney-General.

Mode of exercise of power to make laws.

70.—(1) The power of the King and Parliament to make laws shall be exercised by bills—

(*a*) passed by both chambers of Parliament (that is to say, passed without amendments or with amendments agreed by both chambers);

(*b*) in the cases mentioned in sections 72, 73, 74 and 75(3) of this Constitution, passed by the House of Assembly; or

(*c*) in the cases mentioned in sections 75(2), 76 and 134 of this Constitution, passed at a joint sitting of the Senate and the House of Assembly,

and assented to by the King.

(2) Subject to the provisions of sections 76 and 134(1)(*e*) of this Constitution, when a bill has been presented to the King for assent in pursuance of subsection (1) of this section, he shall signify that he assents or that he withholds assent—

(*a*) in the case of an Appropriation bill or a bill to alter this Constitution, forthwith;

(*b*) in the case of any other bill, within thirty days.

(3) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the King shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by the King and Parliament shall come into operation until it has been published in the Gazette but the King and Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by the King and Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the King and the Parliament of Swaziland".

Introduction of bills, etc.

71.—(1) A bill may be introduced in either chamber of Parliament:

Provided that a money bill or a bill introduced in pursuance of section 62(2) of this Constitution shall not be introduced in the Senate.

(2) Except with the consent of the Cabinet signified by a Minister, neither chamber shall—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

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

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

(iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Swaziland of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government; or

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

Limitation on powers of Senate with respect to appropriation bills.

72.—(1) When a bill that is passed by the House of Assembly and that is certified by the Speaker of the House under subsection (2) of this section as an Appropriation bill is sent to the Senate it shall forthwith be introduced in the Senate and shall be passed by the Senate without delay; and if it is not passed by the Senate by the end of the day after the day on which it was sent to the Senate or if it is passed by the Senate with amendments to which the House does not by then agree, the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

(2) When a bill that in the opinion of the Speaker of the House of Assembly is an Appropriation bill is sent to the Senate from the House it shall bear a certificate of the Speaker of the House that it is an Appropriation bill.

Limitation on powers of Senate with respect to other money bills.

73.—(1) Subject to the provisions of section 74 of this Constitution, when a bill that is passed by the House of Assembly is certified by the Speaker of the House under subsection (2) of this section as a money bill other than an Appropriation bill and, having been sent to the Senate at least thirty days before the end of the session, is not passed by the Senate within thirty days after it is so sent or is passed by the

Senate with amendments to which the House does not agree within thirty days after the bill was sent to the Senate, the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

(2) When a bill that in the opinion of the Speaker of the House of Assembly is a money bill other than an Appropriation bill is sent to the Senate from the House it shall bear a certificate of the Speaker of the House that it is a money bill other than an Appropriation bill.

Limitation on powers of Senate with respect to urgent bills.

74. When, in respect of a bill (including a money bill other than an Appropriation bill) that has been passed by the House of Assembly, the King by writing under his hand certifies to the President of the Senate that enactment of the bill is a matter of urgency and the bill, having been sent to the Senate at least seven days before the end of the session, is not passed by the Senate within seven days after it is so sent or is passed by the Senate with amendments to which the House of Assembly does not agree within seven days after the bill was sent to the Senate, the bill, with such amendments, if any, as may be agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

Procedure where chambers disagree on bills.

75.—(1) This section applies to a bill, other than a bill certified under section 72(2), 73(2) or 74 of this Constitution or a bill for a law to alter this Constitution.

(2) Subject to the provisions of subsection (3) of this section, when a bill to which this section applies having been introduced and passed by one chamber of Parliament has been sent to the other chamber of Parliament at least ninety days before the end of the session and has been considered by that other chamber of Parliament within ninety days after it is so sent but has not within that period been passed either without amendment or with amendments which are agreed to by the chamber in which the bill was introduced, neither chamber shall proceed further upon the bill and the bill shall be referred to a joint sitting of the Senate and the House of Assembly in accordance with the provisions of Schedule 1 to this Constitution.

(3) If a bill to which this section applies, having been introduced in and passed by the House of Assembly, has been sent to the Senate at least ninety days before the end of the session and is not considered by the Senate within ninety days after it is so sent, the bill shall not be referred to a joint sitting of the Senate and the House of Assembly but shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

Reference back of bills by King.

76.—(1) This section applies to a bill, other than a bill certified under section 72(2) or 73(2) of this Constitution or a bill to alter this Constitution or a bill which has been passed at a joint sitting of the Senate and the House of Assembly.

(2) When a bill to which this section applies, having been passed by both chambers of Parliament sitting separately (that is to say passed without amendments or with amendments agreed by both chambers), is presented to the King for assent, the King, acting in his discretion

may by message refer back either the whole bill or such provisions that he may specify for consideration at a joint sitting of the Senate and the House of Assembly and the provisions of Schedule 1 to this Constitution shall apply.

(3) If, within ninety days of the message referring the bill back for consideration, the bill is passed by a joint sitting of the Senate and the House of Assembly it shall again be presented to the King for assent but if it is not so passed the bill shall lapse.

Interpretation, and functions of Speaker.

77.—(1) In this section "money bill" means a bill that contains only provisions dealing with—

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

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

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

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

(*e*) the raising or guarantee of any loan or the repayment thereof; or

(*f*) subordinate matters incidental to any of those matters:

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local government authorities or other local bodies.

(2) When a bill is presented to the King for assent in pursuance of the provisions of section 72(1), 73(1), 74 or 75(3) of this Constitution, as the case may be, it shall bear a certificate of the Speaker of the House of Assembly that those provisions have been complied with.

(3) Any function under this section or section 72, 73, 74 or 75 of this Constitution which falls to be exercised by the Speaker of the House of Assembly may, if he is absent or is for any other reason unable to exercise the functions of his office, be exercised by the Deputy Speaker.

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

Regulation of procedure in Parliament.

78.—(1) Subject to the provisions of this Constitution, each chamber of Parliament may regulate its own procedure.

(2) Each chamber of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the chamber first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the chamber shall not invalidate those proceedings.

CHAPTER VII

THE EXECUTIVE

Executive authority of Swaziland.

79.—(1) Subject to the provisions of this Constitution, the executive authority of Swaziland shall vest in the King.

(2) Save as otherwise provided in this Constitution, that authority may be exercised by the King either directly or through officers or authorities of the Government of Swaziland.

(3) Nothing in this section shall prevent the conferment by Act of Parliament of functions on persons or authorities other than the King.

Ministers.

80.—(1) There shall be a Prime Minister who shall be appointed by the King.

(2) There shall be, in addition to the office of Prime Minister, the office of Deputy Prime Minister and such other offices of Minister of the Government as may be prescribed or, subject to the provisions of any law, established by the King, acting in accordance with the advice of the Prime Minister:

Provided that the number of offices of Minister other than the Prime Minister and Deputy Prime Minister shall not exceed eight.

(3) The King, acting in his discretion, shall appoint as Prime Minister the elected member of the House of Assembly who appears to him best able to command the support of a majority of the members of the House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the elected or appointed members of either chamber.

(4) For the purposes of this section, during any period when Parliament is dissolved a person who was an elected or appointed member of either chamber immediately before the dissolution shall be regarded as continuing as an elected or appointed member, as the case may be, of that chamber.

Tenure of office of Ministers.

81.—(1) The King, acting in his discretion, may remove the Prime Minister from office—

(*a*) if a resolution of no confidence in the Government of Swaziland is passed by the House of Assembly; or

(*b*) if, at any time between the holding of a general election of elected members of the House of Assembly and the date on which the House first meets thereafter, the King considers that, in consequence of changes in the membership of the House resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the House:

Provided that the King shall not remove the Prime Minister from office when a vote of no confidence has been passed by the House of Assembly unless three days have elapsed since the vote was passed and the King has decided not to dissolve Parliament under paragraph (*b*) of the proviso to section 59(4) of this Constitution.

(2) The office of Prime Minister or any other Minister shall become vacant—

(*a*) if he ceases to be a member of Parliament otherwise than by reason of a dissolution of Parliament;

(*b*) if, when Parliament first meets after a dissolution of Parliament, he is not then a member thereof; or

(*c*) if he resigns from office.

(3) The office of a Minister other than the Prime Minister shall become vacant—

(*a*) if the King, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the House of Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) of this section; or

(*c*) on the appointment of any person to the office of Prime Minister.

(4) If for any period the Prime Minister or any other Minister is unable by reason of the provisions of section 46 of this Constitution to perform his functions as a member of Parliament, he shall not during such period perform any of his functions as Prime Minister or a Minister, as the case may be.

Cabinet.

82.—(1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.

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

(3) The provisions of subsection (2) of this section shall not apply in relation to--

(*a*) the appointment and removal from office of Ministers and Assistant Ministers, the assignment of responsibility to any Minister under section 83 of this Constitution, the authorisation of any Minister under section 84 of this Constitution to exercise the functions of the Prime Minister during absence or illness or the designation of an Assistant Minister as a Minister of State; or

(*b*) the dissolution of Parliament.

Assignment of responsibilities to Ministers.

83. The King, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the government of Swaziland, including the administration of any department of government.

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

84.—(1) Whenever the Prime Minister is absent from Swaziland or is by reason of illness or the provisions of section 81(4) of this Constitution unable to exercise the functions conferred on him by this Constitution, those functions (other than the functions conferred by this section) shall be exercised by—

(*a*) the Deputy Prime Minister; or

(*b*) if the office of Deputy Prime Minister is vacant or the Deputy Prime Minister is absent from Swaziland or is by reason of illness or the provisions of section 81(4) of this Constitution unable to exercise the functions of the office of Prime Minister, by such other Minister as the King may, by directions in writing, authorise in that behalf.

(2) The powers of the King under this section shall be exercised by him in accordance with the advice of the Prime Minister or Deputy Prime Minister as the case may be:

Provided that if the Prime Minister and the Deputy Prime Minister are unable to exercise the functions of the office of Prime Minister by reason, as the case may be, of absence, illness or the provisions of section 81(4) of this Constitution, the King may exercise those powers acting in his discretion.

Exercise of King's functions.

85.—(1) In the exercise of his functions under this Constitution or any other law, the King shall, subject to the following provisions of this section, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The provisions of subsection (1) of this section shall not apply in relation to the exercise by the King of—

(*a*) any function conferred upon him by this Constitution that is expressed to be exercisable by him in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet;

(*b*) any function conferred upon him by any other law that is expressed to be exercisable by him in his discretion or that he is otherwise authorised by such law to exercise without obtaining the advice of the Cabinet; or

(*c*) the functions which the King is required to perform by section 100(3), 113(5) or 115(5) of this Constitution or paragraph 1(1) of Schedule 1 to this Constitution.

(3) (*a*) Where in any matter the King has received the advice of the Cabinet or a Minister for the purposes of subsection (1) of this section, he may, within the prescribed period, by writing under his hand require that, for reasons to be specified by him, the Prime Minister shall cause such advice to be reconsidered or, as the case may be, considered at a meeting of the Cabinet, and thereupon the following provisions shall apply—

(i) during the prescribed period no act in furtherance of that advice shall be done by any other person pending consideration thereof by the King unless the Prime Minister, by writing under his hand, has certified that on grounds of urgency such act should be done;

(ii) a meeting of the Cabinet shall be held within seven days after the receipt by the Prime Minister of the requirement made by the King that the advice be reconsidered or considered, as the case may be; and

(iii) if the Cabinet, having reconsidered or, as the case may be, considered the original advice tendered to the King, re-submits the same advice to him, the King shall forthwith act in accordance with that advice.

(*b*) For the purposes of this subsection, "the prescribed period" shall be the period of seven days commencing with the day upon which the King has received the advice in question or, if the King, by writing under his hand, so requires in any case before the expiration of the said period of seven days, the period of fourteen days commencing as aforesaid.

(4) Where the King is required by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the King is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

King to be consulted and informed concerning matters of Government.

86. The King, acting in his discretion, shall have the right to require the Prime Minister and other Ministers to consult with him on any matter relating to the government of Swaziland and the Prime Minister shall keep him fully informed concerning the general conduct of the government of Swaziland and shall furnish him with such information as he, acting in his discretion, may request in respect of any particular matter relating to the government of Swaziland.

Assistant Ministers.

87.—(1) The King, acting in accordance with the advice of the Prime Minister, may appoint Assistant Ministers, the number of whom shall not exceed the number of Ministers, to assist Ministers in the performance of their duties, from among the elected or appointed members of either chamber, and may, by directions in writing, designate not more than two Assistant Ministers as Ministers of State.

(2) For the purpose of this section, during any period when Parliament is dissolved a person who was an elected or appointed member of either chamber immediately before that dissolution shall be regarded as continuing as an elected or an appointed member, as the case may be, of that chamber.

(3) The provisions of subsections (2), (3) and (4) of section 81 of this Constitution shall apply in relation to an Assistant Minister as they apply in relation to a Minister.

Oaths by Ministers.

88. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

Secretary to Cabinet.

89.—(1) There shall be a Secretary to the Cabinet whose office shall be an office in the public service.

(2) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct.

Direction of government departments.

90. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a permanent secretary whose office shall be an office in the public service:

Provided that two or more government departments may be placed under the supervision of one permanent secretary, and any department of government in which the Minister charged with responsibility is assisted by one or more Ministers of State may be placed under the supervision of two permanent secretaries or such greater number of permanent secretaries as does not exceed the number of Ministers (including Ministers of State) in that department.

Attorney-General.

91.—(1) There shall be an Attorney-General whose office shall be a public office.

(2) The Attorney-General shall be the principal legal adviser to the Government of Swaziland and, for the due performance of his duties, entitled to be provided with all papers which are available to the members of the Cabinet or any committee thereof; and he shall have such other functions as may be conferred on him by this Constitution or any other law.

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

(4) The Attorney-General shall have power in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(*b*) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(*c*) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers conferred on the Attorney-General by paragraphs (*b*) and (*c*) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(6) Notwithstanding the provisions of subsection (5) of this section, the powers of the Attorney-General under subsection (4) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(7) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (4)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(8) In the exercise of the functions vested in him by subsection (4) of this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Prerogative of Mercy.

92.—(1) The King may—

(*a*) grant to any person convicted of any offence under the law of Swaziland a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;

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

(*d*) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to the Government on account of such an offence.

(2) There shall be a Committee on the Prerogative of Mercy which shall consist of—

(*a*) three Ministers appointed by the King, acting in his discretion, one of whom shall be appointed by the King, acting as aforesaid, to be the chairman; and

(*b*) the Attorney-General.

(3) An appointed member of the Committee shall vacate his seat on the Committee—

(*a*) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment;

(*b*) if his appointment is revoked by the King, acting in his discretion; or

(*c*) if he ceases to be a Minister.

(4) In the exercise of the powers conferred upon him by subsection (1) of this section, the King shall act in accordance with the advice of the Committee.

(5) The Committee shall not be summoned except by the authority of the chairman.

(6) The chairman or, in his absence, such member of the Committee as the chairman may designate in that behalf shall preside at meetings of the Committee.

(7) Subject to the provisions of this section, the Committee shall regulate its own procedure.

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

(9) Whenever any person has been sentenced to death by any court in Swaziland other than a court-martial, the chairman shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the

record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Committee so that the Committee may advise the King whether or not to exercise his powers under subsection (1) of this section in that case.

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

(11) Nothing in this section shall be construed as precluding an Act of Parliament from making provision of general application under which any sentence of imprisonment shall be reduced if such conditions (being conditions relating to good behaviour by the person on whom the sentence was imposed whilst serving that sentence) as are prescribed are fulfilled.

CHAPTER VIII

LAND AND MINERALS

Power to dispose of Government land.

93. Subject to the provisions of any law for the time being in force in Swaziland, the Government may exercise all rights of ownership over Government land accorded by law including the power to make grants, leases or other dispositions, subject to such rights and interests and to such conditions as the Government may think fit.

Swazi nation land.

94.—(1) All land which is vested in the Nggwenyama in trust for the Swazi nation shall continue so to vest subject to the provisions of this Constitution and to subsisting rights and interests which before 6th September 1968 have been granted to, or recognised as vested in, any person.

(2) The Nggwenyama in Libandla may exercise all rights of ownership over such land including the power to make grants, leases or other dispositions, subject to such rights and interests and to such conditions as he may think fit:

Provided that no right to mortgage such land shall be exercisable save and except by a mortgage registered against land acquired by purchase or grant.

(3) The rights and the powers conferred upon the Nggwenyama in Libandla by this section shall be subject to the provisions of any law for the time being in force in Swaziland but no such law shall operate to vest those rights or that power in any other person or authority.

(4) For the avoidance of doubt it is hereby declared that Swazi nation land is subject to compulsory acquisition for public purposes under the law for the time being in force relating to the compulsory acquisition of land for such purposes.

Minerals and mineral oils.

95.—(1) All minerals and mineral oils in, under or upon any land in Swaziland shall continue to vest in the Nggwenyama in trust for the Swazi nation, subject to any subsisting rights and interests which,

before 6th September 1968, by or under any Order of Her Majesty in Council or any other law in force in Swaziland, or otherwise, have been granted to or recognised as vested in any other person.

(2) The Nggwenyama may make grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Swaziland, but the Nggwenyama shall not exercise any such power except after consultation with the Minerals Committee established by subsection (3) of this section.

(3) There shall be a Minerals Committee which shall consist of not less than four nor more than six persons who shall be appointed by the Nggwenyama in Libandla.

(4) Such member of the Minerals Committee as the Nggwenyama, acting in his discretion, may designate in that behalf shall be chairman of the committee.

(5) The Minerals Committee shall not be summoned except upon the authority of the Nggwenyama.

(6) Subject to the provisions of this section, the Minerals Committee may regulate its own procedure.

Interpretation.

96. In this Chapter "Nggwenyama in Libandla" means the Nggwenyama acting in accordance with the advice of his Libandla.

CHAPTER IX

THE JUDICATURE

PART 1

The High Court

Establishment of High Court.

97.—(1) There shall be a High Court for Swaziland and, subject to the provisions of this Chapter, the judges of the High Court shall be the Chief Justice and such number of puisne judges as may be prescribed.

(2) The High Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any judge of that court.

Appointment of judges of High Court.

98.—(1) The holder of the office of Chief Justice or any office of puisne judge of the High Court shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

(2) (*a*) A person shall not be qualified for appointment as a judge of the High Court unless—

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or in any other country outside the Commonwealth that may be prescribed by Act of Parliament, or a court having jurisdiction in appeals from any such court; or

(ii) he is and has been, for a period in the aggregate of at least ten years, a barrister or advocate entitled to practise in any such court and has so practised for not less than ten years.

(*b*) For the purposes of this subsection, a barrister or advocate shall be regarded as entitled to practise, and as having practised as such, during any period in which he held office as a judge, magistrate, Attorney-General, Solicitor-General, Director of Public Prosecutions or Crown Counsel or State Counsel in any part of the Commonwealth or in a country outside the Commonwealth referred to in this subsection.

Tenure of office of judges of High Court.

99.—(1) Subject to the provisions of this Chapter, a person holding the office of a judge of the High Court shall vacate that office on attaining the retiring age.

(2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person may sit as a judge for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.

(3) A judge of the High Court may at any time resign his office.

(4) The office of any judge of the High Court shall not be abolished while there is a substantive holder thereof.

(5) For the purposes of subsection (1) of this section, the retiring age shall be the age of sixty-two years or such other age as may be prescribed by Act of Parliament:

Provided that—

(*a*) a provision of an Act of Parliament, to the extent that it alters the age at which judges of the High Court shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect;

(*b*) the King, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who attains the age prescribed by or under this subsection to continue in office for such fixed period as may be agreed between the King and that judge, and in relation to that person the provisions of this Constitution shall have effect as if he would attain the retiring age on the expiration of the fixed term so agreed.

Removal of judges.

100.—(1) A judge of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with the provisions of this section.

(2) If the King, acting in his discretion in the case of the Chief Justice and in accordance with the advice of the Chief Justice in the case of a puisne judge, considers that the question of removing a judge of the High Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the King, acting in his discretion, shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the King from among persons who hold or have held high judicial office;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the King and advise the King whether the judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(3) Where a tribunal appointed under subsection (2) of this section advises the King that a judge of the High Court ought to be removed from office for inability as aforesaid or for misbehaviour, the King shall remove such judge from office.

(4) (*a*) All questions for decision by a tribunal appointed under subsection (2) of this section shall be decided by a majority of its members; and the chairman shall have an original vote, and, if the votes are equally divided, a casting vote.

(*b*) The provisions of any law in force governing the procedure of commissions of enquiry shall apply to the tribunal as if the tribunal were a commission of enquiry, and references in that law to a commission shall be construed accordingly.

(*c*) Subject to the provisions of this subsection, the procedure to be followed by the tribunal shall be in the discretion of the tribunal.

(5) If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (2) of this section the King, acting in his discretion, may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the King and shall in any case cease to have effect if the tribunal recommends to the King that the judge should not be removed.

Acting Chief Justice.

101. If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the judges of the Court of Appeal or of the puisne judges or by such other person qualified for appointment as a judge of the High Court as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint for that purpose:

Provided that a person may be so appointed notwithstanding that he has attained the age prescribed for the purposes of section 99 of this Constitution.

Acting puisne judge.

102.—(1) If the office of a puisne judge is vacant or if a puisne judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the King that the state of business in the High Court requires that the number of judges of the Court should be temporarily increased, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge.

(2) If the Chief Justice has occasion to be absent from Swaziland for a period which he considers will be of short duration or is unable to perform the functions of his office for any other cause which he

considers will be of short duration, the Chief Justice may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge during such period as he may specify as the period of that absence or inability:

Provided that the period of an appointment under this subsection shall not exceed seven days.

(3) A person may be appointed to act as a puisne judge under this section notwithstanding that he has attained the age prescribed for the purposes of section 99 of this Constitution.

(4) A person appointed under subsection (1) of this section to act as a puisne judge shall, subject to the provisions of section 100 of this Constitution, continue to act until the expiration of the period of his appointment or, if no such period is specified, until his appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission.

(5) A person appointed under subsection (2) of this section to act as a puisne judge shall, subject to the provisions of section 100 of this Constitution, continue to act until the expiration of the period of his appointment or until his appointment is revoked by the Chief Justice, whichever is the earlier.

(6) A person whose appointment to act as a puisne judge has expired or been revoked may, with the permission of the King, acting in accordance with the advice of the Chief Justice, continue to act as such for such a period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Oaths by judges of High Court.

103. A judge of the High Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

Jurisdiction of High Court.

104.—(1) The High Court shall be a superior court of record and shall have—

(*a*) unlimited original jurisdiction in civil and criminal matters;

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

(*c*) such revisional jurisdiction as the High Court possesses at the commencement of this Constitution in accordance with the provisions of this Constitution and any other law then in force in Swaziland; and

(*d*) such revisional jurisdiction, additional to the jurisdiction mentioned in paragraph (*c*) of this subsection, as may be prescribed by or under any law for the time being in force in Swaziland.

(2) Subject to the provisions of this Constitution, the Chief Justice may make rules for regulating the practice and procedure of the High

Court and such rules may (without prejudice to the generality of the foregoing provisions of this subsection) include provision for any of the following purposes—

(*a*) for regulating the sittings of the High Court and the selection of judges for any purpose ;

(*b*) for prescribing forms and fees in respect of proceedings in the High Court and regulating the costs of and incidental to any such proceedings ;

(*c*) for regulating the right of representation of persons concerned in any proceedings in the High Court ;

(*d*) for prescribing the time within which any requirement of the rules is to be complied with ;

(*e*) for prescribing and regulating the powers and duties of registrars and officers of the court.

(3) No rules of court made under this section which may involve an increase in the expenses of the High Court shall be made except with the concurrence of the Minister for the time being responsible for finance, but the validity of a rule of court shall not be called in question in any proceedings on the grounds that the concurrence of the Minister was not or does not appear to have been obtained.

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

PART 2

The Court of Appeal

Establishment of Court of Appeal.

105.—(1) There shall be a Court of Appeal for Swaziland, styled the Swaziland Court of Appeal, which shall be a superior court of record.

(2) The judges of the Court of Appeal shall be—

(*a*) the Judge President ;

(*b*) such number of Justices of Appeal, being not less than two or more than four, as may be prescribed ; and

(*c*) the Chief Justice and the puisne judges, if any, of the High Court.

(3) The Court of Appeal shall be duly constituted notwithstanding any vacancy among the judges of the Court.

Appointment of judges of Court of Appeal.

106.—(1) The holder of the office of Judge President shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

(2) The holder of any office of Justice of Appeal shall be appointed by the King, acting in accordance with the advice of the Judge President.

(3) A person shall not be qualified for appointment as the Judge President or a Justice of Appeal unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in a country which has been designated in that behalf by Act of Parliament or a court having jurisdiction in appeals from any such court.

(4) (*a*) Notwithstanding the provisions of section 107 of this Constitution and subject to the provisions of this subsection, it shall be lawful to appoint a person to hold the office of Judge President or Justice of Appeal for a period of three years.

(*b*) A person may be appointed under this subsection who has attained the age prescribed for the purposes of section 107 of this Constitution or who will attain that age before the expiration of the appointment.

(*c*) The period of an appointment under this subsection shall be fixed and the appointment shall not be revoked or otherwise terminated:

Provided that the appointment of a person holding office as a Justice of Appeal shall terminate if he is appointed to hold the office of Judge President, but in that case, if he is appointed under this subsection, the period of his appointment as Judge President shall terminate on the date upon which his appointment to be a Justice of Appeal would have expired.

(*d*) In relation to any person appointed under this subsection, the provisions of this Constitution shall have effect as if he would attain the age specified for the purposes of section 107 of this Constitution on the expiration of the period of his appointment.

Tenure of office of Judge President and of Justices of Appeal.

107.—(1) Subject to the provisions of this section, a person holding the office of Judge President or Justice of Appeal shall vacate that office on attaining the retiring age.

(2) Notwithstanding that he has attained the retiring age, a person may sit as a judge of the Court of Appeal for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.

(3) The Judge President or a Justice of Appeal may at any time resign his office.

(4) The office of Judge President or Justice of Appeal shall not be abolished while there is a substantive holder thereof.

(5) For the purposes of this section the retiring age shall be the age of sixty-two years or such other age as may be prescribed by Act of Parliament:

Provided that a provision of an Act of Parliament, to the extent that it alters the age at which judges of the Court of Appeal shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect.

(6) Section 100 of this Constitution shall apply in relation to persons holding or acting in the office of Judge President or Justice of Appeal as it applies in relation to a person holding or acting in the office of puisne judge of the High Court.

Acting judges of Court of Appeal.

108.—(1) If the office of Judge President is vacant or the Judge President is for any reason unable to perform the functions of his office then, until a person has been appointed to and has assumed the functions of that office or until the Judge President has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the Court of Appeal or such other person qualified for appointment as a judge of the Court as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint.

(2) If the office of any Justice of Appeal is vacant or if a Justice of Appeal is appointed to act as Judge President or is for any reason unable to perform the functions of his office or if the Judge President advises the King that the state of business in the Court of Appeal so requires, the King, acting in accordance with the advice of the Judge President, may appoint a person who is qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

(3) A person appointed under subsection (2) of this section to act as a Justice of Appeal shall, subject to the provisions of section 100 of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the King, acting in accordance with the advice of the Judge President.

(4) A person, other than a Justice of Appeal, whose appointment to act as Judge President has expired or been revoked and a person whose appointment to act as a Justice of Appeal has expired or been revoked may, with the permission of the King, acting in accordance with the advice of the Judge President, continue to act as a judge of the Court of Appeal for such a period as may be necessary to enable him to give judgment or to do any other thing in relation with proceedings that were commenced before him previously thereto.

Oaths by judges of Court of Appeal.

109. The Judge President and any Justice of Appeal shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

Appointment of assessors.

110. The Court of Appeal may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualifications as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors.

Jurisdiction of Court of Appeal.

111.—(1) The Court of Appeal shall have—

(*a*) such jurisdiction to hear and determine such appeals from the courts of Swaziland and such powers and authority as the Court of Appeal possesses at the commencement of this Constitution in accordance with the provisions of this Constitution and of any other law then in force in Swaziland ; and

(*b*) such jurisdiction to hear and determine appeals from the courts of Swaziland and such powers and authority (additional to the jurisdiction, powers and authority mentioned in paragraph (*a*) of this subsection) as may be prescribed by or under any law for the time being in force in Swaziland.

(2) Subject to the provisions of subsection (1) of this section, the Court of Appeal shall have, for all purposes of and incidental to the hearing and determination of any appeals in its jurisdiction, the power, authority and jurisdiction vested in the court from which the appeal is brought.

(3) Any decision of the Court of Appeal shall be enforced in like manner as if it were a judgment of the court from which the appeal was brought.

Practice and procedure on appeals.

112.—(1) Subject to the provisions of this Constitution, the Judge President may make rules for regulating the practice and procedure of the Court of Appeal with respect to appeals and, in connection with such appeals, for regulating the practice and procedure in any court from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes—

(*a*) for regulating the sittings of the Court of Appeal, whether in divisions or otherwise, and the selection of judges for any purpose;

(*b*) for regulating the right of representation of persons concerned in any proceedings in the Court of Appeal;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court of Appeal shall be entitled to be present at the hearing of the appeal;

(*d*) for providing for summary determination of any appeal which appears to the Court of Appeal to be frivolous or vexatious or to be brought for the purposes of delay;

(*e*) for prescribing forms and fees in respect of proceedings in the Court of Appeal and regulating the costs of and incidental to any such proceedings;

(*f*) for prescribing and regulating the powers and duties of registrars and officers of the Court of Appeal;

(*g*) for prescribing the time within which any requirement of the rules is to be complied with;

(*h*) for providing for a reference from a decision of a single judge to the Court of Appeal.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court of Appeal other than the summary dismissal of an appeal, shall not be less than three; and

(*b*) any determination by the Court of Appeal of any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

(4) No rules of court made under this section which may involve an increase in the expenses of the Court of Appeal shall be made except with the concurrence of the Minister for the time being responsible for finance but the validity of a rule of court shall not be called in question in any proceedings on the grounds that the concurrence of the Minister was not or does not appear to have been obtained.

PART 3

Judicial Service Commission

Judicial Service Commission.

113.—(1) There shall be a Judicial Service Commission for Swaziland which shall consist of—

(*a*) the Chief Justice, who shall be chairman;

(*b*) the chairman of the Public Service Commission ; and

(*c*) a member who shall be styled the appointed member and who shall be appointed by the King, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held high judicial office:

Provided that if the office of Chief Justice is vacant or the Chief Justice is for any reason unable to perform the functions of his office and by reason of other vacancies in the Commission the Commission cannot act, then, until a person is appointed to hold or act in the office of Chief Justice, the Judge President (or if the office of Judge President is vacant or the Judge President is for any reason unable to perform the functions of his office a Justice of Appeal designated by the King, acting in his discretion) shall perform the functions of the chairman of the Commission.

(2) No person shall be qualified to be appointed as the appointed member if—

(*a*) he is a Senator or member of the House of Assembly or is nominated for election to the House of Assembly ;

(*b*) he is the holder of an office in any organisation that sponsors or supports, or that has at any time sponsored or supported, a candidate for election as a member of a Legislative Council established for Swaziland by Order of Her Majesty in Council or of the Senate or House of Assembly established by this Constitution or the former Constitution ;

(*c*) during the period of two years immediately preceding the date of the appointment—

(i) he has been a member of a Legislative Council or of a Senate or House of Assembly established as aforesaid ;

(ii) he has been nominated for election to a Legislative Council or Senate or House of Assembly established as aforesaid ; or

(iii) he has been the holder of an office in such an organisation as is referred to in paragraph (*b*) of this subsection ; or

(*d*) he is a public officer, other than a judge of the High Court or the Court of Appeal:

Provided that a person shall not be so disqualified by reason only that he had been Speaker of a Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker or President of the Senate established as aforesaid having been elected as such from outside the House of Assembly or, as the case may be, the Senate.

(3) Subject to the provisions of this section, the office of the appointed member shall become vacant—

(*a*) at the expiration of five years or such lesser period, not being less than two years, from the date of his appointment as may be specified in his appointment ; or

(*b*) if any circumstances arise that, if he were not the appointed member, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) The appointed member may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) The appointed member shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Chief Justice represents to the King that the question of removing the appointed member under this section ought to be investigated, then—

(*a*) the King shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the appointed member ought to be removed under this section.

(7) If the question of removing the appointed member has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Chief Justice, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that that member should not be removed.

(8) If the office of the appointed member is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, the King, acting in accordance with the advice of the Chief Justice, may appoint a person who is qualified to be the appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (3) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the King, acting in accordance with the advice of the Chief Justice.

(9) The appointed member shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

(10) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(11) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(12) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

Appointment, etc., of judicial officers.

114.—(1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Judicial Service Commission.

(2) The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more of the members of that Commission or to any person holding or acting in any office to which this section applies.

(3) The offices to which this section applies are—

(*a*) the office of Registrar or Assistant Registrar of the High Court;

(*b*) the office of Registrar or Assistant Registrar of the Court of Appeal;

(*c*) the office of magistrate; and

(*d*) such other offices connected with any court as may be prescribed by Act of Parliament.

CHAPTER X

THE PUBLIC SERVICE

Public Service Commission.

115.—(1) There shall be a Public Service Commission for Swaziland which shall consist of a chairman and not less than two nor more than four other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

(2) No person shall be qualified to be appointed as a member of the Commission if—

(*a*) he is a Senator or member of the House of Assembly or is nominated for election to the House of Assembly;

(*b*) he is the holder of an office in any organisation that sponsors or supports, or that has at any time sponsored or supported, a candidate for election as a member of a Legislative Council established for Swaziland by Order of Her Majesty in Council or of the Senate or House of Assembly established by this Constitution or the former Constitution;

(*c*) during the period of two years immediately preceding the date of the appointment—

(i) he has been a member of a Legislative Council or of a Senate or House of Assembly established as aforesaid;

(ii) he has been nominated for election to a Legislative Council or Senate or House of Assembly established as aforesaid; or

(iii) he has been the holder of an office in such an organisation as is referred to in paragraph (*b*) of this subsection; or

(*d*) he is a public officer, other than a judge of the High Court or the Court of Appeal:

Provided that a person shall not be so disqualified by reason only that he had been Speaker of a Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker or President of the Senate established as aforesaid having been elected as such from outside the House of Assembly or, as the case may be, the Senate.

(3) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(*a*) at the expiration of five years or such lesser period, not being less than two years, from the date of his appointment as may be specified in his instrument of appointment ; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister in the case of the chairman or the chairman in the case of any other member represents to the King that the question of removing a member of the Commission under this section ought to be investigated, then—

(*a*) the King shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Prime Minister, in the case of the chairman of the Commission or member for the time being acting as chairman, or acting in accordance with the advice of the chairman of the Commission, in the case of any other member, may suspend the chairman, acting chairman or other member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that the chairman, acting chairman or other member should not be removed.

(8) If the office of the chairman of the Commission is vacant or if the chairman is for any reason unable to exercise the functions of his office, those functions shall be performed by such one of the other members of the Commission as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint.

(9) If at any time there are less than two members of the Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to perform the functions of his office, then, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so

appointed shall continue to act until his appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission.

(10) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in Schedule 2 to this Constitution or such other oaths as may be prescribed.

(11) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority:

Provided that the Commission shall act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.

(12) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those procedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

(14) Before tendering advice to the King for the purposes of any of the provisions of this section the Judicial Service Commission shall consult the Prime Minister.

Appointment, etc., of public officers.

116.—(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any member of the Commission or to any public officer.

(3) The provisions of this section shall not apply in relation to any of the following offices—

(*a*) the office of a judge of the High Court or Court of Appeal;

(*b*) any office to which section 117 of this Constitution (which relates to Ambassadors, High Commissioners or principal representatives of Swaziland) applies;

(*c*) any office to which section 118 of this Constitution (which relates to permanent secretaries and certain police officers) applies;

(*d*) the office of Attorney-General;

(*e*) except for the purpose of making appointments thereto or to act therein, the office of Director of Audit;

(*f*) any office appointments to which is within the functions of the Judicial Service Commission;

(*g*) offices in the Police Force and offices in the Prison Service, to the extent provided by sections 121 and 122 of this Constitution.

Appointment and removal of Ambassadors, etc.

117.—(1) This section applies to the offices of Ambassador, High Commissioner or other principal representative of Swaziland in any other country or accredited to any international organisation.

(2) Subject to the provisions of subsections (3) and (4) of this section, power to appoint persons to hold the offices to which this section applies and to remove such persons from office shall vest in the King, acting in accordance with the advice of the Prime Minister.

(3) Before advising the King to appoint to any office to which this section applies any person who holds any public office which is not such an office the Prime Minister shall consult the Public Service Commission.

(4) Before or as soon as practicable after advising the King to remove from an office to which this section applies any person who prior to his appointment to that office (or, if he has held more than one such office in succession, to those offices) held any public office which is not such an office the Prime Minister shall refer the question of that person's removal to the Public Service Commission and obtain the Commission's report.

Appointment, etc., of permanent secretaries and certain police officers.

118.—(1) This section applies to the office of the Secretary to the Cabinet, the office of the Commissioner of Police, the office of the Deputy Commissioner of Police, and the offices of permanent secretary.

(2) The power to appoint persons to hold or act in any office to which this section applies and, subject to the provisions of subsection (3) of this section, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the King, acting in accordance with the advice of the Prime Minister.

(3) Before advising the King to exercising any power under subsection (2) of this section to exercise disciplinary control over or remove from office any person the Prime Minister shall refer the question of the exercise of those powers in that case to the Public Service Commission and the following provisions shall apply—

(*a*) the Prime Minister shall cause the person concerned to be furnished with a statement of the grounds upon which it is proposed to exercise those powers ;

(*b*) the Commission shall enquire into the facts of the case and shall, if the person concerned so requests, consider any representation that he wishes to make in person or in writing ;

(*c*) the Commission shall report its findings on the facts of the case and its recommendation concerning the exercise of any powers under subsection (2) of this section.

Appointment of Attorney-General.

119.—(1) The power to appoint a person to hold or act in the office of Attorney-General and to terminate the appointment of any person acting in the office of Attorney-General shall vest in the King, acting in accordance with the advice of the Judicial Service Commission.

(2) A person shall not be qualified for appointment to hold or act in the office of Attorney-General unless he is qualified to be appointed as a judge of the High Court or has practised as an advocate or attorney in Swaziland for not less than ten years.

Removal from office of Attorney-General and Director of Audit.

120. The provisions of section 100 of this Constitution shall apply in relation to a person holding the office of Attorney-General or the office of Director of Audit as they apply in relation to a puisne judge of the High Court but as if there were substituted for any reference in those provisions to the Chief Justice a reference—

(*a*) in the case of the Attorney-General, to the Judicial Service Commission;

(*b*) in the case of the Director of Audit, to the Public Service Commission.

The Police Force.

121.—(1) In relation to any officer in the Police Force below the rank of Inspector, any power vested in the Public Service Commission by section 116 of this Constitution shall not apply to the extent to which that power is, by or under the provisions of any law in force in Swaziland, to be exercised by the Commissioner of Police or any other officer in the Police Force:

Provided that in the case of disciplinary proceedings an appeal shall lie to the Public Service Commission against the award by the Commissioner of Police or such other officer of the punishment of dismissal or of reduction in rank.

(2) The provisions of section 116(2) of this Constitution shall not apply in relation to offices in the Police Force.

The Prison Service.

122. The provisions of subsections (1) and (2) of section 121 of this Constitution shall apply to persons holding offices in the Prison Service below the rank of Chief Officer as they apply to persons holding offices in the Police Force below the rank of Inspector; and, for the purposes of this section, those subsections shall have effect as if there were substituted for the words "Police Force" the words "Prison Service", for the word "Inspector" the words "Chief Officer" and for the words "Commissioner of Police" the words "Director of Prisons".

Pensions laws and protection of pensions rights.

123.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before 6th September 1968 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 6th September 1968, be the law that was in force immediately before that day; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 6th September 1968, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Swaziland may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Swaziland:

Provided that nothing in this subsection shall be construed as preventing—

(*a*) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that apply in the case of that person; or

(*b*) the imposition of reasonable conditions relating to the form in which any payment is to be remitted.

(6) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(7) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(8) For the purposes of this section—

(*a*) to the extent to which the emoluments attaching thereto were payable by Swaziland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal;

(*b*) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Swaziland;

(*c*) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;

(*d*) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland;

(*e*) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office; and

(*f*) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette,

shall be regarded as offices in the public service.

Power of Commissions in relation to pensions, etc.

124.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the High Court, judge of the Court of Appeal, Attorney-General or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means—

(*a*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission; and

(*b*) in any other case, the Public Service Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) For the purposes of this section—

(*a*) to the extent to which the emoluments attaching thereto were payable by Swaziland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal;

(*b*) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Swaziland;

(*c*) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;

(*d*) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland;

(*e*) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office; and

(*f*) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette,

shall be regarded as offices in the public service.

Right of action for wrongful dismissal, etc.

125.—(1) If any person holding a public office is removed from office under any of the provisions of this Constitution, his removal as aforesaid shall be without prejudice to any right of action to which he may be entitled under the law for the time being in force in Swaziland for damages for wrongful dismissal or loss of status :

Provided that no such damages shall be recoverable if the holder of the office is offered appointment to another public office in respect of which the emoluments are not less than the emoluments of the office from which he is removed.

(2) The law relating to rights of action for damages for wrongful dismissal or loss of status shall not be altered to the disadvantage of a public officer during his continuance in office.

(3) Nothing in this section shall apply to the holder of the office of judge of the High Court, judge of the Court of Appeal, Attorney-General or Director of Audit or to any holder of an office to which section 117 of this Constitution applies who immediately prior to his appointment to that office (or if he has held more than one such office in succession, to those offices) was not the holder of a public office.

CHAPTER XI

FINANCE

Consolidated Fund.

126. All revenues or other moneys raised or received for the purposes of the Government of Swaziland (not being revenues or other moneys that are payable by or under this Constitution or any other law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds.

127.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Swaziland ;

(*b*) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Assembly or in such manner and subject to such conditions as may be prescribed in pursuance of section 129 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Swaziland other than the Consolidated Fund or any Contingencies Fund established under section 130 of this Constitution unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and

Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Swaziland, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

128.—(1) The Minister responsible for finance shall cause to be prepared and laid before both chambers, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Swaziland for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an Appropriation bill which shall be introduced in the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found—

(*a*) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act ; or

(*b*) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Assembly and shall be included in a motion or motions seeking approval for the supplementary expenditure in such manner as the House shall prescribe.

(4) A final Supplementary Appropriation bill shall be introduced in the House of Assembly, not later than the end of the financial year next following, providing for the appropriation under each head of expenditure of any funds which it has proved necessary to spend in addition to those appropriated in the Appropriation Act.

Authorisation of expenditure in advance of appropriation.

129. If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier:

Provided that the expenditure so authorised for any service shall not exceed one quarter of the amount authorised for that service in the preceding year.

Contingencies Fund.

130.—(1) An Act of Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the House of Assembly, and a bill or motion shall be introduced therein, as soon as possible, for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

131.—(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on and paid out of the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of judge of the High Court, judge of the Court of Appeal, appointed member of the Judicial Service Commission, member of the Public Service Commission, Attorney-General and Director of Audit.

Public debt.

132.—(1) All debt charges for which Swaziland is liable shall be a charge on and paid out of the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the revenues of Swaziland or the Consolidated Fund and on the service and redemption of debt thereby created.

Director of Audit.

133.—(1) There shall be a Director of Audit, whose office shall be a public office.

(2) The public accounts of Swaziland and of all officers, courts and authorities of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts :

Provided that, if it is so provided by any law in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before both chambers.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER XII

ALTERATION OF THE CONSTITUTION

Mode of altering this Constitution.

134.—(1) This Constitution shall not be altered except in the following manner—

(*a*) the alteration shall be initiated by the introduction of a bill, expressly providing that the Constitution shall be so altered, in a joint sitting of the Senate and the House of Assembly summoned for the purpose in accordance with the provisions of Schedule 1 to this Constitution;

(*b*) after the bill has been introduced in a joint sitting it shall be published in the Gazette and no further proceedings shall be taken on the bill in Parliament until the prescribed period has elapsed;

(*c*) if, after the prescribed period has elapsed, the bill is passed at a joint sitting of the Senate and the House of Assembly it shall, subject to paragraphs (*e*) and (*f*) of this subsection, be submitted to the King for assent;

(*d*) for the purpose of paragraph (*c*) of this subsection, if a bill contains provision for altering any of the specially entrenched provisions or entrenched provisions of this Constitution, the bill shall not be passed at a joint sitting of the Senate and the House of Assembly unless it is supported on its final reading by the votes of not less than three-quarters of all the members of both those chambers;

(*e*) if the bill as passed at the joint sitting contains provision for altering any of the specially entrenched provisions of this Constitution that provision shall be submitted to a referendum, held in such manner as may be prescribed by Act of Parliament, at which every person who at the time when the referendum is held would be entitled to vote at an election of elected members of the House of Assembly but no other person is entitled to vote; and unless that provision is approved on the referendum by not less than two-thirds of all the votes validly cast on that referendum the bill shall not be submitted to the King for assent;

(*f*) when a bill to alter this Constitution is submitted to the King for assent it shall be accompanied by a certificate under the hand of the President of the Senate and the Speaker of the House of Assembly that the provisions of paragraphs (*a*), (*b*) and (*d*) of this subsection have been complied with and when a referendum has been held by a certificate of the officer in charge of the referendum stating the result of the referendum.

(2) A bill to alter this Constitution shall lapse—

(*a*) if it is not submitted for assent at the date of the conclusion of the next session of Parliament after the session in which it is introduced;

(*b*) if on any reading of the bill in a joint sitting it is not passed; or

(*c*) if, having been submitted to a referendum in accordance with subsection (1)(*e*) of this section, it is not approved in the manner provided by that subsection.

(3) In this section—

(*a*) references to any of the provisions of this Constitution include references to any law that amends or replaces that provision; and

(*b*) references to the alteration of this Constitution or, as the case may be, to altering any provision include references—

(i) to revoking it with or without re-enactment thereof or the making of different provision in lieu thereof;

(ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; or

(iii) to suspending its operation for any period or terminating any such suspension.

(4) In this section—

"entrenched provisions" means any of the provisions of this Constitution specified in Part II of Schedule 4 to this Constitution;

"prescribed period", in relation to any bill containing provision to alter the entrenched provisions or the specially entrenched provisions of this Constitution, means a period of three months commencing from the introduction of the bill in a joint sitting and, in relation to any other bill means a period of one month commencing as aforesaid;

"specially entrenched provisions" means any of the provisions of this Constitution specified in Part I of Schedule 4 to this Constitution.

CHAPTER XIII

MISCELLANEOUS

Swazi National Council.

135. Save as otherwise provided in this Constitution, the Swazi National Council, which consists of the Nggwenyama, the Ndlovukazi, and of all adult male Swazi, shall continue to exercise its function of advising the Nggwenyama on all matters regulated by Swazi law and custom and connected with Swazi traditions and culture; and shall exercise such function either in Libandla or in Liqoqo, as the case may be, in accordance with Swazi law and custom.

Subordinate legislation.

136. An Act of Parliament may make provision conferring functions on a joint sitting of the chambers of Parliament with respect to any subordinate legislation (that is to say any instruments having the force of law made under an Act of Parliament) and for the summoning and procedure of a joint sitting for the purpose of the exercise of those functions.

References to public office, etc.

137.—(1) In this Constitution, unless the context otherwise requires, the expression "public office"—

(*a*) shall be construed as including the offices of judges of the High Court or Court of Appeal, the offices of members of all other courts of law in Swaziland (other than courts-martial), and the offices of members of the Police Force and of members of the Prison Service; and

(*b*) shall not be construed as including the offices of President or Deputy President of the Senate, Speaker or Deputy Speaker of the House of Assembly, Minister, Assistant Minister, Senator, member of the House of Assembly or member of any Commission established by this Constitution.

(2) For the purposes of this Constitution, a person shall not be regarded as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of public service.

Acting appointments.

138.—(1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

Removal from office.

139.—(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the High Court or of the Court of Appeal or the Attorney-General or the Director of Audit to retire from the public service ; and

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations.

140. Save as otherwise provided in this Constitution, any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed ; and the resignation shall take effect and the office shall accordingly become vacant—

(*a*) at such time or on such date (if any) as may be specified in the writing ; or

(*b*) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

Re-appointments and concurrent appointments.

141.—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Saving for jurisdiction of courts.

142. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

Power to amend and revoke instruments, etc.

143. Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, rule or direction.

Interpretation.

144.—(1) In this Constitution unless the context otherwise requires—

"Act of Parliament" means any law made by the King and Parliament;

"the Commissioner of Police" means the officer, by whatever title called, commanding the Police Force;

"the Commonwealth" means the countries that are independent members of the Commonwealth and territories for whose international relations any of those countries is wholly or in part responsible;

"financial year" means the period of twelve months ending on the thirty-first day of March in any year or such other day as may be prescribed;

"the former Constitution" means the Constitution of the Kingdom of Swaziland set out in the Schedule to the Swaziland Constitution Order 1967 as in force on 5th September 1968;

"the Gazette" means the Swaziland Government Gazette;

"the Government" means the Government of Swaziland;

"high judicial office" means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or in any other country outside the Commonwealth that may be prescribed or the office of a judge of a court having jurisdiction in appeals from such a court;

"the King" includes any person lawfully performing the functions of the King in accordance with Chapter IV of this Constitution;

"Libandla" means a Council consisting of advisers of the Nggwenyama and of representatives of the Swazi nation or part of that nation, meeting to discuss any matters of communal concern in accordance with Swazi law and custom;

"Liqoqo" means a Council the membership of which is in part elected by the Swazi National Council from among their number, in part selected by the Nggwenyama and in part traditionally appointed, and of which both the Nggwenyama and the Ndlovukazi are themselves members;

"the Ndlovukazi" means the person appointed as Ndlovukazi under Swazi law and custom;

"the Nggwenyama" means the person appointed as Nggwenyama under Swazi law and custom and includes any person for the time being exercising the functions of the Nggwenyama under Swazi law and custom;

"oath" includes affirmation;

"Parliament" means the Parliament of Swaziland established by this Constitution;

"the Police Force" means the Swaziland Police Force and includes any other police force established in accordance with such provision as may be prescribed;

"prescribed" means prescribed in a law: provided that, in relation to anything that may be prescribed only by Act of Parliament, it means so prescribed;

"public office" means, subject to the provisions of section 137 of this Constitution, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public service" means service in a civil capacity in respect of the government of Swaziland;

"session" means, in relation to Parliament, the sittings of Parliament commencing when the House of Assembly first meets after any general election or when Parliament first meets after its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to a chamber, a period during which that chamber is sitting continuously without adjournment, and includes any period during which the chamber is in committee.

(2) Save as otherwise provided in this Constitution, the Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

(a) 1889 c. 63.

Sections 18, 75, 76 and 134.

SCHEDULE 1 TO THE CONSTITUTION

SUMMONING AND PROCEDURE OF JOINT SITTINGS OF SENATE AND HOUSE OF ASSEMBLY

1.—(1) The King shall summon a joint sitting of the Senate and the House of Assembly—

(*a*) whenever he is informed by the Prime Minister that it is necessary in order that a joint sitting may deliberate and vote upon the question of approval, extending approval, or revocation of a declaration of a state of emergency under section 18 of this Constitution ;

(*b*) in the circumstances mentioned in section 75(2) or 76(2) of this Constitution ;

(*c*) whenever he is informed by the President of the Senate or the Speaker of the House of Assembly that a member of the Senate or the House of Assembly, as the case may be, has given notice of the introduction of a bill to alter the Constitution ; or

(*d*) whenever it is necessary in order that a joint sitting of the Senate and the House of Assembly may deliberate and vote upon a bill to alter the Constitution in accordance with section 134(1)(*c*) of this Constitution.

(2) Subject to sub-paragraph (4) of this paragraph, the summons of a joint sitting shall be by message to the Senate and the House of Assembly through the President or Speaker, as the case may be, and shall state the business which the sitting is summoned to transact and shall appoint a day for the joint sitting, being not more than fourteen days after the date of the message in the case of a sitting for the purpose mentioned in sub-paragraph (1)(*a*) of this paragraph and not more than twenty-one days after the message in any other case.

(3) The prorogation of Parliament shall not affect any business which a joint sitting of the Senate and the House of Assembly has, at the date of the prorogation, been summoned to transact in accordance with the provisions of this paragraph or which is then under consideration by a joint sitting, but, subject to the provisions of sub-paragraph (4) of this paragraph, any business pending for consideration or under consideration by a joint sitting when Parliament is dissolved shall lapse at the date of the dissolution.

(4) The provisions of section 60 of this Constitution (which relates to the recall of the chambers of Parliament after a dissolution) shall apply for the purpose of authorising the recall of members of those chambers in a joint sitting as it applies for authorising the recall of the chambers of Parliament.

2. The members of the Senate and the House of Assembly shall meet together in joint sitting on the day appointed and on any succeeding day or days that may be necessary and may deliberate and shall vote together upon the business the joint sitting was summoned to transact.

3. Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of deliberating and voting upon a bill in the circumstances mentioned in section 75(2) of this Constitution the following provisions shall apply—

(*a*) the members of the Senate and the House of Assembly may deliberate and shall vote together upon the bill as last proposed in the chamber in which it was introduced and upon such admissible amendments to the bill as may be proposed in the joint sitting ;

(*b*) if the bill, with such admissible amendments, if any, as are agreed to by the joint sitting, is affirmed by the joint sitting, the bill as so affirmed shall be deemed to have been duly passed ;

(*c*) for the purposes of this paragraph—

(i) if the bill has not been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill;

(ii) if the bill has been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill and such other amendments as are relevant to the matters with respect to which the chambers have not agreed;

(iii) the decision of the person presiding in the joint sitting as to the amendments that are admissible under the provisions of this sub-paragraph shall be final.

4.—(1) Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of considering a bill referred back by the King in accordance with section 76(2) of this Constitution the following provisions shall apply—

(*a*) if the whole bill has been referred back, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any amendment to any provision of the bill which may be proposed in the joint sitting;

(*b*) if the bill has been referred back for consideration of provisions of the bill specified by the King, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any admissible amendment which may be proposed in the joint sitting;

(*c*) if the bill is affirmed with such amendments (if any) as are mentioned in the preceding sub-paragraphs and are agreed by the joint sitting, it shall be deemed to be duly passed.

(2) For the purposes of sub-paragraph (1)(*b*) of this paragraph there shall be admissible only amendments to the provisions specified by the King and such other amendments as are relevant to the matters contained in the King's message, and the decision of the person presiding in the joint sitting as to the amendments that are admissible shall be final.

5. The Speaker of the House of Assembly and the President of the Senate shall, in that order, preside alternately at joint sittings of the Senate and the House of Assembly and for the purpose of this paragraph the sitting or sittings necessary to dispose respectively of any motion for the purpose of section 18 of this Constitution, of the business relating to any bill referred to a joint sitting in accordance with section 75(2) or 76(2) of this Constitution, or of the business relating to any bill to alter the Constitution shall be regarded as a single sitting.

6. A joint sitting shall not be disqualified for the transaction of business by reason of any vacancy in the membership of either chamber.

7. If objection is taken by a member of either chamber who is present that there are present in that sitting (besides the person presiding) fewer than twenty-five members of the chambers of Parliament and, after such interval as may be prescribed in the rules of procedure applying to a joint sitting, the member presiding ascertains that there are still fewer than twenty-five members of the chambers of Parliament present, he shall thereupon adjourn the joint sitting.

8.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in a joint sitting of the Senate and the House of Assembly shall be determined by a majority of the votes of the members of Parliament present and voting.

(2) A President elected from among persons who are Senators or a Speaker elected from among persons who are members of the House (whether or not he is presiding in a joint sitting) shall have an original but not a casting vote.

(3) A President or Deputy President of the Senate elected from among persons who are not Senators or a Speaker or a Deputy Speaker of the House of Assembly elected from among persons who are not members of the House shall have no vote.

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

(5) Subject to the provisions of sections 18(5) and 134(1)(*d*) of this Constitution, if upon any question before a joint sitting the votes of the persons entitled to vote are equally divided the motion shall be lost.

(6) If the rules of procedure of a chamber of Parliament make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted, those rules of procedure shall have effect for determining whether a member of that chamber has voted in a joint sitting.

9. Subject to the provisions of this Schedule, the rules of procedure for the time being of the House of Assembly shall apply, with the necessary modifications, for regulating any proceedings of a joint sitting under this Constitution which correspond to proceedings of the House of Assembly.

Sections 36, 54(6), 63, 88, 103, 109, 113(9) and 115(10).

SCHEDULE 2 TO THE CONSTITUTION

OATHS

(Oath or affirmation for the due execution of the office of King of Swaziland)

I ..... do swear [or solemnly affirm] that I, in the office of King of Swaziland, preserve, protect and defend the said Constitution ; that I will, as King, govern the people of Swaziland according to the said Constitution and the other laws of Swaziland ; and that I will, as King and so far as lies within my power, cause law and justice to be administered in mercy to the people of Swaziland.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation for the due execution of the office of Regent)

I ..... do swear [or solemnly affirm] that I, in the office of Regent of Swaziland, will, under the Constitution of the Kingdom of Swaziland, well and truly serve the King of Swaziland, his heirs and successors ; that I will, as Regent, preserve, protect and defend the said Constitution ; that I will, as Regent, govern the people of Swaziland according to the said Constitution and the other laws of Swaziland ; and that I will, as Regent and so far as lies within my power, cause law and justice to be administered in mercy to the people of Swaziland.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation of allegiance)

I ..... do swear [or solemnly affirm] that I will be faithful and bear true allegiance to King ....., his heirs and successors, according to law.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation for due execution of office)

I ..... do swear [or solemnly affirm] that I will well and truly serve King ....., his heirs and successors, in the office of [here insert the description of the office].

So help me God. [To be omitted in affirmation.]

(Judicial oath or affirmation)

I ..... do swear [or solemnly affirm] that I will well and truly serve King ....., his heirs and successors, in the office of [here insert the description of the judicial office] and I will do right to all manner of people according to the law without fear or favour, affection or ill-will.

So help me God. [To be omitted in affirmation.]

SCHEDULE 3 TO THE CONSTITUTION

Section 62(2).

MATTERS WHICH SHALL CONTINUE TO BE REGULATED BY SWAZI LAW AND CUSTOM

(*a*) The office of Nggwenyama.

(*b*) The office of Ndlovukazi (the Queen Mother).

(*c*) The authorisation of a person to perform the functions of Regent for the purposes of section 30 of this Constitution.

(*d*) The appointment, revocation of appointment and suspension of Chiefs.

(*e*) The composition of the Swazi National Council, the appointment and revocation of appointment of members of the Council, and the procedure of the Council.

(*f*) The Ncwala Ceremony.

(*g*) The Libutfo (regimental) system.

SCHEDULE 4 TO THE CONSTITUTION

Section 134.

PART I

SPECIALLY ENTRENCHED PROVISIONS

(i) Chapter I;

(ii) Chapter II;

(iii) Sections 28, 29 and 30;

(iv) Sections 37, 56, 58, 59(1), 59(4), 60 and 61(1);

(v) Sections 62, 70(1), 70(2) and 70(3);

(vi) Sections 79(1), 79(2), 80(1), 80(3), 81, 82, 83, 84, 85, 86, 92(1), 92(2), 92(3) and 92(4);

(vii) Sections 94 and 95;

(viii) Sections 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 113 and 114;

(ix) Sections 115 and 116;

(x) Sections 131, 133(1), 133(4), 134 and 135;

(xi) Chapter XIII in its application to any of the provisions referred to in this part of this Schedule;

(xii) Schedule 1 in its application to any of the provisions referred to in this part of this Schedule;

(xiii) Schedule 3;

(xiv) This Schedule.

PART II

ENTRENCHED PROVISIONS

(i) Sections 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 54, 55, 59(2), 59(3);

(ii) Sections 71, 72, 73, 75, 77(1) and 78;

(iii) Sections 87, 91, 117, 118, 119, 120, 121, 122, 123, 124 and 125;

(iv) Sections 133(2) and 133(3);

(v) Chapter XIII in its application to any of the provisions referred to in this part of this Schedule;

(vi) Schedule 1 in its application to any of the provisions referred to in this part of this Schedule.

EXPLANATORY NOTE

(This Note is not part of the Order.)

By virtue of the Swaziland Independence Act 1968 Her Majesty's jurisdiction will cease in Swaziland on 6 September 1968 and Swaziland will accordingly become an independent kingdom within the Commonwealth. This Order makes provision for a Constitution for Swaziland to come into effect on that day; it includes provision for the exercise of the functions of the Head of State by the King of Swaziland, for the legislature, the executive government, the judicature and the public service. The Constitution also contains provisions relating to citizenship of Swaziland and fundamental rights and freedoms of the individual.