EFFECT OF AMENDMENTS TO THE 1996 CONSTITUTION: IN PARTICULAR THE 2009 PROPOSED 17TH AMENDMENT

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Introduction

We often hear talk of our South African Constitution granting us the democracy and freedom that we should embrace, enjoy and protect. Such talk is usually based on general perceptions and people are not really familiar with the full extent of the Constitution and its purpose. The general public cannot always be aware of certain government action and other occurrences that could have an adverse effect on this constitutionally granted democracy and freedom. One manner, in which this constitutional democracy and freedom could be violated or undermined, is by means of superfluous and irregular amendments to the ratified provisions of the Constitution which could create an impression of constitutional instability, insecurity and uncertainty. Should an amendment of the Constitution be passed that, for example, violates the principle of the separation of government powers as embedded in the Constitution (the trias-politica principle), and one branch of government should acquire more than its share of powers over the other two branches, it would undermine and disrupt the carefully delineated areas of control as arranged by the Constitution.

When the proposed Constitution Seventeenth Amendment Bill of 2009 was introduced, it contained several aspects which had the potential of violating the supreme principles contained in the Constitution. The Executive branch of government, as one of the three branches of government, would have acquired more than its share of constitutionally apportioned powers over the other two branches (Legislative and Judicial). This would have led to very dire consequences in practise. These concerns were fortunately intercepted and dealt with since then and the revised Constitution Seventeenth Amendment Bill of 2012 was introduced and finalised in November 2012.

Besides the fact that the 1996 Constitution establishes a sovereign, democratic and constitutional South African state, all government actions are contained in the various laws of South Africa so as to serve the general interests of the public. The content of these laws are presumed to be known by the general public but this is not entirely possible as only a small portion of the general public has the necessary legal knowledge or the skills to correctly interpret and understand the rather technical and cumbersome legislation on the statute books. When it comes to amending one or more statutes, even less is known about why and how this is done, and of the legislative process which leads to passing an Amendment Bill. Should one talk of amendments to the Constitution, and refer to the cautionary approach to protect the supremacy of the Constitution, the different entrenched provisions and the special procedure to be followed for such amendments, it is tantamount to having a very confusing discussion.

The purpose of this paper is to give a brief indication of what a constitution is and its purpose; describe the status of the South African Constitution and why it is different to ordinary legislation; indicate why entrenched provisions are necessary in the Constitution; explain how the Constitution defines the structure of government; explain the meaning and purpose of amendments to legislation; briefly cover the content of the 16 amendments to the Constitution to identify aspects to avoid; discuss the 17th amendment to the Constitution and its controversy; refer to the 18th amendment; and focus on the effect of amendments on ratified constitutional provisions and why amendments of the Constitution should possibly be limited to protect its supreme principles.
A constitution and its purpose

History tells us that the first document to be called a constitution was written in the ancient Greek city of Athens around 600 BC. About 300 years later Aristotle was the first to define constitutionalism and differentiate between ordinary laws and having a constitution.

Just prior to 621 BC, Athens was in pandemonium. The oral laws had not been recorded yet and this caused much uncertainty among the people. The noblemen acted for their own benefit but the lower classes were weary of being taken advantage of, and were no longer willing to accept what they were told verbally by the lawmakers and judges. The law enforcers then appointed a scribe of the law, Draco (pronounced “draykoh”), to write down the Athenian laws. In 621 BC Draco codified the cruel oral laws of Athens but his attempt to improve the situation of the Greek polis horrified its citizens. Draco believed that there was no greater punishment than death so the laws were particularly harsh as the death penalty was prescribed as the punishment for even minor offences. The stringency of these laws gave rise to expressions such as "draconian punishment", "draconian laws", and "draconian measures". In 594 BC Solon, the then ruler of Athens, had a more compassionate approach and created the new Solonian Constitution. It eased the burden of the workers, and determined that membership of the ruling class was to be based on wealth (plutocracy), rather than by birth (aristocracy). Cleisthenes again reformed the Athenian constitution by setting it on a democratic footing in 508 BC (http://www.experiencefestival.com/a/Draco/id/464909).

Years later, Aristotle (350 BC) was one of the first in recorded history to make a formal distinction between ordinary law and constitutional law, establishing ideas of a constitution and constitutionalism, and attempting to classify different forms of constitutional government. The most basic definition he used to describe a constitution in general terms was "the arrangement of the offices in a state". He also distinguished between citizens, who had the right to participate in the state, and non-citizens and slaves, who did not (Aristotle: 2004; http://classics.mit.edu/Aristotle/athenian_const.1.1.html).

Much nearer to a democratic constitution, or also sometimes referred to as the "enlightened constitution" model, was developed by philosophers such as Thomas Hobbes, Jean-Jacques Rousseau, and John Locke. The model proposed that constitutional governments should be stable, adaptable, accountable and open, and should represent the people, therefore support democracy (http://www.britannica.com/EBchecked/topic/134169/constitution ). In his book Leviathan of 1660, Thomas Hobbes (1588-1679) stated that before governments and civil society were created, humans lived in a state of nature. People were free to do whatever they desired and take whatever they wanted. Each person had the natural rights of life, liberty, and the pursuit of property. In Hobbes' state of nature, the life of man was "nasty, brutish, cruel, and short" - an entirely undesirable condition. But Hobbes acknowledged that human beings can perceive the undesirability of the state of nature and, through a social contract, they can create a government that will provide them with order. Government is thus formed by means of a social contract between the people and those appointed to govern them (http://oregonstate.edu/instruct/phil302/texts/hobbes/leviathan-contents.html).

From this overview of where a constitution originated from, is quite apparent that people living together in a state, desired a social contract to ensure order and that the government should represent the people and be stable, adaptable, accountable and open. The purpose of a constitution was also an attempt to regulate the relationship between individuals and the governors, and to establish the broad rights of individuals.

The author Finer (1979: 32) gives a clear description of a constitution by stating that it is a body of rules which regulates the system of government within a state. It establishes the bodies and
institutions which form part of that system, provides for the powers which they are to exercise, determines how they are to interact and coexist with one another and, perhaps most importantly of all, it is concerned with the relationship between government and the individual.

From the above, it is apparent that a constitution is seen to provide a regulated system of stable, adaptable, accountable and open government, and with a relationship between government and the individual. In the next paragraphs, different parts of the South African Constitution are described for the purposes of this paper.

**Constitution of the Republic of South Africa, 1996**

As mentioned in the Introduction, the public is apparently not entirely familiar with the full extent of the Constitution and aware that certain government action and amendments to the Constitution could have an adverse effect on constitutionally granted democracy and freedom. For the purposes of this paper, a description is now given of the status of the 1996 Constitution.

The Constitution of the Republic of South Africa, 1996, is the country's fifth since Union in 1909, and was drawn up in 1993 by the Constitutional Assembly of Parliament. Notwithstanding the composition of the then Parliament (the National Assembly and the Senate), the 1993 Constitution (section 68) granted legislative authority to the Constitutional Assembly. This body was indeed composed of the National Assembly and the Senate, but these Houses sat jointly as one body for the purposes of drafting and adopting a new constitutional text. In fact the Constitutional Assembly was Parliament functioning in another form. Therefore, the Constitutional Assembly, sitting as a body of its own, had the one unique legislative task of drafting a new constitution. For the single task, the Constitutional Assembly had its own and unique procedures (1993 Constitution: section 70) and its own legislative process and certainly did not exist as an interim or alternative Parliament (Van Wyk 1997, 378-379; Devenish 2000, 21). The new constitutional text drafted and passed by the Constitutional Assembly was submitted to the Constitutional Court for certification and when finally adopted, the text was assented to by the President (1993 Constitution: sections 71 and 73). It was promulgated on 10 December 1996 and came into effect on 4 February 1997, replacing the Interim Constitution of 1993 (Van Heerden 2007: 4).

The 1996 Constitution not only contained a Bill of Rights in its chapter 2, but also reflected what people need, namely a regulated system of stable, adaptable, accountable and open government, and with a relationship between government and the individual. The Constitution's democratic values and principles created stability and certainty among people, and this could be respected, nurtured and protected by all institutions and individuals.

**A superior law**

The intention was that the 1996 Constitution would be a unique and supreme statute, and would have a higher status than other laws. This is substantiated in its preamble: 'We, the people of South Africa ... adopt this Constitution as the supreme law of the Republic ...'.

The South African Constitutions prior to 1993 were structured according to the Westminster system, which was inherited from Britain and which was based on a doctrine of parliamentary sovereignty (Boulle et al. 1989, 104; Burns 2003, 33). According to this doctrine, Parliament is sovereign and is the supreme authority in the state and all other government institutions are subject to it (Rautenbach and Malherbe 2009, 16). This meant that Parliament, the legislative authority, had the supreme power and was not subject to another person or institution (Boulle et al. 1989, 34).

When the 1996 Constitution came into effect on 4 February 1997 as the supreme law of the country, it accordingly replaced the system of parliamentary sovereignty and that parliament had the
supreme authority. South Africa therefore changed to a system of constitutional supremacy instead of parliamentary or legislative supremacy. Parliament does though remain the highest legislative (law-making) body in South Africa but is subordinate to the supreme 1996 Constitution (Van Heerden 2007: 4).

The 1996 Constitution’s supremacy above other laws is also stipulated in its section 2, which reads:

“This Constitution is the supreme law of the Republic: law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

This means that the 1996 Constitution is the supreme law and no other legislation or other source of law has the same legal status or force. Any legislation or action of any government body (including parliament) which is in conflict with the 1996 Constitution, is invalid. The Constitution is accordingly the most important source of law which must be respected and applied by government as a guideline for other laws.

**Numbering of the 1996 Constitution**

The initial numbering of the Constitution of the Republic of South Africa as Act 108 of 1996 was an administrative mistake. The numbering was made superfluous by virtue of the fact that the 1996 Constitution was supreme and that it was drafted by the Constitutional Assembly and not by Parliament. The normal Acts of Parliament are numbered each year, but the 1996 Constitution should not have been included in the parliamentary list of 1996 legislation. In fact, the allocation of an Act number undermined the product of the Constitutional Assembly; its appearance in this form created the impression that it was equal in status to other ordinary parliamentary legislation, whereas it was specifically adopted as the supreme law of South Africa (Van Heerden 2007: 2-3).

Section 59(3) of the 1993 Constitution substantiates the view that the 1996 Constitution was never intended to be an ordinary statute. Section 59(3) stated that all Bills, except the new constitutional text, had to be considered to be ordinary Bills for the purposes of being adopted by Parliament. This provision clearly referred to legislation enacted by Parliament and did not include the new constitutional text that was to be passed by the Constitutional Assembly. The new constitutional text should have been excluded from the parliamentary list of laws for 1996 and from the process of being given an Act number.

Almost nine years later, the Citation of Constitutional Laws Act, 2005, brought about certain fundamental changes to the manner in which the 1996 Constitution, and laws amending it, should be referred to. The preamble to the Citation Act acknowledges that the 1996 Constitution is a special statute. It then states that the Constitution and laws containing amendments to the Constitution should be treated differently from other Acts of Parliament by not being allocated an Act number like other ordinary Acts of Parliament (Citation Act, 2005, Preamble).

Section 1(1) of the Citation Act stipulates the effect of the change and provides that the Constitution must not be associated with an Act number. The reference to `Act 108 of 1996’ will, therefore, no longer be used when referring to the Constitution; only the full name and the year must be used, namely, *Constitution of the Republic of South Africa, 1996*.

The changes prescribed by the Citation Act are also retrospective in nature, because they affect not only future laws amending the 1996 Constitution, but also laws that have already been passed to amend it and that are currently on the Law Book (Citation Act, 2005, sections 2 and 3).

These events confirm the superior status of the 1996 Constitution.
Division of the governing authority

The 1996 Constitution provides the legal foundation for the existence of the Republic, sets out the rights and duties of its citizens, and defines the structure of government. It also divides the governing authority of South Africa into three parts, namely legislative, executive and judicial, with separate powers and areas of responsibilities (sections 43, 85 and 165). This distinguishes between judicial, quasi-judicial and administrative functions. Chapter 10 of the Constitution, 1996, deals specifically with the basic values and principles governing public administration (government actions) and states that public administration must be governed by the democratic values and principles enshrined in the Constitution (section 195(1)). Chapter 8 of the Constitution, 1996, defines the structure of the judiciary to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

These provisions clearly indicate that each of the three branches of the governing authority function within their own demarcated areas as described in the Constitution, and may not encroach upon each other’s areas. The three branches of government exercise control among themselves through a system called “checks and balances”. Thus one branch of government checks that the others are acting constitutionally, but it cannot take over the other branches’ functions. The aim is also to see that there is a balance between the branches of government so that one branch does not become too strong at the expense of the others (Currie and De Waal 2005: 18). When an amendment to the Constitution is being prepared by the Executive branch of government, the Judicial branch is constitutionally obliged to ensure that the intended amendment is aligned with the principles in the Constitution. This not only protects the supremacy and stability of the Constitution but also prevents the Executive from usurping more powers than what the Constitution intends it to have.

Now, besides the legal foundations provided in the Constitution, more comprehensive details of government institutions and all government actions are contained in the various laws of South Africa so as to serve the general interests of the public. In the next part these are described to illustrate the difference between the supreme Constitution and ordinary legislation.

Legislative framework

The legislative authority granted in the Constitution is simply the authorisation to make laws in accordance with constitutional principles (Burger 2001, 6). Parliament therefore has the authority to make laws for the Republic according to an ongoing legislative programme (1996 Constitution, section 43) and does so in terms of the legislative process.

Parliament is obliged to ensure that all laws passed are in accordance with constitutional principles because any law that is inconsistent with the 1996 Constitution is invalid (1996 Constitution: section 2). In practice, a law which is in conflict with the Constitution may be declared to be unconstitutional by a court of law. Such a declaration will have the effect of rendering the law invalid. The Constitutional Court is the highest court in all constitutional matters and makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force (1996 Constitution, section 167(5)).

As mentioned above, more comprehensive details of government institutions and all government actions (public administration) are contained in the various laws. When certain changes occur within society, it may lead to the necessity of amending one or more laws to align these to the changed circumstances. Amending these laws according to a determined legislative process is rather quite straightforward and government actions accordingly adapt to such amended provisions. Since the Constitution is the supreme law of South Africa, it may not be amended in the same way as ordinary laws. Section 74 of the Constitution contains a special procedure that has to be followed in order to
effect a change to its provisions and different entrenched provisions. Amendments to the Constitution could have more extensive effects than those of ordinary legislation.

More details of what an amendment to an ordinary law and the Constitution comprises, and what entrenchment entails, are now given.

**An amendment and entrenchment**

A statute is aimed at the promotion of the public interest and ought to pertain to and, when necessary, be reframed to be heedful of practical circumstances. When a statute stands to be altered, it involves that its provisions may be amended, changed, replaced, or added to. The proposed changes to a statute are contained in an Amendment Bill that is introduced to Parliament. Such a Bill is dealt with in terms of the parliamentary legislative process and must be passed by a majority of the delegates present during a sitting of the National Assembly and the National Council of Provinces, respectively. There are no special requirements and procedures to follow in order to introduce and pass a Bill that amends an ordinary Act of Parliament, and such a Bill can be passed by a minority vote (Van Heerden 2007: 4; Rautenbach and Malherbe 2009: 175).

An amendment to the Constitution will sometimes also be necessary to reflect the changes that have occurred within society. This prevents the Constitution from becoming an historical anachronism or “leftover”. Since the 1996 Constitution is the supreme law, it will not be amended in the same way as ordinary laws as Parliament is prevented from amending the Constitution without following special procedures. The 1996 Constitution therefore contains specific procedures in section 74 that have to be followed in order to amend its different parts. These provisions are complex since some provisions are more securely entrenched than others (Currie and De Waal 2005: 10; Rautenbach and Malherbe 2009: 176; ConsAlert 2009: 2).

There are several entrenched provisions in section 74. One example of an entrenchment clause is found in section 74(2) which states that Chapter 2 of the Constitution (the Bill of Rights) may be amended by an Amendment Bill passed by-

(a) the National Assembly, with a supporting vote of at least two thirds of its members (that is, at least 267 of the 400 members); and
(b) the National Council of Provinces, with a supporting vote of at least six provinces (at least six of the nine provinces).

The entrenchment clause thus requires a supporting vote of a minimum of two thirds of its members whereas with ordinary Amendment Bills, only a majority of delegates present during a sitting is required.

When reading the whole of section 74, the intention is clearly to ensure that any proposed amendment to a provision of the Constitution has to be done according to a special procedure and that the amendment is ratified by a specific majority vote (Currie and De Waal 2005: 10; Rautenbach and Malherbe 2009: 181). This not only protects the values and principles that form the basis of the Constitution but also aims at preventing arbitrary and irregular amendments to satisfy the whims of government action that affect the interests of the public.

**Amendments to the 1996 Constitution**

Since 1996 sixteen Constitution Amendment Acts have been passed. A short overview of these amendments is given in order to show that some amendments were necessary at the time but that others could possibly have been kept in abeyance to be included in another amendment in order to limit the number of amendments. Several amendments were due to governmental actions which were controversial and where the Constitutional Court made an order to retract the amendment.
The **First** Amendment was promulgated on 29 August 1997, and dealt with an Acting President taking the oath of office; allowed the President of the Constitutional Court to designate another judge to administer the oath of office to the President or Acting President; and extended the cut-off date for deeds to be considered for amnesty by the Truth and Reconciliation Commission.

The **Second** Amendment was promulgated on 7 October 1998. It extended the terms of office of municipal councils from four to five years; dealt with the nomination of members of the Judicial Service Commission, powers of the Public Service Commission, and renamed the Human Rights Commission.

The **Third** Amendment was promulgated on 30 October 1998. It allowed the demarcation of cross-boundary municipalities. The changes it made were repealed by the Twelfth Amendment.

The **Fourth and Fifth** Amendments were promulgated on 19 March 1999. These dealt with elections to the National Assembly and the provincial legislatures. The two amendments were passed as separate Acts because of the special requirements for amendments affecting provincial powers which applied to the provisions of the Fourth Amendment but not to those of the Fifth.

The **Sixth** Amendment was promulgated on 21 November 2001. It altered the titles of senior judicial officers; extended the term of office of a Constitutional Court judge; arranged the appointment of two Deputy Ministers from outside the National Assembly and extended the powers of municipal councils to raise loans.

The **Seventh** Amendment was promulgated on 14 December 2001, and made various amendments relating to the passage of financial legislation and the financial relationship between the provincial and national governments.

The **Eighth and Ninth** Amendments were promulgated on 20 June 2002. The Eighth Amendment allowed members of municipal councils to move from one political party to another without losing their seats. The Ninth Amendment provided for the re-allocation of seats in the National Council of Provinces after floor-crossing in provincial legislatures. It was, however, declared unconstitutional by the Constitutional Court. Parliament then re-enacted these provisions as the **Tenth** Amendment, which was promulgated on 19 March 2003. The Eighth, Ninth and Tenth Amendments were effectively repealed by the Fourteenth and Fifteenth Amendments.

The **Eleventh** Amendment was promulgated on 11 April 2003. It renamed the Northern Province to Limpopo Province. It modified the procedure for national government intervention in dysfunctional provincial governments and expanded the powers of provincial governments to intervene in dysfunctional municipalities.

The **Twelfth** Amendment was promulgated on 23 December 2005. It redefined the boundaries of the provinces, and repealed the provisions inserted by the Third Amendment. Many communities affected challenged the amendment before the Constitutional Court, which ruled against the KwaZulu-Natal Legislature. Parliament re-enacted the changes as the **Thirteenth** Amendment, which was promulgated on 14 December 2007. The people of Khutsong also strenuously opposed the change. In 2009, the Sixteenth Amendment transferred Merafong City, which contains Khutsong, back to Gauteng.

The **Fourteenth and Fifteenth** Amendments were promulgated on 9 January 2009. They repealed the floor-crossing provisions added by the Eighth, Ninth and Tenth Amendments.
The Sixteenth Amendment was promulgated on 26 March 2009. It transferred the Merafong City Local Municipality from North West province to Gauteng, reversing the change made by the Twelfth Amendment.

The point could be made that eight (8) of the 16 amendments could have been avoided as these were due to government actions that were questioned. It appears that the provisions of section 74 of the Constitution were not fully adhered to or respected in these cases. The actions by government affected the rights and interests of the public adversely, thereby being in violation of the constitutional relationship between the government and the public.

The discussion that follows is an illustration of how the actions of the Executive branch of government violated the supreme principles in the Constitution in an attempt to gain more powers than what it is constitutionally entitled to.

Amendments 17 and 18 to the 1996 Constitution

When the proposed Constitution Seventeenth Amendment Bill of 2009, was published in the Government Gazette on 17 June 2009 for comments, it was controversial (Government Gazette 2009). The proposed amendment envisaged to vest the national government with new powers of intervention at local government level whenever it was deemed necessary to achieve regional efficiencies and economies of scale in respect of municipal functions. This was to be achieved by the insertion of a new subsection (1A) in section 156 of the Constitution. The proposed new section 156(1A) would allow the national government to regulate the exercise by municipalities of their executive authority in certain circumstances.

Based on the manner in which the provisions of the Bill were formulated, the Centre for Constitutional Rights (ConsAlert 2009: 1) pointed out unconstitutional aspects about the provisions of the Bill, namely that it-

1. undermines the supremacy of the Constitution as it disrupts several carefully delineated areas of control arranged by the Constitution,
2. undermines the three-sphere system of governance envisaged in the Constitution as it negates the distinctiveness for the municipal sphere,
3. contains a clause that excludes the operation of the Constitution (namely, “Notwithstanding any other provision of the Constitution …”), and
4. violates the doctrine of separation of powers as it removed the review function of the Court with the clause mentioned in (3) above.

The Centre for Constitutional Rights (ConsAlert 2009: 2) also stated that constitutional amendments should be approached cautiously. The Constitution is the supreme law of the country and amendments to it should be viewed in a different light as amendments to ordinary legislation.

The 2009 Bill was later withdrawn. The new proposed Constitution Seventeenth Amendment Bill of 2012 now contains different matters to those in the 2009 Bill and was adopted by Parliament on 20 November 2012. The Bill of 2012 contains a few main aspects and a number of consequential amendments. It amends a few sections of the Constitution to provide that the Chief Justice is the head of the judiciary; change references to “Magistrates’ Courts” to “Lower Courts”; provide for a single “High Court of South Africa” comprising of various Divisions; and provide that the Constitutional Court is the highest (apex) Court in all matters.

These amendments introduce a judicial governance framework by establishing a separate institution in the form of the Office of the Chief Justice as a separate entity from the Department of Justice and Constitutional Development. This enables the judiciary to regulate itself in the same way as the Executive and Parliament do, in keeping with the separation of powers as embedded in the
Constitution. It gives effect to the principle of the separation of powers and thereby enhances the independence of the judiciary, and, it seeks to promote and enhance judicial accountability. These amendments also have a significant impact on the framework within which public administration functions in government structures, namely the judicial administration.

When these matters were first tabled in Parliament in 2006, they sought to place the administration of justice in the hands of the Justice Minister, in fact the Executive branch, and not in the hands of the Chief Justice. This caused much dissatisfaction in the legal community as the independence of the judiciary would be violated. These matters were later withdrawn from Parliament and, after substantial redrafting, the Constitution Seventeenth Amendment Bill of 2012 returned in the acceptable format described.

The Constitution Eighteenth Amendment Bill was published in the Government Gazette of 21 January 2011 for comments. It contains only one clause which seeks to amend Part A of Schedule 4 to the Constitution by replacing a certain expression. This matter is not intended for further discussion as it will be a repeat of what has been discussed above.

Fortunately, the supreme principles in the 1996 Constitution have remained stable and protected by the actions of the Judiciary, as one of the three branches of government applying the checks and balances of constitutional provisions.

Concluding remarks

The 1996 Constitution is important for a number of reasons as it -

- is supreme with democratic values and principles and any law or conduct which is inconsistent with it has no force or effect;
- sets out the structure of the sovereign, democratic and constitutional state and its organs (for example the president, legislature, executive and judiciary);
- provides for the powers and functions of organs of state in the national, provincial and local spheres of government to ensure accountable, responsive and open government; and
- contains a Bill of Fundamental Rights which guarantees and protects the individual's basic human rights;

In a democratic society, such as in South Africa, the 1996 Constitution is regarded as an expression of the will of the people and a reflection of prevailing values, requiring the support of the citizens. All three branches of government and the public are obliged to respect and protect its supremacy. Amendments to the Constitution should be approached with caution and limited wherever possible so as to avoid violating the supreme principles in it.

In support of the previous remark, a reference is made to a very relevant scholar. Prof George Devenish, who assisted in drafting the interim 1993 Constitution, recently wrote about amendments to the Constitution (Devenish 2012: 15). When the Constitution is to be amended by government, the question must be asked if the Constitution is indeed defective in that regard. Government may be facing challenges which give rise to ineffective accountability and insufficient transparency in relation to government administration (public administration) and this affects service delivery. This again results in protests relating to the lack of service delivery at especially local government level. The judiciary, as one of the three branches of government, has effectively as an independent institution upheld and promoted the Constitution by invalidating laws and executive conduct in conflict with it. This has, however, incurred the wrath of the executive government which has, on occasion, threatened to review the judicial powers and testing right of the judiciary. What is clear, says Devenish, is that political problems in South Africa do not stem from a defective constitution, but rather from a weak, corrupt, and ineffective executive government. The Constitution must also
develop and adjust, but under no circumstances must it be amended to suit the whims of the government.

List of references