

The 1996 Constitution of the Republic of South Africa: Ultimately supreme without a number

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ABSTRACT

In the constitutional history of South Africa, it was customary to provide the constitution with an Act number. Prior to the implementation of the 1993 Constitution (now repealed), Parliament was sovereign and as such could adopt, amend and repeal any law that it wished to. No distinction was made between a constitution and other ordinary parliamentary legislation. In pursuance of this tradition, Parliament passed the 1993 Constitution and accordingly allocated an Act number to it. Parliament became subordinate to the Constitution when it came into operation on 27 April 1994 and became the supreme law of the Republic (section 4). This switch in position meant that South Africa moved from a Westminster-type political order to one with a supreme Constitution. When the Constitutional Assembly embarked on the process of drafting a 'new' Constitution, it was erroneously allocated an Act number. 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. This article explores the numbering issue in detail and analyses the provisions of the Citation of Constitutional Laws Act, 2005, that brought about certain fundamental changes to the manner in which the current Constitution should be referred to.

KEYWORDS: South African Constitution, citation of Acts, numbering

I. INTRODUCTION

The numbering of the Constitution of the Republic of South Africa as Act 108 of 1996 was an administrative mistake. The Acts of Parliament are numbered each year, but the Constitution should not have been included in the parliamentary list of 1996 legislation because it was adopted by the Constitutional Assembly. 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. 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 purpose of this article is to cover the events which led to the allocation of an Act number to this Constitution and to analyse the impact of the Citation Act, 2005. It is furthermore appropriate to provide an overview of the legislative process that is followed when legislation is passed by Parliament and to reflect on the elements that differ when ordinary legislation and a supreme constitution, respectively, are enacted. For conceptual clarity, an explanation is given of the legislative authority vested in Parliament and the authority which was granted to the Constitutional Assembly. The status of the pre-1994 and post-1994 Constitutions is also discussed to emphasise the unique characteristics of a supreme constitution. (These aspects are not necessarily dealt with in the order mentioned.)

2. LEGISLATIVE PROCESS TO PASS LEGISLATION THROUGH PARLIAMENT

The Acts passed by Parliament are numbered at a particular stage during the legislative process (Burger 2001, 8). A description of this process is necessary in order to gain an understanding of the process which led to the allocation of an Act number to the 1996 Constitution.

The National Assembly makes rules and orders that regulate its business and proceedings (1996 Constitution, sec. 45). These rules and orders are known as the Standing Orders of Parliament, and include references to parliamentary customs. The legislative process is chiefly regulated by these Standing Orders (Rautenbach and Malherbe 2004, 153, 159). A similar situation existed in terms of the 1993 Constitution (sec. 58).

The legislative process can be described as a sequence of actions by authorised government institutions and functionaries by which a proposal for a law (a Bill) is formulated, considered, refined and approved according to prescribed procedures in order to confer on it (as an Act of Parliament) the force of law (Burger 2001, 8). Parliament and other institutions and functionaries involved in this process exercise their power to make, amend and repeal rules of law in statutory form through the legislative process. The process also includes the creation or initiation of a Bill, its consideration by Parliament (and parliamentary committees) and the stipulation of actions to be performed after its approval (Burger 2001, 6–7). The numbering of an approved Bill as an Act of Parliament forms part of the parliamentary administrative proceedings and is performed by the functionaries of the Presidency. This process comprises a specific administrative procedure that requires explicit adherence. The strict requirement of explicit adherence to prescribed requirements during the preparation of a legislative instrument, such as the drafting of a Bill, is essential in order to maintain a successful legislative programme.

It must be noted that the Standing Orders of Parliament have not been enforced by the courts and are, therefore, not regarded as rules of law. Parliament, however, is subject to the Constitution (sec. 2) in respect of all its actions, including its internal proceedings; the Standing Orders are, therefore, aligned to the relevant principles in the Constitution (Rautenbach and Malherbe 2004, 142–143).

The current legislative process has been applied, with occasional changes, since South Africa became a Union in 1910 (Devenish 2000, 7). When the new constitutional order came into existence in 1994, the concept of a supreme constitution was introduced and brought an end to the notion of parliamentary supremacy. This fundamental change also required careful consideration of the actual consequences and requirements that accompany the complexity of a supreme constitution (Steytler 2000, 1). This implies that consequential changes to the legislative process should have been considered and implemented at that early stage to ensure that the supremacy of the Constitution would be reflected and contained in all respects. Such changes should have included distinctions between ordinary parliamentary legislation and the supreme Constitution.

However, given the dramatic and impressive change from an apartheid state to a democratic state in 1994, not much attention was apparently given to matters such as the revision of the legislative process and the numbering of statutes passed by Parliament. During 1996, attention was no doubt focused on producing a ‘final’ constitution that would conform to the 34 constitutional principles contained in schedule 4 of the 1993 Constitution, which had been agreed on during the political negotiations in the early 1990s. The primary objective was apparently to bring to a close the long and bitter struggle to establish constitutional democracy in South Africa (De Waal, Currie and Erasmus 2001, 5; Devenish 2000, 21).

The parliamentary legislative process with its administrative proceedings to be performed by the functionaries of the Presidency remained unaltered and it is doubtful that anyone thought about the implications that the numbering of the 1996 Constitution would have. This situation prevailed notwithstanding the fact that the 1993 Constitution (sec. 68) vested the legislative authority to draft and adopt the 1996 Constitution in the Constitutional Assembly rather than Parliament. The legislative authority of the Constitutional Assembly and Parliament is discussed next so as to distinguish between the two systems.

3. LEGISLATIVE AUTHORITY TO ADOPT LEGISLATION

The legislative authority granted in the Constitution is simply the authorisation to make laws in accordance with constitutional principles (Burger 2001, 6). Parliament has the authority to make laws for the Republic (1996 Constitution, sec. 43) and does so in terms of the procedures of the legislative process. Parliament comprises the National Assembly and the National Council of Provinces (1996 Constitution, sec. 42), but each House functions separately. In terms of section 37 of the 1993 Constitution, Parliament had similar authority and

consisted of the National Assembly and the Senate (1993 Constitution, sec. 36). These Houses also functioned separately.

Notwithstanding the composition of the then Parliament, the 1993 Constitution (sec. 68) also granted legislative authority to the Constitutional Assembly. This body was likewise 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. It may be argued that the Constitutional Assembly was Parliament functioning in another form, because until then the authority to pass primary legislation was usually only vested in certain bodies, namely, government bodies (national, provincial and local legislatures) that had legislative authority (Rautenbach and Malherbe 2004, 2, 5). Although this situation could mystify the reader, it incorporated the same 'actors', but they played completely separate roles and used a different authority and procedure for each assigned task. It required monumental determination for the role players to meet the challenges posed by the Constitution and to manage the enormously important tasks in a systematic and coherent manner.

Perhaps the primary difference between the then Parliament and the Constitutional Assembly was that the Constitutional Assembly had only one unique legislative task, whereas Parliament had the usual ongoing legislative programme to deal with. For the single task, the Constitutional Assembly had its own chairperson, commissions, committees, administrative staff, rules and procedures to conduct its business (1993 Constitution, sec. 70). Accordingly, it also had its own legislative process. With these aspects in mind, it clearly did not exist as an interim or alternative Parliament (Van Wyk 1997, 378–379; Devenish 2000, 21).

Finally, the new constitutional text drafted and passed by the Constitutional Assembly had to be submitted to the Constitutional Court for certification once it complied with the constitutional principles contained in schedule 4 of the 1993 Constitution. When finally adopted, the text had to be assented to by the President and then, upon promulgation, it would become the Constitution of the Republic of South Africa (1993 Constitution, sec. 71 and 73).

These procedures were unique to the Constitutional Assembly and differed radically from those applied by Parliament. Only one similarity existed, namely, that the President had to assent to the final constitutional text just as the President had to assent to Bills passed by the then Parliament (1993 Constitution, sec. 64). The fact that the procedures followed to draft and adopt the new constitutional text differed from those required to pass ordinary legislation suggests that the constitutional text should have been treated differently from ordinary legislation.

It is now appropriate to reflect on the differences that exist between the enactment of ordinary legislation and a constitution so as to illustrate why a constitution should be treated differently.

4. DIFFERENTIATION BETWEEN A CONSTITUTION AND OTHER LEGISLATION

In many states, the constitution is the supreme law of the state and it is often regarded as a special law with a higher status than other laws. The purpose of a constitution, as a key element of a legal system, is to provide the norm to which all government actions should conform (Motimele and Semanya 1993, ii; Rautenbach and Malherbe 2004, 24; Devenish 2000, 4). The constitutional principles shape the ordinary law and dictate the manner in which legislation is to be drafted and interpreted, as well as the way the courts must develop the common law (De Waal et al. 2001, 7; Steytler 2000, 3). A constitution is a statute that contains the most important rules of law in connection with the constitutional system of the country. It primarily contains legislative provisions on the composition, powers and procedures of government bodies, and defines government authority, confers it on particular government institutions, and regulates and limits its exercise. Ordinary parliamentary legislation then provides directives to administrative institutions, such as government departments, on the execution of government policy and the allocation of funds and other resources (Motimele and Semanya 1993, ii–iii; Rautenbach and Malherbe 2004, 133). In the process, a constitution guarantees and regulates the rights and freedoms of the individual. In a democratic society, it is regarded as an expression of the will of the people and a reflection of prevailing values, requiring the support of the citizens (Rautenbach and Malherbe 2004, 20; Devenish 2000, 3).

Other legislation is subordinate to the Constitution; the content of other legislation must always be consistent with the norms and principles of the Constitution so as not to be declared invalid (1996 Constitution, sec. 2). All legislation that is introduced to Parliament in the form of a Bill is divided into four main types, namely, ordinary Bills that do not affect the provinces (sec. 75), ordinary Bills that affect the provinces (sec. 76), money Bills (sec. 77) and Bills amending the Constitution (sec. 74). These Bills primarily provide directives to administrative government departments on their functions and are introduced to Parliament by a Cabinet Member or a Deputy Minister, or a Member or Committee of the National Assembly. All Bills are dealt with in terms of the parliamentary legislative process and must be passed by a majority of delegates present during a sitting of the National Assembly and the National Council of Provinces, respectively. Once a Bill has been passed, it goes to the President for his assent. There are no special requirements and procedures to follow in order to introduce and pass a Bill that will amend an ordinary Act of Parliament, and such a Bill can be passed by a minority vote.

These descriptions clearly distinguish a constitution from ordinary legislation and encapsulate the objectives of the current Constitution. The actual status of the current Constitution will now be scrutinised.

5. UNIQUE STATUS OF THE 1996 CONSTITUTION

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 . . .’ Its supremacy above other laws is also stipulated in section 2 of the Constitution. A few other unique characteristics are described to confirm this intention.

Sections 59(3) and 64 of the 1993 Constitution substantiate the view that the current Constitution was never intended to be an ordinary statute. Section 59(3) stated that all Bills, *except the new constitutional text* (my emphasis), had to be considered to be ordinary Bills for the purposes of being adopted by Parliament. Section 64 stipulated that a Bill passed by Parliament would, upon its promulgation, be an Act of Parliament. These provisions clearly referred to legislation enacted by Parliament and did not include the new constitutional text that was to be passed by the Constitutional Assembly. These stipulations, accordingly, meant that 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.

Another confirmation of the unique status of the Constitution is that the current content of the Constitution enjoys exceptional protection against random amendments by Parliament. Section 74 states that it is entrenched and prescribes multiple entrenchment methods that must be followed when passing legislation to amend its provisions. This means that the procedures to pass amendments of the Constitution entail more than a simple majority vote. Different majority votes in the National Assembly and in the National Council of Provinces apply in the case of different provisions of the Constitution. These methods are aimed at protecting its content and the Bill of Rights in Chapter 2. No other law enjoys such protection.

Another unique aspect of the current Constitution is that it contains a Bill of Rights. The courts may use the provisions of the Bill and those of the Constitution as yardsticks to decide on the validity of other laws and government actions which affect the interests of the individual (Rautenbach and Malherbe 2004, 23; Burns 2003, 48).

It is also necessary to add that the Constitution plays an important role in ensuring a fair relationship between government institutions and the inhabitants of the country. It contains numerous legal directives on how these institutions must act mutually and *vis-à-vis* the inhabitants of the country (Boulle, Harris and Hoexter 1989, 8). It also serves as a mutual agreement between the ruler and those being ruled. There is, however, a purposeful consensus on the rules by which the ruler must govern; section 1 of the 1996 Constitution states unequivocally that the rule of law underpins the Republic of South Africa. This means that the rule of law is a collection of values (such as legality, fairness and basic rights) to ensure the correct balance of rights and powers between individuals and the state. Such a collection of values and rights is usually embedded in a constitution of a constitutional state

(Labuschagne 2006, 1). If any of these values that underpin the current Constitution are diluted, the consequences will undoubtedly impact negatively on the foundation of the Constitution. It will have dire consequences for the rights of individuals and eventually for the level of democracy in the country. This ought not to happen as the main purpose of the current Constitution is to place constitutional values beyond the control of the politicians of the day (Labuschagne 2006, 2; Burns 2003, 48).

With the exception of the 1993 Constitution, previous South African Constitutions did not have a status similar to the current Constitution. The status of previous South African Constitutions is discussed next.

6. PREVIOUS SOUTH AFRICAN CONSTITUTIONS

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; in other words, it is the supreme authority in the state and all other government institutions are subject to it (Rautenbach and Malherbe 2004, 48; Steytler 2000, 1). Section 30 of the 1983 Constitution, for example, stipulated that the State President and Parliament were the sovereign legislative authority for the Republic. This meant that the legislative authority had the supreme power and was not subject to another person or institution (Steytler 2000, 1; Boulle et al. 1989, 34). Before the 1993 Constitution came into operation on 27 April 1994, constitutional law was dominated by the doctrine of parliamentary sovereignty, and Parliament could make any law it wished and no person or institution (including the courts) could challenge these laws (De Waal et al. 2001, 2; Devenish 2000, 8).

This situation has changed. Section 172(1)(a) of the 1996 Constitution states that the courts are formally vested with the power to test the constitutional validity of any law or government action. In this way, South Africa departed formally and substantially from the system of parliamentary sovereignty which previously dominated the constitutional law of the country (Devenish 2000, 9; Burns 2003, 33).

The three South African Constitutions which preceded the 1993 Constitution did not differ much from ordinary Acts of Parliament (Boulle et al. 1989, 10). These were the Union Constitution (South Africa Act 1909 (9 Edw VII, c 9)), the Republic Constitution (Constitution of the Republic of South Africa, 1961 (Act 32 of 1961)) and the Tricameral Constitution (Constitution of the Republic of South Africa, 1983 (Act 110 of 1983)). They did not have supreme status and Parliament was free to amend them by means of ordinary procedures and simple majority votes. They contained very few entrenched sections, which required a special procedure to amend (De Waal et al. 2001, 3; Boulle et al. 1989, 104–105).

In the Westminster tradition of parliamentary sovereignty, the constitution has no higher status than other legislation and Parliament could adopt a new constitution or an amendment of the constitution according to the normal procedures for enacting ordinary laws (Boulle et al. 1989, 35; Rautenbach and Malherbe 2004, 25).

With the above in mind, the following question arises: Why was the 1996 Constitution numbered and how did such an administrative error occur?

7. THE ERROR IN THE PROCESS OF ADOPTING THE 1996 CONSTITUTION

The Constitutional Assembly adopted an amended text of the ‘final’ Constitution on 11 October 1996 and submitted it to the Constitutional Court for certification. On 2 December 1996, the Court (1997(1)) found the text to be consistent with the 34 constitutional principles and on 4 December 1996, President Mandela signed the certified text. It was then supposed to be published in the Government Gazette without a parliamentary Act number in accordance with section 73(13) of the 1993 Constitution, which stipulated that once the new constitutional text was adopted, the President had to assent to it. Then it had to be promulgated as the Constitution of the Republic of South Africa. This section contained no instructions concerning the numbering of the new text. However, after the President had assented to the Act, the functionaries of the Presidency erroneously continued with the prescribed parliamentary legislative process as it then stood, and not with legislative process of the Constitutional Assembly. As a result, the Constitution was allocated a number. The Constitution of the Republic of South Africa, with Act number 108 of 1996, was subsequently promulgated in the Government Gazette on 18 December 1996 (Bell 2006). The Constitution came into operation on 4 February 1997 (De Waal et al. 2001, 6). The functionaries of the Presidency seemingly completed the historic process oblivious of the fact that they had erroneously applied the parliamentary legislative process or that they had made an administrative error.

This mistake was corrected about nine years later when Parliament adopted the Citation of Constitutional Laws Act, 2005 (Act 5 of 2005). The provisions of this Act need to be analysed in order to comprehend its full impact.

8. IMPACT OF THE CITATION OF CONSTITUTIONAL LAWS ACT, 2005

Parliament passed the Citation of Constitutional Laws Act, 2005, during 2005. This Act has an impact on everything that refers to or is linked to the 1996 Constitution. The Citation Act was published in *Government Gazette* No. 27722 on 27 June 2005 and came into operation on the same day.

The Long Title of the Citation Act reflects the purpose of the Act, namely, to change the image of the 1996 Constitution by changing the manner of referring to it and to laws amending it. With these revisions in place, the supreme status of the current Constitution should be reflected clearly and correctly.

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, sec. 2 and 3).

The preamble to the Citation Act describes the status of the 1996 Constitution and acknowledges that it is a special statute. The preamble refers to section 2 of the Constitution, which stipulates that it is the supreme law of the Republic. Moreover, it confirms that the Constitution, unlike other parliamentary Acts, was not passed by Parliament but was adopted by the Constitutional Assembly. 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). The preamble finally confirms the status of the Constitution as the supreme law of the Republic and states that all other law is subordinate to it.

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. Fortunately, the change does not require an amendment to the Constitution's short title. As with any other legislation, its short title contains only its actual name and the year in which it was passed and adopted, namely, the 'Constitution of the Republic of South Africa, 1996'.

The retrospective effect of section 1(1) is that any reference to the Constitution with the allocated Act number, namely, 'Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)', in any law still in force and passed prior to 27 June 2005, must be construed as a reference to the 'Constitution of the Republic of South Africa, 1996', thus omitting the number '108'.

Another retrospective effect is that the titles of laws that were passed to amend the Constitution before the Citation Act came into operation on 27 June 2005, as well as those passed after 27 June 2005, must also not be associated with an Act number and must be amended appropriately. The aim is to ensure that the manner of reference to these laws is also adapted. For the sake of clarity, this arrangement will be explained in two parts.

Firstly, section 2 of the Citation Act states that the relevant laws passed before 27 June 2005 (listed in a schedule to the Citation Act) are amended by substituting the short title of each Act with a short title containing a number that places the relevant Act in a 'chronological order of amendments to the Constitution', notwithstanding the year in which that Act was adopted. Now, since the Constitution became law, 12 Constitution Amendment Laws have been passed. Eleven of these laws were passed before 27 June 2005, and were given titles and parliamentary Act numbers such as the 'Constitution of the Republic of South Africa Amendment Act, 35 of 1997' (the first Amendment Act). The consequence of the provisions of section 2 is that the reference 'Act 35 of 1997' may no longer be used. Instead, the short title of the first Amendment Act that amended the Constitution has been amended to read: 'Constitution First Amendment Act of 1997'. The Amendment Act accordingly has no parliamentary Act number, but only a number that reflects the order in which

it was passed as a Constitution Amendment Act. The same rule applies to all 11 Constitution Amendment Acts. The table below contains the original and amended titles of the 11 Amendment Acts.

Secondly, section 3 of the Citation Act stipulates that from the date of commencement of the Citation Act (27 June 2005) any law amending the Constitution must likewise not be allocated a parliamentary Act number or be associated with such a number. The short titles of laws amending the Constitution, which were passed by Parliament after 27 June 2005, must therefore likewise reflect their chronological order, in line with the short titles of laws that amended the Constitution before 27 June 2005. Since 27 June 2005, only one amendment to the Constitution has been passed, namely, in December 2005. The principle prescribed by the Citation Act was followed and the short title of this law reads: ‘Constitution Twelfth Amendment Act of 2005’. The Amendment Act has no parliamentary Act number as the numbering ‘twelfth’ places it in the ‘chronological order of amendments to the Constitution’ as stipulated in section 2 and as explained above. Although it may appear as if 12 amendments to the Constitution were passed during 2005, the ‘twelfth’ merely indicates the chronological order of amendments and the ‘2005’ indicates the year in which the amending law was passed. The table below provides clarity about the manner of referring to the Acts amending the Constitution.

Table I: Laws amending the Constitution

Short titles of laws amending the Constitution of the Republic of South Africa, 1996		
Laws passed before 27 June 2005:		
No. and year of law	Original short title	Amended short title in chronological order of amendments to the Constitution
Act No. 35 of 1997	Constitution of the Republic of South Africa Amendment Act, 1997	Constitution First Amendment Act of 1997
Act No. 65 of 1998	Constitution of the Republic of South Africa Amendment Act, 1998	Constitution Second Amendment Act of 1998
Act No. 87 of 1998	Constitution of the Republic of South Africa Second Amendment Act, 1998	Constitution Third Amendment Act of 1998
Act No. 3 of 1999	Constitution of the Republic of South Africa Amendment Act, 1999	Constitution Fourth Amendment Act of 1999
Act No. 2 of 1999	Constitution of the Republic of South Africa Second Amendment Act, 1999	Constitution Fifth Amendment Act of 1999
Act No. 34 of 2001	Constitution of the Republic of South Africa Amendment Act, 2001	Constitution Sixth Amendment Act of 2001
Act No. 61 of 2001	Constitution of the Republic of South Africa Second Amendment Act, 2001	Constitution Seventh Amendment Act of 2001

No. and year of law	Original short title	Amended short title in chronological order of amendments to the Constitution
Act No. 18 of 2002	Constitution of the Republic of South Africa Amendment Act, 2002	Constitution Eighth Amendment Act of 2002
Act No. 21 of 2002	Constitution of the Republic of South Africa Second Amendment Act, 2002	Constitution Ninth Amendment Act of 2002
Act No. 2 of 2003	Constitution of the Republic of South Africa Amendment Act, 2003	Constitution Tenth Amendment Act of 2003
Act No. 3 of 2003	Constitution of the Republic of South Africa Second Amendment Act, 2003	Constitution Eleventh Amendment Act of 2003
Law passed after 27 June 2005:		
Year of law	Original short title	
2005	Constitution Twelfth Amendment Act of 2005	

An important aspect is that all the laws amending the Constitution have been and will continue to be passed by Parliament. This is possible as section 74 of the Constitution grants this authority to Parliament, but states clearly that there are multiple entrenchment requirements that must be followed when dealing with laws to amend the Constitution (see discussion above in paragraph 5). Despite the fact that such laws will be passed by Parliament in terms of the parliamentary legislative process, no Act number will be allocated to such laws in terms of section 2 of the Citation Act. This is a consequential change to the parliamentary legislative process and is in line with the principle of maintaining a supreme status for the current Constitution.

Finally, Van Wyk's comment (1997, 379) that the administrative error of allocating an Act number to the 1996 Constitution ought to be corrected, has in fact been acted upon and the error has been corrected. The 1996 Constitution is now supreme in every respect.

9. CONCLUSION

The starting point of this article was to explore the events which led to the allocation of a parliamentary Act number to the 1996 Constitution. Although the Constitutional Assembly prepared and adopted the text of the Constitution, a description of the legislative process that is followed when ordinary legislation is passed through Parliament explained how the numbering of the Acts of Parliament and therefore also the numbering of the current Constitution occurred.

There can be no doubt that the current Constitution is the supreme law of South Africa, but its appearance with an Act number created the impression that it was not

supreme in all respects. A discussion of the features that differentiate the Constitution from ordinary legislation confirmed that the Constitution is a special law with a higher status than other laws.

The impact of the Citation Act on the Constitution and its amending laws was analysed. The Citation Act brought about a change in the manner of referring to the Constitution and to laws amending it. The article reaches the conclusion that the Citation Act has corrected the administrative error of numbering the 1996 Constitution and that the Constitution is supreme in every respect.

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