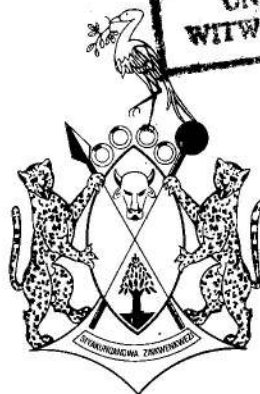


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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 101 OF 1990

IT IS HEREBY NOTIFIED THAT THE CHAIRMAN OF THE COUNCIL  
OF STATE HAS ASSENTED TO THE FOLLOWING DECREE WHICH  
IS HEREBY PUBLISHED FOR GENERAL INFORMATION:-

SUPREME COURT DECREE, 1990

DECREE No. 43 OF 1990

# DEPARTMENT OF THE COUNCIL OF STATE

## SUPREME COURT DECREE, 1990

### DECREE

To consolidate and amend the laws relating to the Supreme Court of Ciskei and to provide for incidental matters.

(English text signed by the Chairman of the Council of State. Assented to on 22 November 1990).

*BE IT DECREED by the Council of State of the Republic of Ciskei as follows:-*

**1. Definitions. - (1) In this Decree, unless the context otherwise indicates —**

**"appellate division"** means the appellate division of the Supreme Court established by section 2 of this Decree and includes a court of that division;

**"attorney"** means any person enrolled as an attorney of the Supreme Court and who has not been suspended from practice and whose name has not been struck off the roll of attorneys kept by the registrar under section 21 of the Attorneys Act, 1979 (Act 53 of 1979);

**"Chief Justice"** means the Chief Justice appointed in terms of Section 5 of this Decree and includes an acting Chief Justice;

**"civil summons"** means any summons whereby civil proceedings are commenced and includes any rule nisi, notice of motion, application or petition the object of which is to require the appearance before the court out of which it is issued of any person against whom relief is sought in such proceedings or of any person who is interested in resisting the grant of such relief;

**"Council of State"** means the Council of State of the Republic which assumed power on 4th March 1990, as constituted from time to time;

**"Councillor"** means the Councillor of State for Justice;

**"court day"** means, subject to the provisions of subsection (2), any day other than a Saturday, Sunday or a public holiday;

**"defendant"** includes any respondent or other party against whom relief is sought in civil proceedings;

**"Director-General"** means the Director-General : Department of Justice;

**"division"** means, as the case may be, the appellate division or the general division;

**"full court"** means a court of the general division consisting of two or more judges;

**"Gazette"** means the Government Gazette of the Republic;

**"general division"** means the general division of the Supreme Court established by section 2 of this Decree and includes a court of that division;

**"judge"** means a judge appointed under section 5 of this Decree and includes the Chief Justice;

**"judge of appeal"** means a judge appointed as a judge of the appellate division in terms of Section 5 of this Decree and includes the Chief Justice and any other judge appointed by the Chief Justice under Section 3(1) to sit as a judge of appeal;

**"lower court"** means any court (other than the Supreme Court) which is required to keep a record of its proceedings and includes a magistrate holding a preparatory examination into an alleged offence;

**"public holiday"** means a public holiday established by the Public Holidays Act, 1981, (Act 3 of 1981);

**"registrar"** means the registrar of the Supreme Court or of a division thereof and includes an assistant registrar;

**"Republic"** means the Republic of Ciskei;

**"rules of court"** means the rules of court made, approved and published, or deemed to have been made, approved and published, under Section 37 of this Decree;

**"Supreme Court"** means the Supreme Court of Ciskei.

## SUPREME COURT DECREE, 1990

(2) In the computation of any time prescribed by the rules of court, which is expressed in days, only court days shall be included.

**2. Constitution of Supreme Court of Ciskei.** - There shall be a Supreme Court of Ciskei which shall consist of a general division and an appellate division and in which shall be vested the judicial authority of the Republic.

**3. Constitution of divisions.** - (1) The appellate division shall consist of the Chief Justice of Ciskei and so many judges of appeal as the Chairman of the Council of State may from time to time determine and such judge or judges of the general division as may be appointed by the Chief Justice from time to time to sit as judges of appeal.

(2) The general division shall consist of the Chief Justice and so many judges as the Chairman of the Council of State may from time to time determine.

**4. Seat of Supreme Court.** - (1) The seat of the Supreme Court shall be at Bisho.

(2) Notwithstanding the provision of subsection 1, the Chief Justice may, if he deems it expedient, direct that the Supreme Court sit at any other place in the Republic.

**5. Appointment and remuneration of judges.** - (1) Subject to the provisions of subsection (2) the Chairman of the Council of State shall appoint under his hand and the seal of the Republic of Ciskei a Chief Justice and so many other judges of the Supreme Court of Ciskei, or a division thereof, as he may from time to time determine.

(2) No person shall be appointed under subsection (1) —

(a) to the office of Chief Justice, unless he holds or has at any time held office as a judge of the Supreme Court or as a judge of a superior court in the Republic of South Africa or in such other country as the Council of State may prescribe by resolution;

(b) to any office of judge, unless —

- (i) he has practised as an advocate in the Supreme Court or in any superior court referred to in paragraph (a) for a period of not less than 10 years; or
- (ii) he has previously held office as a judge in any such court; or

(c) to the office of Chief Justice or judge of the general division, if he is of or above the age of 70 years.

(3) The Chairman of the Council of State may appoint to act temporarily as a judge, any person who qualifies for appointment under subsection (1) and (2) or any person who would so qualify but for his age: Provided that —

(a) the Councillor of State for Justice may appoint any such person to act as a judge for a period not exceeding one month; and

(b) no person other than a person who complies with the provisions of subsection (2)(a) shall be appointed to act as Chief Justice.

(4) (a) The remuneration and other conditions of service of the judges of appeal shall be determined by the Chairman of the Council of State.

(b) The remuneration of the Chief Justice or a judge shall not at any time be reduced while he continues in office.

(5) The Chief Justice and every judge in the Supreme Court shall, before commencing to exercise the functions and duties of his office make and subscribe, before a judge of the Supreme Court or, if a judge is not available, before a person designated by the Chairman of the Council of State, an oath or affirmation substantially in the following form:

"I, .....  
(full name)

do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a judge of the Supreme Court administer justice to all persons alike without fear, favour or prejudice, and, as the circumstances of any particular case may require, in accordance with the law and customs of the Republic of Ciskei."

**6. Judge not to hold any other office of profit.** - No judge of the Supreme Court shall without the consent of the Councillor accept, hold or perform any other office of profit or receive in respect of any service, fees, emoluments or other remuneration apart from his salary and any allowances which may be payable to him in his capacity as such a judge.

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**7. Removal of judge from office.** - The Chief Justice or any other judge of the Supreme Court may be removed from office upon a unanimous vote by all the members of the Council of State where such removal is necessary on grounds of misbehaviour or incapacity after such judge has been fully informed of such grounds and has been granted an opportunity to address the Council thereon.

**8. Constitution of court of appellate division.** - (1) Subject to the provisions of subsection (2) and (3) the quorum of a court of the appellate division in all matters (whether civil or criminal) shall be at least three judges of appeal.

(2) The judgement of the majority of the judges of a court of the appellate division shall be the judgement of the court and, where there is no judgement to which a majority of such judges agree, the hearing shall be adjourned and be commenced *de novo* before a new court constituted in such manner as the Chief Justice or the senior available judge of appeal may determine.

(3) If at any stage during the hearing of a matter one or more of the judges of appeal die or retire or become otherwise incapable of acting or are absent, the hearing shall, if two judges remain, proceed before such remaining judges and, if only one judge remains, be adjourned and the matter shall be heard *de novo*: Provided that, if the hearing proceeds before two judges and they cannot agree on a judgement, the matter shall be heard *de novo*.

(4) No judge of appeal shall sit at a hearing of an appeal against a judgement or order given or made in a case which was heard before him.

(5) Nothing in this section contained shall be construed as prohibiting or preventing the Chief Justice from sitting at any time as, and exercising the power and jurisdiction of, a judge of the general division.

**9. Constitution of court of general division.** - (1) Save as otherwise provided in this Decree or in any other law, a court of the general division shall, when sitting as a court of first instance for the hearing of any civil matter, be constituted before one judge: Provided that the Chief Justice, or in his absence the senior available judge of the general division, may at any time direct that a particular matter be heard by a full court consisting of so many judges as he may determine: Provided further that a single judge may at any time discontinue the hearing of any matter which is being heard before him and refer it for hearing to a full court.

(2) For the hearing of any appeal from or the review of the proceedings of a lower court, a court of the general division shall, subject to the provisions of subsection (5) and except where such court is in terms of any other law required or permitted to be otherwise constituted, be constituted before not less than two judges.

(3) Whenever it appears to the Chief Justice or, in his absence, the senior available judge of the general division, that any matter which is being heard before a court of the general division should in view of its importance be heard before a court consisting of a larger number of judges than are then sitting, he may direct that the hearing be discontinued and commenced anew before a court consisting of so many judges as he may determine.

(4) For the hearing of any criminal case as a court of first instance, a court of the general division shall be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters.

(5) During any period which may by rule of the court be fixed as a vacation of the general division, one judge thereof, shall, notwithstanding anything contained in this Decree or in any other law, be competent to exercise all the powers, jurisdiction and authority of a court of such division.

(6) A court of the general division may, when sitting as a court of first instance for the hearing of a civil matter, summon to its assistance one or more persons of skill and experience in the field to which such matter relates to sit and act as assessors in an advisory capacity.

(7) The general division may at any time sit in so many courts, constituted in the manner provided for in this Decree, as the number of available judges may allow.

**10. Nature of courts and seals.** - (1) Any court of a division shall be a court of record.

(2) Each division shall have for use as the occasion may require, a seal of such design as may in the case of each division be prescribed by the Chairman of the Council of State by proclamation in the Gazette.

(3) Any such seal shall be kept in the custody of the registrar of the division concerned.

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**11. Manner of arriving at decision in full court of general division.** - (1) Save as otherwise provided in this Decree or in any other law, the judgement of the majority of the judges of the full court of the general division shall be the judgement of the court and, where the judgements of the majority of the judges of such court are not in agreement or, if the hearing is proceeding before two judges, such judges cannot agree on a judgement, the hearing shall be adjourned and commenced *de novo* before a new court constituted in such manner as the Chief Justice or, in his absence, the senior available judge of the general division may determine.

(2) If, at any stage during the hearing of any matter by a full court of the general division, any judge of such court dies or retires or is otherwise incapable of acting or is absent, the hearing shall, if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges: Provided that, if such remaining judges do not constitute such majority or if only one judge remains, the hearing shall be commenced *de novo* unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of such remaining judges or of such one remaining judge as the decision of the court.

**12. Jurisdiction of general division.** - (1) The general division shall have jurisdiction —

(a) over all persons residing or being in the Republic;

(b) in relation to all causes arising in the Republic;

(c) in relation to all other causes, wheresoever arising, in respect of which all parties thereto consent in writing to such jurisdiction: Provided that where such parties require the application of a system of law other than the law of the Republic in the adjudication of such cause, such consent in writing shall be accompanied by a written agreement between such parties specifying the system of law so to be applied;

(d) in respect of all offences triable within the Republic; and

(e) in respect of all other matters of which it may according to law take cognizance.

(2) The general division shall have power —

(a) to hear and determine appeals from all lower courts;

(b) to review the proceedings of all lower courts;

(c) in its discretion and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(3) The grounds upon which the proceedings of any lower court may be brought under review before a court of the general division shall be —

(a) absence of jurisdiction on the part of the lower court;

(b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;

(c) gross irregularity in the proceedings; or

(d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(4) Nothing in subsection (3) contained shall be construed as affecting the provisions of any other law providing for the review of the proceedings of lower courts.

**13. Reference of certain matters to a referee.** - (1) In any civil proceedings a court of the general division may, with the consent of the parties, refer —

(a) any matter which requires extensive examination of documents or scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or

(b) any matter which relates wholly or in part to accounts; or

(c) any other matter arising in such proceedings, for enquiry and report to a referee to be appointed by the court, and the court may adopt the report of any such referee, either wholly or in part and either with or without modification, or may remit such report for further enquiry or report or consideration by such referee, or may make such other order in regard thereto as may be necessary or desirable.

(2) Any such report or any part thereof which is adopted by the court, whether with or without modification, shall have effect as if it were a finding by the court in the proceedings in question.



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(3) Any such referee shall for the purposes of such enquiry have such powers and shall conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of court.

(4) For the purpose of procuring the attendance of any witness (including any witness detained in custody under any law) and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be civil proceedings.

(5) (a) Any person summoned to appear and give evidence or to produce any document or thing before a referee, who without sufficient cause fails to attend at the time and place specified or to remain in attendance until the conclusion of the enquiry or until he is excused by the referee from further attendance, or refuses to be sworn or to make affirmation as a witness, or having been sworn or having made affirmation, fails to answer fully and satisfactorily any question put to him or fails to produce any document or thing in his possession or custody or under his control which he was summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding 6 months.

(b) Any person who after having been sworn or having made affirmation gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(6) A referee shall be entitled to such remuneration as may be prescribed by the rules of court or, if no such remuneration has been so prescribed, as the court may determine, and to any reasonable expenditure incurred by him for the purposes of the enquiry, and any such remuneration and expenditure shall be taxed by the taxing master of the court and shall be costs in the cause.

**14. Proceedings to be in open court.** - Save as is otherwise provided in any law and except in so far as the court concerned may in any special case otherwise direct, all proceedings in the Supreme Court shall be carried on in open court.

**15. Provisions relating to appeals to appellate division.** - (1) Subject to the provisions of this section, an appeal from a judgement or order of a court of the general division in any civil proceedings or against any judgement or order given or made by a court of the general division on appeal, may be made to the appellate division: Provided that no appeal shall lie from a judgement or order of a court of the general division in proceedings in connection with an application —

- (a) by one spouse against the other for maintenance pendente lite;
- (b) for contribution towards the cost of a pending matrimonial action;
- (c) for the interim custody of a child when a matrimonial action between its parents is pending or is about to be instituted; or
- (d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or is about to be instituted.

(2) The following provisions shall apply in connection with appeals under subsection (1), namely —

(a) no judgement or order of a court of the general division shall be subject to appeal save with the leave of the court by which the judgement was given or the order was made or, where such leave has been refused, save with the leave of the appellate division; and

(b) the right of appeal to the appellate division shall further be subject to such restrictions or limitations as may specifically be imposed thereon by any other law.

(3) The leave contemplated in paragraph (a) of subsection (2), whether of the court of the general division or of the appellate division, may be given subject to such conditions, including a condition that the applicant shall pay the costs of appeal, as may be determined by the court from which the appeal is made or by the appellate division.

(4) (a) An application to the appellate division for leave to appeal to that division shall be made by petition addressed to the Chief Justice within twenty-one days (or such longer period as may on good cause be allowed) after the leave of the court against whose decision it is desired to appeal was refused.

(b) The said petition shall be considered by the Chief Justice or, if by reason of the provisions of Section 8(4) and (5) he is unable to deal therewith, by another judge of appeal.

(c) The Chief Justice or other judge considering the petition may order that the application be argued before him at an appointed time and place and may, whether or not he has so ordered —

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- (i) grant or refuse the application; or
- (ii) refer the application to the court of the appellate division for consideration, whether upon argument or otherwise, and where an application has been so referred to the court of the appellate division, that court may grant or refuse the application.

(d) Where the application is granted, the Chief Justice or other judge of appeal or the court of the appellate division, as the case may be, may vary any order as to costs made by the court of the general division when refusing leave to appeal.

(e) The decision of the Chief Justice or other judge of appeal or of the court of the appellate division, as the case may be, to grant or to refuse the application shall be final.

(f) Notice of the date fixed for the hearing of any application under this subsection and of the place appointed for the hearing under paragraph (c) shall be given to the applicant and the respondent by the registrar.

(5) If in any civil matter leave to appeal is granted under subsection (2) or (4) the court or judge granting such leave may order the appellant to find security for the costs of the appeal in such an amount as may be determined by the registrar and may fix the time within which such security shall be found.

**16. Powers of appellate division or general division at hearing of appeal.** - A court of the appellate division or of the general division, as the case may be, shall have power —

(a) at the hearing of an appeal, to receive further evidence either orally or by deposition before a person appointed by such court or to remit the case to the court of first instance, or the court whose judgement is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as to the court concerned seems necessary; and

(b) to confirm, amend or set aside the judgement or order which is the subject of the appeal and to give any judgement or make any order which the circumstances may require.

**17. Review powers of appellate division.** - If in any criminal matter which served before the general division it is brought to the notice of the appellate division that the proceedings were not in accordance with justice, the appellate division shall have the same powers in respect of such proceedings as if the matter came before the appellate division on appeal.

**18. Witnesses in civil proceedings.** - (1) A party to civil proceedings before a court of the general division in which the attendance of witnesses is required may procure the attendance of any witness in the manner provided for in the rules of court.

(2) Whenever any person subpoenaed to attend any civil proceedings as a witness fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence under oath that the subpoena was served upon the person to whom it is directed and that his reasonable expenses calculated in accordance with the tariff framed under section 36(1) have been paid or offered to him, or that he is evading service of the subpoena or, if any person who has attended in obedience to a subpoena fails to remain in attendance, the court in which the said proceedings are conducted may issue a warrant directing that he be arrested and brought before such court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder before the court which issued it or in any prison or other place of detention or in the custody of the person who is in charge of him with a view to securing his presence as a witness at the said proceedings: Provided that the court may release him on a recognizance with or without sureties for his appearance to give evidence as required and for his appearance at the enquiry referred to in subsection (4).

(4) The court may in a summary manner enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months.

(5) Any sentence imposed by the court under subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence imposed in a criminal case.

(6) If a person who has entered into any recognizance for his appearance to give evidence at such proceedings or for his appearance at an enquiry referred to in subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance be dealt with as if he had failed to obey a subpoena to attend such proceedings or to appear at such enquiry.

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**19. Manner of dealing with recalcitrant witness.** - (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 18 or is present and is orally required by the court to give evidence in any civil proceedings, refuses to be sworn or to make an affirmation or, having been sworn or having made an affirmation, refuses to answer such questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without any just excuse for refusal or failure the court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit to prison the person so refusing or failing, unless he sooner consents to do what is required of him.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him, the court may again adjourn the proceedings and commit him for a like period and so again from time to time until such person consents to do what is required of him.

(3) Nothing in this section contained shall be construed as preventing the court from giving judgement in any case or otherwise disposing of the proceedings on any other sufficient evidence taken.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in court.

(5) When a subpoena is issued to procure the attendance of a judicial officer to give evidence or to produce any book, paper or document in any civil proceedings, and it appears —

(a) that he is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings, or

(b) that such book, paper or document could properly be produced by some other person, or

(c) that the compelling of his attendance would be an abuse of the process of the court, the court may, notwithstanding anything in this section contained, after reasonable notice by the registrar to the party who issued out the subpoena and after hearing that party in chambers if he appears, make an order cancelling such subpoena.

**20. Examination of witness by interrogatories.** - (1) A court of the general division may, in connection with any civil proceedings pending before it, order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of that court be taken by means of interrogatories by a commissioner appointed for that purpose by the court.

(2) Whenever an order is made under subsection (1) the registrar shall certify that fact and transmit a copy of his certificate to the commissioner together with any interrogatories duly and lawfully framed which it is desired to put to the said person and fees and the amount of the expenses payable to the said person for his appearance as hereinafter provided.

(3) Upon receipt of the certificate, interrogatories and amounts aforesaid, the commissioner shall summon the said person to appear before him and upon his appearance shall take his evidence as if he were a witness in a civil case in the court and shall put to him the interrogatories aforesaid with any other questions calculated to obtain full and true answers to the interrogatories and shall take down or cause to be taken down the evidence so obtained and shall transmit the same, certified as correct, to the registrar.

(4) The commissioner shall further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his appearance and the cost of the issue and service of the process for summoning such person before him.

(5) Any interrogatories taken and certified under the provisions of this section shall, subject to all lawful exceptions, be received as evidence in the civil proceedings aforesaid.

**21. Manner of dealing with commissions rogatoire, letters of request or documents for service originating in foreign country.** - (1) Whenever a commission rogatoire or letter of request received from any State or territory or court outside the Republic is transmitted to the registrar by the Director-General, together with a translation in an official language if the original is in any other language, and an intimation that the Councillor considers it desirable that effect should be given thereto without requiring an application to be made to the court by the agents, if any, of the parties to the action or matter, the registrar shall submit the same to a judge in chambers in order to give effect to such commission rogatoire or letter of request.

(2) Whenever a request for the service on a person in the Republic of any civil process or citation received from a state, territory or court outside the Republic, is transmitted to the registrar by the Director-General, together with a translation in an official language if the original



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is in any other language, and an intimation that the Councillor considers it desirable that effect should be given thereto, the registrar shall cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff or any person specially appointed thereto by a judge.

(3) The registrar shall, after effect has been given to any such commission rogatoire, letter or request, process or citation, return all relevant documents, duly certified in accordance with the rules of court, to the Director-General for onward transmission.

(4) Except where the Councillor otherwise directs, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service such as is referred to in this section has been performed.

**22. Officers of the Supreme Court and their powers.** - (1) (a) The Councillor may, subject otherwise to the laws governing the public service, appoint for the Supreme Court or any division thereof a registrar, assistant registrar, sheriff, additional sheriff, deputy-sheriffs and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of such court or division: Provided that if the duties to be performed by any deputy-sheriff are in the opinion of the Councillor insufficient to keep at least one person fully occupied throughout the year, and no officer in the public service is in the opinion of the Councillor able to perform the duties of such deputy-sheriff in addition to his other duties, or if in the opinion of the Councillor the duties of such deputy-sheriff can be performed satisfactorily and at less cost to the State by a person who is not an officer in the public service, the Councillor may appoint any person as such deputy-sheriff at such remuneration and on such conditions as the Councillor may determine.

(b) Whenever by reason of absence or incapacity a registrar, assistant registrar or sheriff is unable to carry out the functions of his office or his office becomes vacant, the Councillor may authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(c) An additional sheriff may, subject to the directions of the sheriff, exercise all powers and perform all the functions and duties of the sheriff.

(2) Any officer in the public service appointed under subsection (1) may hold simultaneously more than one of the offices mentioned in that subsection.

(3) A deputy-sheriff who is not an officer in the public service may with the approval of the Councillor appoint one or more assistants for whom he shall be responsible and any such assistant may subject to the directions of the deputy-sheriff exercise any of the powers and perform any of the functions or duties of such deputy-sheriff.

(4) Any person appointed as an assistant to a deputy-sheriff who is an officer in the public service may, subject to the directions of such deputy-sheriff, exercise any of the powers and perform any of the functions or duties of that deputy-sheriff.

(5) A deputy-sheriff who is not an officer of the public service shall, as soon as possible after his appointment, furnish security to the satisfaction of the sheriff for the due and faithful performance of his functions and, if he fails or neglects to furnish such security within a period fixed by the sheriff, his appointment shall lapse at the expiration of the said period.

(6) Whenever in any matter objection is made to the service or execution of process by the sheriff or a deputy-sheriff by reason of the interest of such sheriff or deputy-sheriff in such matter or of the relationship of such sheriff or deputy-sheriff to a party to such matter or of any other good cause of challenge, or whenever by reason of illness or absence or for any other reason it is necessary to appoint any person to perform temporarily any of the duties of a deputy-sheriff the Councillor may appoint an acting deputy-sheriff.

(7) The Councillor may delegate to an officer in his department any of the powers vested in him by this section.

**23. Keeping of trust account and books of account by deputy-sheriff.** - (1) Every deputy-sheriff who is not an officer in the public service shall open a separate trust account, which shall contain a reference to this section, with a banking institution registered under the Banks Act, 1965 (Act 23 of 1965) and shall deposit therein all money received or held by him in his capacity as deputy-sheriff on account of any other person.

(2) Notwithstanding anything to the contrary in any law or the common law contained, no amount standing to the credit of an account referred to in subsection (1) shall be regarded as being part of the assets of the deputy-sheriff concerned, such amount shall not be attached on behalf of any creditor of such deputy-sheriff and it shall not upon his decease or insolvency form part of his deceased or insolvent estate.

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(3) Every deputy-sheriff shall keep proper books of account containing particulars and information regarding all moneys received, held or paid by him for or on account of any person in his capacity as deputy-sheriff.

(4) Any deputy-sheriff shall, when requested thereto by the Councillor, the sheriff, a magistrate or an officer authorised thereto in writing by the Councillor, without delay make the books of account referred to in subsection (3) available to the Councillor or the said sheriff, magistrate or officer for examination.

(5) Any banking institution at which a deputy-sheriff keeps a trust account shall, at the request of the Councillor, the sheriff, a magistrate or an officer authorised thereto in writing by the Councillor, furnish particulars of deposits into, withdrawals from and the balance of such account as at any particular time mentioned in the request, to the person so requesting the banking institution.

(6) (a) If any deputy-sheriff dies, vacates his office, or is dismissed from his office, all process and other documents which were in his possession, including accounting records which will be required to pay the claims of persons whose money has been deposited in the account referred to in subsection (1), shall be taken possession of by the sheriff and furnished to the deputy-sheriff's successor, who shall pay such claims from the moneys in the said trust account.

(b) If a deputy-sheriff is suspended from office and profit by the sheriff in terms of section 24 and the sheriff appoints someone referred to in that section to act as deputy-sheriff, such appointed person shall be furnished by the sheriff with all the process and other documents referred to in paragraph (a), and shall take over the control and administration of the trust account until the suspension is set aside or the suspended deputy-sheriff is dismissed from his office.

(7) A successor referred to in subsection (6)(a) and any person referred to in subsection (6)(b) shall be entitled to the moneys, costs and expenses prescribed in the rules of court in respect of the payment of claims from, and the performance of any other act regarding the administration of the trust account of the previous deputy-sheriff concerned.

**24. Suspension of deputy-sheriff.** - (1) A deputy-sheriff who is alleged to have been negligent or dilatory in the service or execution of process or to have demanded payment of more than the prescribed fees or expenses or to have made a false return or in any other manner to have misconducted himself in connection with his duties, may pending investigation be suspended from office and profit by the sheriff who may appoint a person to act in his place during the period of suspension.

(2) The sheriff shall forthwith report to the Director-General for the information of the Councillor any action which he has taken under this section, and the Councillor may after investigation set aside the suspension or may confirm it and may if he deems fit dismiss from his office the deputy-sheriff who has been so suspended.

**25. Execution of process.** - (1) The sheriff or the deputy-sheriff concerned or his assistant shall execute all sentences, decrees, judgements, writs, summonses, rules, orders, warrants, commands and processes of the Supreme Court directed to the sheriff and make return of the manner of execution thereof to the court concerned and to the party at whose instance they were issued.

(2) The return of the sheriff or a deputy-sheriff or his assistant of what has been done upon any process of the court shall be *prima facie* evidence of the matters therein stated.

(3) The sheriff shall receive and cause to be detained all persons arrested by order of the court of any division or committed to his custody by competent authority.

(4) A refusal by the sheriff or any deputy-sheriff to do any act which he is by law empowered to do shall be subject to review by a court of the general division on application *ex parte* or on notice as the circumstances may require.

(5) Any warrant or other process for the execution of a judgement given or order issued against any association of persons corporate or unincorporate, partnership or firm may be executed by attachment of the property or assets of such association, partnership or firm.

**26. Property not liable to be seized in execution.** - The sheriff or a deputy-sheriff shall not seize in execution of any process —

(a) the necessary beds and bedding and wearing apparel of the person against whom execution is levied or any member of his family;

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(b) the necessary furniture other than beds, and household utensils in so far as they do not exceed in value the sum of one thousand rand;

(c) stock, tools, and agricultural implements of a farmer in so far as they do not exceed in value the sum of one thousand rand;

(d) any food or drink sufficient to meet the needs of such person and the members of his family for one month;

(e) tools and implements of trade in so far as they do not exceed in value the sum of one thousand rand;

(f) professional books, documents or instruments necessarily used by the debtor in his profession in so far as they do not exceed in value the sum of one thousand rand; or

(g) such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his possession as part of his equipment: Provided that the court may in exceptional circumstances and on such conditions as it may determine, increase the amount specified in paragraphs (b), (c), (e) or (f) to not more than double the amount therein mentioned.

**27. Offences relating to execution. - Any person who —**

(a) obstructs a sheriff or deputy-sheriff or his assistant in the execution of his duty,

(b) being aware that goods are under arrest, interdict or attachment by the court makes away with or disposes of those goods in a manner not authorised by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in such a manner,

(c) being a judgement debtor and being required by a sheriff or deputy-sheriff or his assistant to point out property to satisfy a warrant issued in execution of a judgement against such person —

(i) falsely declares to that sheriff or deputy-sheriff or his assistant that he possesses no property or insufficient property to satisfy the warrant, or

(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff or his assistant when requested to do so, or

(d) being a judgement debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff or his assistant in regard to the delivery of documents in his possession or under his control relating to the title of any immovable property under execution,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

**28. Service of process on sheriff or deputy-sheriff. - (1)** Whenever any process requires to be served on the sheriff, such process may be served by the other party by delivering a copy thereof to the sheriff at his office during ordinary office hours against his signature.

(2) Whenever any process requires to be served on a deputy-sheriff, the said process may, if the deputy-sheriff resides in the same district as the sheriff, be served by the sheriff and in every other case by the messenger of the magistrate's court: Provided that, if the messenger is himself the deputy-sheriff to be so served, the said process may be served by any person specially appointed by the sheriff for that purpose.

**29. Liability of State for acts of sheriff or his deputy. - (1)** The State shall be liable for any loss or damage resulting from any wrongful act performed by the sheriff or by a deputy-sheriff who is an officer of the public service or an assistant of such deputy-sheriff within the scope of his employment as such sheriff or deputy-sheriff or assistant or from any neglect of duty of such sheriff or deputy-sheriff or assistant.

(2) The sheriff or deputy-sheriff or his assistant shall not be liable for damage arising out of the rescue or escape of any person arrested by him or committed to his custody unless such rescue or escape was effected through his negligence or connivance, but shall, in the event of the rescue or escape of any such person, use all lawful means for his pursuit, apprehension and safe custody.

**30. Transmission by telegraph of summons, writ or other process and of notice of issue thereof. -** In any civil proceedings —

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(a) any summons, writ, warrant, rule, order, notice, document or other process of the court or communication which by law, rules of court or agreement of parties is required or directed to be served or executed upon any person or left at the house or place of abode or business of any person in order that it may be properly served or executed and that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person, or left at his house or place of abode or business shall be of the same force and effect as if the original had been shown to or a copy thereof served or executed upon such person or left as aforesaid, as the case may be; and

(b) a telegram from any judicial officer, police official, registrar, assistant registrar, sheriff, deputy-sheriff or clerk of the court stating that a warrant or writ has been issued for the apprehension or arrest of any person required to appear in or to answer any civil suit, action or proceeding shall be a sufficient authority to any officer by law authorized to execute any such warrant or writ for the arrest and detention of such person until a sufficient time, not exceeding fourteen days, has elapsed to allow of the transmission of the warrant or writ to the place where such person has been arrested or detained, unless the discharge of such person be previously ordered by a judge: Provided that any such judge may upon cause shown order the further detention of any such person for a period to be stated in such order, but not exceeding twenty-eight days from the date of the arrest of such person.

**31. Time allowed to enter a notice of intention to defend.** - Unless and until otherwise provided by the rules of court, the time allowed for entering a notice of intention to defend with regard to a civil summons shall —

(a) if the summons is to be served within the Republic, be not less than twenty-one court days; and

(b) in any other case, be not less than twenty-eight court days.

**32. Prohibition on arrest or attachment to found jurisdiction where defendant resides within Republic.** - No arrest of a person or attachment of property to found jurisdiction shall be ordered by the Supreme Court against a person who is resident in the Republic.

**33. No process to be issued against judge except with consent of court of general division.** - (1) Notwithstanding anything to the contrary in any law contained, no summons or subpoena against any judge shall in any civil action be issued out of any court except with the consent of a court of the general division.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, or where a subpoena has been issued against a judge in a criminal matter, the date upon which such judge must attend court shall be determined in consultation with the Chief Justice or in his absence, the next senior judge of the general division.

**34. Certified copy of Supreme Court record admissible as evidence.** - Whenever a judgement, decree, order or other record of any court of a division is required to be proved or inspected or referred to in any manner, a copy of such judgement, decree, order or other record duly certified as such by the registrar under the seal of the court shall be *prima facie* evidence thereof without proof of the authenticity of the registrar's signature.

**35. Witness fees.** - (1) The Councillor may in consultation with the Councillor of State for Finance and Economic Development from time to time by notice in the *Gazette* prescribe a tariff of allowances which shall be paid to a witness in civil proceedings or to any person who is to accompany any such witness on account of the advanced or tender age, or the infirmity, of such witness.

(2) Such notice may differentiate between persons according to the distances which they have to travel to attend the court to which they are summoned or subpoenaed or according to their professions, calling or occupations and may empower such officers in the service of the State as may be specified therein to order payment of allowances in accordance with a higher tariff than the tariff so prescribed, in cases where payment of allowances in accordance with the prescribed tariff may cause undue hardship.

(3) Notwithstanding anything to the contrary in any law contained, the court concerned may order that no allowances or only a portion of the prescribed allowances shall be paid to any witness.

**36. Chief Justice may authorise attorney to appear in Supreme Court.** - An attorney may, with the permission of the Chief Justice, appear in the Supreme Court in any action in which the Chief Justice considers such appearance to be in the interests of the administration of justice.



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**37. Rules of Court.** - (1) Subject to the provisions of subsection (2) the Chief Justice may make rules regulating the conduct of proceedings of the divisions of the Supreme Court of Ciskei and prescribing any matter whatsoever which it is necessary to prescribe in order to ensure the proper despatch and conduct of business of such courts, including rules prescribing court fees, the fees payable for the service or execution of process and the fees chargeable by advocates, attorneys and notaries, as well as rules relating to the taxation of bills of costs and recovery of the costs.

(2) Any rules made by the Chief Justice under subsection (1) shall be made known by notice in the *Gazette*.

(3) Any rules of court made under any law repealed by section 39 and in force immediately prior to the commencement of this Decree shall, notwithstanding such repeal, remain of full force and effect until amended, substituted or withdrawn in terms of this section.

**38. Existing divisions and courts.** - The appellate division and the general division of the Supreme Court of Ciskei, as existing immediately before the commencement of this decree, shall remain in existence.

**39. Repeal of laws and savings.** - (1) Subject to the provisions of this section and of subsection (3), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

(2) Any appointment made under or declared to remain in existence by the provisions of any law repealed by subsection (1) and any security given or anything done in connection with or by virtue of any such appointment shall remain of full force and effect, and any condition or provision which immediately prior to the commencement of this Decree applied in relation to any person by virtue of any such law shall continue to apply as if that law had not been repealed.

(3) Anything done under any provision of a law repealed by subsection (1) shall be deemed to have been done under the corresponding provision of this Decree.

**40. Short title.** - This Decree shall be called the Supreme Court Decree 1990.

### SCHEDULE

#### LAWS REPEALED

No. AND YEAR OF LAW	TITLE	EXTENT OF REPEAL
Act No. 20 of 1981	Republic of Ciskei Constitution Act, 1981	Sections 53(2)–(4) 54, 55, 56, 58, 59 and 60
Act No. 2 of 1984	Supreme Court Act 1984	The Whole

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GOVERNMENT NOTICE No. 101 OF 1990			GOVERNMENT NOTICE No. 101 OF 1990		
SUPREME COURT CECREE, 1990			SUPREME COURT CECREE, 1990		
(DECREE No. 43 OF 1990)			(DECREE No. 43 OF 1990)		

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