

*Sandra Kayser*

1/13/11

# **CONSTITUTIONAL ASSEMBLY**

**Draft Report**

**Multi-lateral Meetings on  
Chapters 3,4,5,6, and 7**

**16, 17, 18/19 April 1996**

## CONTENTS

1.	Report of 16 April 1996	Page 1 - 4
2.	Report of 17 April 1996	Pages 5 - 10
3.	Report of 18/19 April 1996 Draft formulations on chapter 3, 4, 5, 6, and 7 as addenda to this report p 16 - 43	Pages 11 - 15

# CONSTITUTIONAL ASSEMBLY

## Multi-lateral Meeting

16 April 1996

### Chapter three of the fifth edition of the refined working draft.

1. It was agreed that this chapter is justiciable with both specific and general application.

It was agreed that this chapter should make the principles of co-operative government applicable to all the institutions of government except the judiciary.

2. **Basic structure**

#### 40(1)

It was agreed that this section would be redrafted including "distinct and/but interdependent".

#### 40(2)(d)

It was agreed that this chapter should be redrafted by removing brackets around [geographical].

3. **41(1)**

It was agreed that the introductory section should be redrafted along similar line to the formulation contained in the chapter dealing with Public Administration: "... must be governed by values and principles ..."

4. **41(2)**

It was agreed that this section should be redrafted on the basis of the proposed formulation: "National legislation must establish intergovernmental structures to secure, promote and facilitate intergovernmental relations ~~executive co-operation and to co-ordinate the exercise of executive authority.~~"

5. **41(3)**

It was agreed that a clause should be added regarding the role of the Courts. A formulation was being prepared by Mr De Lange.

## **Chapter four of the fifth edition of the refined working draft.**

**1. Composition of Parliament (43)**

It was agreed that section 1 should be redrafted stating that the national legislative authority is Parliament consisting of the National Assembly and the National Council of Provinces when it participates in the legislative process as set out in the Constitution.

It was agreed that the Panel would look at sections 2 and 3 to ensure that they are necessary in their present form. Parties would table amendments with the Panel.

It was agreed that the word "controlling" in (2) be replaced with "overseeing".

**2. Legislative Authority of Republic (44)**

It was noted that this clause may not accurately reflect legislative authority and should be looked at again with respect to provincial and local government.

### **NATIONAL ASSEMBLY**

**3. Composition and election (45)**

It was agreed that [350] should remain in brackets.

It was agreed that the voting age of 18 should be inserted in this section and in sections 100 and 147.

The ANC proposed that a one percent threshold be included. It was agreed that other parties would consider this.

The DP proposed that provision for constituency representation be made or that it is not ruled out by the Constitution. It was agreed that the Panel would give consideration to this when redrafting this section.

The Panel expressed concern that this section may not comply with Constitutional Principle VIII. They would table an opinion on this matter.

**4. Membership (46)**

The NP were still studying section 46(3)(b) and would come back to this.

**5. Duration of National Assembly (48)**

It was noted that 48(1) and 49(1) needed to be looked at together.

**6. Dissolution of the National Assembly (49)**

No agreement was reached on 49(1).

It was agreed that section 49(2) should cover any eventuality in which the office of the President becomes vacant and the Panel would draft accordingly. No agreement was reached on which formulation was preferable.

7. **Sittings and recess periods (50(3))**  
No agreement was reached on section 50(3).
8. **Speaker and Deputy Speaker (51)**  
The ANC proposed that a presidium of Deputy Speakers be established. No agreement was reached on this matter.
9. **Decisions (52(1)(b))**  
The ANC queried the need to stipulate a quorum in 52(1)(b) in that there was a need to make a distinction between the quorum required to vote. It was noted that quorum's could be stipulated in the rules of Parliament.

It was agreed that the ANC would look at this further.

10. **Parliamentary control (54)**  
The ANC proposed that 54(1) and 54(2) contain more detail setting out the powers of the National Assembly. And that 54(3) be deleted.
11. **Internal autonomy (55)**  
The NP proposed that the leader of the largest minority party under section 55(2) be entitled to the same salaries, privileges and entitlements of a Minister.
12. **Privilege (56)**  
It was agreed that this would be revisited.

#### **NATIONAL COUNCIL OF PROVINCES**

13. **Composition of National Council (58(1))**  
It was agreed that a formula should be contained in the Constitution setting out the allocation of places to each party within a provincial delegation - in the delegation as a whole and within the six permanent delegates.

It was agreed that the Panel would develop a formula either for inclusion in 58 or in a Schedule.

The DP proposed that the formula be drafted along the lines of section 48(2) in the Interim Constitution.

#### **58(2)(ii)**

The NP stated that this section did not clearly capture the principle of the rotating delegates.

**58(3)**

It was agreed that a new section be added setting out the head of the provincial delegation. It was agreed that the Premier should head the delegation and that in the absence of the Premier the delegation should choose its own head.

**14. Sittings of National Council (61(2))**

It was noted that no provision was made for joint sitting and this needed to be addressed.

**61 (3)**

It was agreed that this section would be finalised together with 50(3).

**15. Chairperson and Deputy Chairperson (62)**

There was no agreement on the secretariat for the NCOP and whether it would fall within the ambit of the National Assembly. It was agreed that the Secretary of Parliament would make a proposal in this regard.

**62(6)**

It was agreed that "six" should be replaced with "five".

**16. Decisions (63)**

It was agreed that 63(b) should be deleted and that 63(c) be redrafted to make it clear that all matters before the NCOP should be decided by a vote of five provinces.

It was agreed that a section should be added providing for legislation supported by the NCOP to determine the authority (mandate) of the delegation. A transitional provision could be drafted until this legislation is in place.

**17. Cabinet members participation in the National Council (64)**

It was agreed that this section and its heading should be amended to provide for the participation of Deputy Ministers.

**18. Internal Autonomy (66)**

It was agreed that section 66(3) should mirror the appropriate section under National Assembly.

# CONSTITUTIONAL ASSEMBLY

## Draft minutes of multi-lateral meeting

17 April 1996

### Chapter 4

Discussion took place on the following sections:

#### THE NATIONAL ASSEMBLY

**1. Composition and election (45)**

It was agreed that [350] should remain in brackets.

The ANC proposed that a one percent threshold be included. It was agreed that other parties would consider this.

The DP proposed that provision for constituency representation be made or that it is not ruled out by the Constitution. It was agreed that consideration would be given to this when redrafting this section.

The ANC stated that they wished to revisit the possible inclusion of a clause like section 43(b) of the interim Constitution in this section.

**2. Membership (46)**

It was agreed that the voting age of 18 should be included in section 46(1).

It was noted that much of the detail contained in 46(1)(a) to (e) could be contained in legislation and that consideration would be given to this in drafting.

**3. Oaths or affirmation by members (47)**

It was agreed that Schedule two should make provision for swearing in new members.

**4. Dissolution of the National Assembly (49)**

No agreement was reached on 49(1).

The alternative section 49(2) was agreed to.

**5. Sittings and recess periods (50)**

**50(1)**

It was agreed that 10 days should be replaced by 14 days.

**50(3)**

No agreement was reached on this section.

6. **Speaker and Deputy Speaker (51)**  
It was agreed that section 51(1) would include provision for "such presiding officers as shall be determined by the rules of Parliament".
7. **Parliamentary control (54)**  
It was agreed that the term "control" be replaced with "oversight".  
  
It was agreed that section 54(3) be deleted.
8. **Internal autonomy (55)**  
It was agreed that section 55 (1) be deleted and replace with sections 55A(1)(2)(3)(a) of the ANC memorandum on the National Assembly.  
  
It was agreed that section (2) of the draft be retained.
9. **Privilege (56)**  
It was agreed that this section be redrafted taking into consideration the proposals contained in the ANC memorandum and the memorandum tabled by the Parliamentary Secretariat.  
  
It was agreed that the Ministers referred to in section 88(3)(c) be included in section (3).
10. **Public participation and access (57)**  
It was agreed that the word "participation" be replaced with "involvement".
11. **Powers of the National Assembly**  
It was agreed that section 54 of the ANC memorandum be included in the draft.  
  
In section 54(1)(a) the word "support" be replaced with "passed" and that provision be made for the National Assembly to reject legislation. It was agreed that the term "before it" replace "referred".  
  
It was agreed that section (2)(iii) be deleted.

## **NATIONAL LEGISLATIVE PROCESS**

- 1 **All Bills (69)**  
It was agreed that section 69 should be redrafted to make provision for Schedule four legislation to be introduced and adopted in the NCOP before being introduced in the National Assembly. If legislation introduced and adopted by the NCOP was not accepted by the National Assembly the mechanism set out in section 72(c) would apply.
  - 1.1 **69(1)**  
It was agreed that section 69(1) should be redrafted to exclude money bills.



1.2 69(2)

It was agreed that the words approval, consent and support meant the same thing and that the technical advisors should redraft this section. A preference for the consistent use of the word "consent" was stated.

2 Bills amending the Constitution (70)

No agreement was reached on the outstanding matters in this section which include:

2.1 Whether a 50% or a two thirds majority was required in the relevant provincial legislature(s) in section 70(2).

2.2 Whether Constitutional Principle XVIII(5) should be included in this section.

2.3 Whether section (3) should be retained.

It was agreed that this section would be "flagged" and that footnote two contained in the sidebar would be canvassed in bilateral meetings.

3 Bills outside Schedule four (71)

This section was agreed to.

4 Bills within Schedule four (72)

4.1 72(c)

It was agreed that section 72(c) would include another section providing for minor amendments to a Bill to be referred to the National Assembly rather than the Mediation Committee.

4.2 72(d)

It was agreed that it should be made clear that the 30 day time period begins with a referral to the Mediation Committee.

5 Money Bills (73)

The following draft text was agreed to regarding money Bills:

73 (1) ***A Bill that appropriates money or imposes taxes, levies or duties is a money Bill, but a Bill that imposes a user fee, fine or other monetary penalty is not necessarily a money Bill.***

(2) ***Only a money Bill may provide for appropriation of money or imposition of a tax, levy or duty; and a money Bill may not deal with any other matter.***

(3) ***Only the Cabinet member responsible for national financial matters, or another Cabinet member acting with the concurrence of that member, may introduce a money Bill in the***

***National Assembly.***

- (4) An Act of Parliament must provide for a process by which Parliament may amend a money Bill.***
- (5) A money Bill must be referred to the National Council of Provinces and the Council must consider it in terms of the process established in section 71.***

It was agreed that the technical advisers would look at this further.

**6 Mediation Committee (74)**  
This section was agreed to.

**7 Joint rules and orders (75)**  
It was agreed that this section would be amended to clearly indicate the joint rules and ensure that the list contained in the section would not be exclusive.

**Minutes of 17 April 1996**

**CHAPTER 6  
PROVINCES**

**PROVINCIAL LEGISLATURES**

It was agreed that Sections 101, 104, 108, 109, 110, 111, and 112 need to be brought in line with the related provisions of the National Assembly.

Sections not specifically referred to below were adopted.

**Section 101: Membership**

Regarding Section 101(1), it was noted that a new matter was raised by the DP, namely whether there should be a provision for "ordinarily resident," and it was agreed that this may be resolved by provision for national legislation to deal with this.

Regarding Section 101(2), it was agreed to that it should read "in terms of subsection (1)(a) and (b)."

**Section 114: Application by members to Constitutional Court**

Regarding Section 114(2)(a), it was noted that a proposal was made by the NP to change the required majority to 90%, and that this was being considered by the ANC.

Regarding Section 114(4), it was agreed to flag this subsection.

**Section 115: Promulgation**

The meeting agreed to the alternative formulation contained in the 5th Edition of the Working Draft.

**CONFLICTING LAWS**

The meeting adopted the technical explanation of the difference between "laws" and "legislation", that "law" was used in a more comprehensive sense of including provincial constitutions.

**Section 135: Conflicts between national and provincial legislation**

Regarding Section 135, it was agreed that Subsection (4) would be added to those subsections applying.

Regarding Section 135(2)(b), the DP restated their concern that this may not comply with an interpretation of the constitutional principles and that they were seeking advice of Senior Counsel.

Regarding Section 135(2)(d), it was noted that the ANC had conceded to this formulation, on the basis that the NP would agree to add "or impedes the implementation of national policies." This was agreed to by the meeting.

Regarding Section 3(c), it was agreed to delete reference to (1)(c) from the draft.

**Section 136: Conflicts between national legislation and provincial constitutions**

The meeting agreed to this.

**Section 137: Conflicts that cannot be resolved**

The meeting agreed to this.

**Section 138: Status of legislation that does not prevail**

The meeting agreed to this.

## DRAFT REPORT

Multi-lateral meeting on chapters 3, 4, 5, 6 AND 7

18 and 19 April 1996

### Flagged issues:

#### CHAPTER 3 (see attached draft)

Also agreed to replace "commitment" in 40(3) with "obligation." Also refer minutes of 17 April.

#### CHAPTER 4 (see attached draft)

##### Section 43(4): Composition of Parliament

NP flagged "providing a national forum."

#### NATIONAL ASSEMBLY

##### Section 45: Composition and election

Discussion not concluded, and where to insert question of 18 years.

##### Section 49(1): Dissolution of National Assembly before expiry of its term

Discussion not concluded.

##### Section 50(3): Sittings and recess periods

Discussion on seat not concluded.

##### Section 55: Internal arrangements, proceedings and procedures of NA

###### (1)(a)

Flagged "control and [dispose of] its internal arrangements."

###### (1)(b)

"proceedings and procedure" flagged.

###### (2)(b)

"in its proceedings in a manner consistent with democracy" flagged by ANC.

#### NATIONAL COUNCIL OF PROVINCES

##### Section 59(2)(a): Allocation of delegates

Agreed to, but was flagged as possibly changing later.

**Section 61(3): Sittings of National Council**

Noted technically must be subject to what is in National Assembly.

**Section 63(2): Decisions**

flagged for later discussion, also that there may be a reference to Section 72.

**Section 65: Local government's participation in National Council**

Agreement to delete "A delegation of" flagged by NP.

**Section 66, 67, 68: Internal autonomy; privilege; public access**

Noted depends on National Assembly, a technical matter.

**SCHEDULE 2**

approved, but portion of part B flagged by NP.

**CHAPTER 5 (see attached draft)**

**Section 82 and 88**

Changes agreed but may be interpreted as flagged.

**Section 94**

Agreed to deletion of clause, but ANC flagged.

**Section 97(3)(a)**

Different technical advice on "to regulate public access", flagged for technical advisers to look at.

**CHAPTER 6 (see attached draft)**

**Section 98(2)**

Flagged for transitional arrangements, and noted NP had alternative draft.

**Section 118(e)**

ANC flagged the agreement to remove brackets.

**PROVINCIAL CONSTITUTIONS**

**Section 132(1)(b)**

Agreed to add "where applicable" but incorporating "in the province" flagged for technical advice.

#### **Section 132(2)(b)**

Agreed to, but noted that new idea raised by Panel.

#### **CONFLICTING LAWS**

##### **Section 135**

Agreed to leave as is, but noted there was a concern that national subordinate legislation could override provincial legislation, and that parties may want to move amendments to the Bill.

Noted that DP was seeking legal advice.

#### **SCHEDULE 4**

The following issues were flagged:

Education..., provincial public media, water and sanitation services..., fencing and fences, child care facilities/health

Provincial public works flagged that may require clarity.

Local government out, and flagged, police in but flagged.

#### **CHAPTER 7 (see attached draft)**

##### **Section 139 and 140**

Agreed to with the changes indicated on the draft.

The DP proposed that in 1(b) the words: "within the framework of national and provincial development policies" be deleted as this was catered for else where.

It was agreed that this would remain in for the present.

The NP stated that they would propose an amendment to 1(c).

##### **Section 140**

Agreed to with the changes indicated on the draft.

It was noted that sections 139 and 140 dealt with the same things and that attention should be given to combining these. It was agreed that this would be looked at in the week of 22 April.

##### **Section 141**

Changes indicated on the draft. Reservations tabled will be dealt with in further discussions between parties.

It was agreed that the concept of "framework" mentioned in 141 (new) (4) be flagged. It was suggested that the word be replaced with "parameters".

The technical advisers would look further at the implications of using the word "framework".

The DP had reservations with the word "oversight" in (new)(4)(b).

#### **Section 142**

It was agreed that (2) be deleted and section (1) be changed as indicated on the draft.

#### **Section 143**

It was agreed that Mr Grove would draft a new section 2A.

It was agreed that section (4) needed to be "beefed up".

It was noted that the DP had reservations regarding this section.

#### **Section 144**

Changes indicated on the draft were agreed to.

#### **Section 145**

It was noted that further discussion should take place regarding a proportional representation provision.

#### **Section 146**

It was agreed that a new section (2) should be added similar to section 46(2) of the 5th edition of the refined working draft.

#### **Section 147**

It was agreed that section 2(b) in brackets be flagged for further discussion.

#### **Section 151**

It was agreed that section (1) should be redrafted to include consent by the NCOP.

It was agreed that sections 1(3)(b)(iii) and (2) be deleted.

#### **Section 153**



It was agreed that this section should be redrafted to make provision for Executive intervention in a manner consistent with the rest of the Constitution.

**Section 153A**

It was agreed that further discussion on this needed to take place.

**Schedule**

The local government schedule was not discussed.

## DRAFT REFORMULATION OF

### DRAFT

**Date:** 18 April 1996  
**Status:** As instructed by the ad hoc committee. For discussion by the Constitutional Committee on 19 April 1996.  
**Author:** TRT  
**File name:** a:coop1846.dra

## CHAPTER 3 PRINCIPLES OF CO-OPERATIVE GOVERNMENT

### BASIC STRUCTURE

- 40 (1) Governance of the republic is constituted as ~~three~~ distinctive <sup>but</sup> interdependent spheres: national, provincial and local.
- (2) A spirit of co-operation must be observed and practised among all spheres of government <sup>on a</sup> ~~ment~~, in the interest of -
- (a) preserving the peace, national unity and the indivisibility of the Republic;
  - (b) securing the well-being of the people of the Republic; and
  - (c) providing effective, transparent, accountable and coherent government for the Republic as a whole.
- (3) Government within each sphere must conduct itself in a spirit of <sup>mutual</sup> respect and trust, reflecting the <sup>of</sup> mutual commitment to -
- (a) foster friendly relations;
  - (b) support and assist each other;
  - (c) consult on matters of common interest;
  - (d) co-ordinate actions with each other in terms of agreed procedures; and
  - (e) cultivate mutual trust and co-operation.

### INTERGOVERNMENTAL CO-OPERATION

41. (1) Government must observe and adhere to the spirit of co-operation and trust characteristic of interdependent governance. In particular, government within <sup>each</sup> ~~the~~ sphere -
- (a) must be loyal to the Constitution, the Republic, and its people;
  - (b) must respect the constitutional status, institutions, powers and functions of government in the other spheres;
  - (c) may assume only the powers and functions conferred on it in terms of the Constitution; and
  - (d) may not exercise any powers or functions in a manner that encroaches on the [geographical,] functional or institutional

integrity of government in another sphere.

- (2) National legislation may establish structures <sup>and institutions</sup> to promote and facilitate inter-governmental executive ~~co-operation and to co-ordinate the exercise of the executive authority~~ <sup>relations</sup>
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a competent court to resolve the dispute.
- (4) National legislation must provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (5) If a competent court determines that the requirements of subsection (3) have not been satisfied, it may refer a dispute back to the organs of state involved.

## CHAPTER 4

### PARLIAMENT

#### Composition of Parliament

43. (1) Parliament consists of -

- (a) the National Assembly; and
  - (b) the National Council of Provinces.
- (2) The National Assembly and National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
- (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a forum for public consideration of issues, by passing legislation and by scrutinising and controlling executive action.
- (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a forum for public consideration of issues affecting the provinces.

#### Legislative authority of the Republic

43A. The legislative authority of the Republic -

- (a) in the national sphere of government is vested in Parliament as set out in section 44;
- (b) in the provincial sphere of government is vested in the provincial legislature of a province, as set out in section 99; and
- [(c) in the local sphere of government is vested in the municipal councils, as set out in section 143.]

#### National legislative authority

44. (1) The national legislative authority as vested in Parliament -

- (a) confers on the National Assembly the power -

- (i) to amend the Constitution;
  - (ii) to pass legislation with regard to any matter, including a matter within the functional areas listed in Schedule 4 but excluding a matter within the exclusive legislative powers of the provinces; and
  - (iii) to assign any of its legislative powers to any legislature in another sphere of government; and
- (b) confers on the National Council of Provinces the power -
- (i) to participate in amending the Constitution in accordance with section 70;
  - (ii) to pass legislation with regard to any matter within the functional areas listed in Schedule 4, in accordance with section 72; and
  - (iii) to consider legislation passed by the National Assembly and falling outside the functional areas listed in Schedule 4, in accordance with section 71.
- (2) Legislation passed by the National Council of Provinces which is reasonably necessary for or incidental to the effective exercise of its power to legislate with regard to a matter within the functional areas listed in Schedule 4, falls within those functional areas.
- (3) When exercising its legislative authority Parliament is bound only by the Constitution, and must act in accordance with and within the limits of the Constitution.

#### THE NATIONAL ASSEMBLY

#### Composition and election

45. The National Assembly consists of [350] women and men elected as members in terms of a system of proportional representation based on a common voters roll, and prescribed by national legislation [which provides for the election of members -

- (a) from national and provincial, or only provincial, lists of party candidates drawn up in a party's order of preference; and
  - (b) in a manner which ensures that -
    - (i) the number of members fixed for each province is elected from the lists for that province only; and
    - (ii) the members elected reflect the proportions of the votes recorded for the respective parties nationally and in the provinces.]
- (No definite instructions)

## **Membership**

- 46. (1)** Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -
    - (i) the President, Deputy President, Ministers and Deputy Ministers; and
    - (ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;
  - (b) delegates to the National Council of Provinces, or members of a provincial legislature or a municipal council;
  - (c) unrehabilitated insolvents;
  - (d) anyone declared to be of unsound mind by a court of the Republic; or
  - (e) anyone who, after this section took effect, has been convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of the National Assembly in terms of subsection (1) (a) and (b) may be a candidate for the Assembly, subject to limits and conditions established by national legislation.
- (3) A person loses membership of the National Assembly if that person -
- (a) ceases to be eligible; or
  - (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership.
- (4) Vacancies in the National Assembly must be filled in terms of national legislation.

### **Oaths or affirmation by members**

47. Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Duration of National Assembly**

48. (1) The National Assembly is elected for a term of five years.
- (2) If the National Assembly is dissolved in terms of section 49, or when its term expires, the President, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved, or its term expired.
- (3) If the results of an election of the National Assembly are not declared within the period established in terms of section 178 or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) The National Assembly remains competent to function from the time it is dissolved, or its term expires, until the day before the first day of polling for the next Assembly.

### **Dissolution of National Assembly before expiry of its term**

49. (1) The President may dissolve the National Assembly if the Assembly, by resolution adopted by [a majority/at least two thirds] of its members supports dissolution.

(Still under discussion)

- (2) The Acting-President must dissolve the National Assembly if -
- (a) there is a vacancy in the office of President; and
- (b) the Assembly fails to elect a new President within 30 days after the vacancy occurred.

### **Sittings and recess periods**

50. (1) The first sitting of the National Assembly after an election must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 14 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct urgent business.

- (3) [The National Assembly sits at the Houses of Parliament in Cape Town; but, the Assembly, in the national interest and by resolution adopted by a majority of its members, may determine that it sits elsewhere.]

(Still under discussion)

#### **Speaker and Deputy Speaker**

51. (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.
- (2) The President of the Constitutional Court must preside over the election of the Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.
- (3) The procedure set out in Schedule 3 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.

#### **Decisions**

52. (1) Unless the Constitution provides otherwise -
- (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
- (b) one third of the members must be present before a vote may be taken on any other question before the Assembly; and
- (c) all questions before the Assembly are decided by a majority of the votes cast.
- (2) The presiding member of the National Assembly has no deliberative vote, but -
- (a) must cast a deciding vote whenever there is an equal number of votes on both sides of a question; and
- (b) may cast a deliberate<sup>ive</sup> vote where a question must be decided by a vote of at least two thirds of the members.

#### **Rights of certain Cabinet members in National Assembly**

53. The President and other members of the Cabinet who are not members of the National Assembly may attend, and may speak in, the Assembly, but may not vote.



**Oversight by National Assembly**

54. (1) In exercising its legislative power the National Assembly may -

- (a) consider, pass, amend or reject any legislation before it; and
- (b) initiate or prepare legislation, except money Bills.

(2) The National Assembly must determine and provide for mechanisms to -

- (a) ensure that all executive organs of state in the national sphere of government are accountable to it; and
- (b) maintain proper oversight of -
  - (i) the exercise of national executive authority, including the administration of legislation;
  - (ii) any organ of state, other than the courts or a statutory body.

~~(3) National legislation may provide that answers given, documents produced or evidence given by a person in terms of subsection (1) may not be used against that person in any court except in circumstances specified in national legislation.~~

~~(Sub. (3) suggested by Secretariat of Parliament)~~

**Evidence or information before National Assembly**

54A. (1) The National Assembly and any of its committees may -

- (a) summons any person to appear before it to give evidence on oath or affirmation or to produce documents;
- (b) require any person or institution to report to it; and
- (c) to receive petitions, representations or submissions from any interested person.

(2) The National Assembly and any of its committees may, in terms of national legislation or its rules and orders, compel any person or institution to comply with a summons in terms of subsection (1).

**Internal arrangements, proceedings and procedures of National Assembly**

55. (1) The National Assembly may -

- (a) control and [dispose of] its internal arrangements, proceedings and procedures.

- (b) make rules and orders concerning its business, [proceedings and procedures] with due regard to representative and participatory democracy, accountability, transparency and public participation.
- (2) The rules and orders of the National Assembly must provide for -
- (a) the establishment, constitution, composition, powers, functions, procedures and duration of its committees; and
  - (b) the participation of all opposition parties represented in the Assembly in the legislative process in a manner consistent with democracy.

**Privilege**

56. (1) Cabinet members and the members of the National Assembly have freedom of speech and debate in the Assembly and in its committees, subject to its rules and orders.
- (2) Cabinet members and the members of the National Assembly are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
- (a) anything they have said in, produced before, or submitted to the Assembly or any of its committees; or
  - (b) anything revealed as a result of anything that they have said, produced or submitted.
- (3) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.
- (4) Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund, as may be regulated by an Act of Parliament.

**Public involvement and access**

57. (1) The National Assembly must -
- (a) facilitate public involvement in its law-making processes; and
  - (b) conduct its business in an open manner.
- (2) Sittings of the National Assembly must be open to the public.

**CHAPTER 5  
THE PRESIDENT AND  
THE NATIONAL EXECUTIVE**

**The President**

**80. The President -**

- Agreed*
- (a) is the Head of State and head of the national executive.
  - (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
  - (c) promotes the unity of the nation and that which will advance the Republic.

**Powers and functions of President**

**81. (1)** The President has the power entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.

- Agreed*
- (2) The President is responsible for-
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to Parliament for reconsideration of the Bill's constitutionality;
  - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - (d) summoning the National Assembly to an extraordinary sitting to conduct urgent business;
  - (e) dissolving the National Assembly and calling an election after a vote of no-confidence in the Cabinet has been passed by the Assembly;
  - (f) appointing commissions of enquiry;
  - (g) accrediting foreign diplomatic representatives;
  - (h) appointing ambassadors; and
  - (i) conferring honours.

**Executive authority of the Republic**

**82. (1)** The executive power of the Republic, including is vested in the President.

(2) The President and other members of the Cabinet -

- Agreed*
- (a) implement national legislation;
  - (b) develop and implement national policy; ~~and~~
  - (c) coordinate the functioning of government departments; *and*
  - (d) *prepare and initiate legislation.*

**Election of President**

**83. (1)** At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be President.

*Agreed*

(2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Schedule 3 applies to the election of the President.

- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional Court, but not more than 30 days after the vacancy occurs.

**Assumption of office by President**

84. When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

**Term of office of President**

85. (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.
- (2) No person may hold office as President for more than two terms; but, when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

**Removal of President**

86. (1) The National Assembly, by a resolution adopted by at least two thirds of its members, may remove the President from office only on the grounds of
- (a) a serious violation of the Constitution or the law;
  - (b) serious misconduct; or
  - (c) inability to perform the functions of office.
- (2) Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.

**Acting President**

87. (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President -
- (a) the Deputy President;
  - (b) a Minister designated by the President;
  - (c) a Minister designated by the other members of the Cabinet;
  - (d) a member of the National Assembly elected by its members.
- (2) An Acting-President has the responsibilities, powers and functions of the President.

**Cabinet**

88. (1) The Cabinet consists of the President, a Deputy President and Ministers.
- (2) The President appoints the Deputy President and Ministers, assigns their functions, and may dismiss them.
- (3) The President -
- (a) must select the Deputy President from among the members of the National Assembly;
  - (b) may select any number of Ministers from among the members of the

- National Assembly; and
- (c) may select no more than two Ministers from outside the Assembly.
- (4) Members of the Cabinet must act in accordance with the Constitution and may perform any act required to give effect to the Constitution.
- (5) Members of the Cabinet are accountable collectively and individually to Parliament for the performance of their functions.
- (6) The Deputy President and Ministers are responsible for the functions of the executive assigned to them by the President.
- (7) The Deputy President must assist the President in the execution of the functions of government.
- (8) *Members of the Cabinet*  
~~Ministers~~ must provide Parliament with full and regular reports concerning matters under their control.

*Agreed*

Deputy Ministers

89. The President may appoint Deputy Ministers from among the members of the National Assembly to assist the members of the Cabinet, and may dismiss them.

*Agreed*

Continuation of Cabinet after elections

90. When an election of the National Assembly is held, the Cabinet, the Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

*Agreed*

Oath of office

91. Before Ministers and Deputy Ministers begin to perform their office, they must swear or affirm their faithfulness to the Republic and obedience to the Constitution, by solemn declaration in accordance with Schedule 2.

*Agreed*

Conduct of Cabinet members and Deputy Ministers

92. (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not -
- (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

*Agreed*

Transfer of functions

93. The President by proclamation may transfer to a member of the Cabinet-
- (a) the administration of any legislation entrusted to another member; or
  - (b) any function entrusted by legislation to another member.

~~Temporary assignment of functions~~

Temporary assignment of functions

94. The President may assign to a Cabinet member any functions of another member who is absent from office or is unable to perform those functions.

***New clause agreed to in multi-lateral***

National executive intervention (action) in provinces

95. (1) The national executive may assume the administration of any legislation or the performance of -

(a) any executive function vested in the executive of a province in terms of the constitution:

(aa) when it is necessary:

(i) to maintain essential national standards or to establish minimum standards required for the rendering of services;

(ii) to maintain economic unity;

(iii) to maintain national security; or

(iv) to prevent that province from taking unreasonable action which is prejudicial to the interest of another province or to the country as a whole; and

(bb) when such executive fails or refuses to effectively administer such function; and

(b) any executive function vested in the executive of a province in terms of legislation:

(i) for any purpose listed in sub-section 4(a); or

(ii) because that legislation is not being effectively administered in the province, due to failure or refusal by such executive.

(2) Where a province fails (or refuses) to comply with its obligations under the Constitution or a national law the national government may, (with the consent of the National Council of Provinces,) take the necessary steps to enforce compliance.

(3) In exercising this authority the national government may issue directives to all provinces and their authorities.

(4) Review of intervention by NCOP.

**Implementation of national legislation by the provinces and supervision by the national government**

to be incorporated in 95

95A(3) The national government shall oversee the implementation of national legislation by the provinces in accordance with applicable law.

*Agreed*

**Executive Co-operation**

95C(1) An executive organ of state, by agreement with another executive organ of state at the same or any other level of government, may:

- (a) assign any of its powers, other than its constitutional powers, to that other organ of state; or
- (b) authorise that organ of state to perform any act on its behalf.

*Agreed*

**Executive decisions**

96. (1) A written decision by the President must be countersigned by another member of the Cabinet if -

- (a) the decision is made in terms of specific legislation; and
- (b) that legislation falls within a functional area assigned to that other Cabinet member.

(2) Promulgations, regulations and other instruments of subordinate legislation must be accessible to the public.

(3) Legislation must specify the manner in which, and the extent to which, instruments mentioned in subsection (2) must be -

- (a) tabled in Parliament; and
- (b) approved by Parliament.

*Agreed*

**Votes of no-confidence**

97. (1) If the National Assembly, by a vote of the majority of its members, passes a motion of no-confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.

(2) If the National Assembly, by a vote of the majority of its members, passes a motion of no-confidence in the President, the President and the other members of the Cabinet must resign.

### CHAPTER 6 PROVINCES

*Agreed*

Provinces  
98. (1)

The Republic has the following provinces:

- (a) Eastern Cape
- (b) Free State
- (c) Gauteng
- (d) KwaZulu-Natal
- (e) Mpumalanga
- (f) Northern Cape
- (g) Northern Province
- (h) North-West
- (i) Western Cape.

- (2) The boundaries of the provinces are those existing when the Constitution took effect.

### PROVINCIAL LEGISLATURES

Legislative authority of provinces

99. (1)

The legislative authority of a province is vested in its provincial legislature; which accordingly has the power -

- (a) to adopt a constitution for the province or to amend any constitution adopted by it; and
- (b) to pass legislation for the province with regard to -
  - (i) any matter within the functional areas listed in Schedule 4; and
  - (ii) any matter outside those functional areas expressly delegated to the province by national legislation.

- (2) A provincial legislature is bound by the Constitution and must act in accordance with the Constitution. A province which has adopted a provincial constitution is also bound by that constitution, and must act in accordance with it.

- (3) The adoption of a provincial constitution and of any amendment to it is an exclusive provincial legislative power.

- (4) A province's power to legislate with regard to a matter within the functional areas listed in Schedule 4 includes the power to pass any law which is reasonably necessary for, or incidental to, the effective exercise of its legislative power.

*ANC proposal agreed to. (Johnny's draft)*

*Subject to resolution of section 45 under 1.1 A*

Composition  
100. (1)

and election of provincial legislatures  
A provincial legislature consists of women and men elected as members in terms of a system of proportional representation based on a common voters roll for the province, and prescribed



- (a) ceases to be eligible; or
- (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership.

(4) Vacancies must be filled in terms of national legislation.

*Agreed*  
*Schedule 2*  
*to be adjusted*  
*provision for*  
*vacancies in*  
*terms of*  
*section 103*

Oath or affirmation by members

102. Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm their faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2.

Duration of provincial legislatures

103. (1) A provincial legislature is elected for a term of five years.

(2) If a provincial legislature is dissolved in terms of section 124, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved, or its term expired.

(3) If the results of an election of a provincial legislature are not declared within the period referred to in section ... or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.

(4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature.

*Agreed*

Dissolution of provincial legislatures before expiry of term

104. (1) The Premier of a province may dissolve the provincial legislature if the legislature, by resolution adopted by [a majority / at least two thirds] of its members supports dissolution.

~~(2) An Acting Premier of a province must dissolve the provincial legislature if -~~

~~(a) the Premier has resigned after a vote of no-confidence in terms of section ... and~~

~~(b) the legislature fails to elect a new Premier within [21 days] of the vote of no confidence.~~

[Suggested alternative formulation:

"(2) An Acting Premier must dissolve the provincial legislature if -

(a) there is a vacancy in the office of Premier; and

(b) the legislature fails to elect a new Premier within 30 days

*Majority*  
*needed to be*  
*resolved.*

*Agreed*

Provinces may attend, and may speak in their provincial legislature and its committees, but may not vote. *(insert: and shall attend, if requested to do so by a prov. leg.)*

*insert the request to attend*

Control by provincial legislatures

109. (1) A provincial legislature must take measures necessary to -  
(a) ensure that all provincial executive organs of state are accountable to it; and  
(b) maintain proper legislative oversight of the exercise of provincial executive authority.

*first in accordance with amendments sections 54 A, 55, 56 & 57 under Jot Assembly*

(2) A provincial legislature may -  
(a) require anyone to appear before it or any of its committees to answer questions or to produce documents, or to give evidence on oath or affirmation;  
(b) require any person or provincial organ of state to report to it or any of its committees on any matter;  
(c) receive representations; or  
(d) authorise a committee of the legislature to exercise these powers.

(3) Answers given, documents produced or evidence given by a person in terms of subsection (2) may not be used against that person in a court except -  
(a) on a charge of perjury in respect of the evidence given; or  
(b) [if the court in the interest of justice decides otherwise].

Internal autonomy

110. (1) A provincial legislature may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers, functions, procedures and duration of its committees.

(2) The rules and orders of a provincial legislature must provide for the participation of minority parties in its legislative proceedings in a manner consistent with democracy.

Privilege

111. (1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces have freedom of speech and debate in the provincial legislature and in its committees, subject to its rules and orders.

(2) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -

(a) anything they have said in, produced before, or submitted to their provincial legislature or any of its committees; or

- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application, if -
  - (a) the interest of justice requires this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful the Constitutional Court must order the applicants to pay costs unless the application had a reasonable prospect of success.

Promulgation

115. (1) A Bill assented to and signed by the Premier of a province must be promulgated and becomes an Act of the province upon its promulgation.
- (2) Provincial Acts must be published in the national Government Gazette.

Agreed

[Alternative formulation.

"A Bill assented to and signed by the Premier of a province must be published in the national Government Gazette and becomes an Act of the province upon its publication."]

Safekeeping of Provincial Acts

Agreed

116. The signed copy of an Act of a provincial legislature is conclusive evidence of the provisions of that Act and, [immediately] after promulgation, must be entrusted to the Constitutional Court for safekeeping .

PROVINCIAL EXECUTIVES

Executive authority of provinces

→ see new draft attached

Re-drafted according to agreement.

117. (1) A province has executive authority -
  - (a) to administer matters within the functional areas listed in Schedule 4, to the extent that it has the administrative capacity to assume effective responsibility, which capacity must be assessed in terms of national legislation;
  - (b) to administer provincial legislation in the province;
  - (c) to administer national legislation in the province, the administration of which has been assigned to it in terms of national legislation enacted with the support of the National Council of Provinces, or to which the National Council has consented; and
  - (d) to perform any other function assigned to it in terms of the Constitution or national legislation.
- (2) The administration of provincial legislation in a province is an exclusive provincial matter; but, this subsection does not limit

but, when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.

#### Acting Premiers

- Agreed*
122. (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier -
- (a) a member of the Executive Council designated by the Premier;
  - (b) a member of the Executive Council designated by the other members of the Executive Council;
  - (c) a member of the provincial legislature elected by its members.
- (2) An Acting-Premier has the responsibilities, powers and functions of the Premier.

#### Executive Councils

- Agreed*  
*(Subject to appointment to (a) in Art. 64)*
123. (1) The Executive Council of a province consists of the Premier and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature.
- (2) The Premier of a province appoints the members of the Executive Council, assigns their functions, and may dismiss them.
- (3) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier.
- (4) Members of the Executive Council of a province must act in accordance with the Constitution.
- (5) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the performance of their functions.
- (6) Members of the Executive Council of a province must provide the legislature with full and regular reports concerning matters under their control.

#### Continuation of Executive Councils after elections

- Agreed*
124. When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office.

its members. passes a motion of no-confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.

- (2) If a provincial legislature, by resolution adopted by a majority of its members, passes a motion of no-confidence in the Premier, the Premier and the other members of the Executive Council must resign.

### PROVINCIAL CONSTITUTIONS

#### Adoption of provincial constitutions

131. (1) A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill.

*Agreed*

#### Contents of provincial constitutions

132. (1) A provincial constitution, or constitutional amendment, must be consistent with this Constitution, but may provide for -

- (a) provincial legislative or executive structures and procedures that differ from those provided for in this Constitution; or
- (b) the institution, role, authority and status of a traditional monarch.

*Agreed subject to agreement yet revision not implemented*

Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) and (b) of subsection (1) -

- (a) must comply with -
  - (i) the principles set out in section 1; and
  - (ii) the principles of co-operative government set out in Chapter 3;
- (b) may not confer on the province or any of its legislative or executive structures, any power or function that falls outside the area of provincial competence in terms of this Constitution.

#### Certification of provincial constitutions

133. (1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution to the Constitutional Court for certification.

- (2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified -
- (a) that the text has been passed in accordance with section 131; and
  - (b) that all the provisions of the text comply with section 132.

*Agreed subject to revision still to be done*

Signing, promulgation and safekeeping of provincial constitutions

134. (1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.
- (2) A text assented to and signed by the Premier must be promulgated and becomes law upon its promulgation.
- (3) A provincial constitution or constitutional amendment must be published in the national government gazette.

[Alternative formulation for subsections (2) and (3).

"The text assented to and signed by the Premier must be published in the national Government Gazette and becomes law upon its publication."

- (4) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, [immediately] after promulgation, must be entrusted to the Constitutional Court for safekeeping.

CONFLICTING LAWS<sup>2</sup>

*Agreed as amended*  
Conflicts between national and provincial legislation

135. (1) If there is a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4, subsections (2), ~~and~~ (3) apply.

- (2) The national legislation prevails over the provincial legislation if the national legislation applies uniformly with regard to the country as a whole and if it -
- (a) deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually;
- (b) establishes -
- (i) norms and standards;
  - (ii) frameworks; or
  - (iii) national policies.
- which provide for uniformity across the nation with regard to a matter which in the interest of the country as a whole requires uniformity;
- (c) is necessary for -
- (i) the maintenance of national security;
  - (ii) the maintenance of economic unity;
  - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
  - (iv) the promotion of economic activities across provincial boundaries;
  - (v) the promotion of equal opportunity or equal access

## Executive authority of provinces

- 117(1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier and the other members of the Executive Council shall subject to section 117(3) have the executive authority:
- (a) to administer all matters within the functional areas listed in Schedule 4 except where provided otherwise in the Constitution or an Act of Parliament;
  - (b) to administer provincial legislation in the province;
  - (c) to administer national legislation in the province where the administration of that national legislation has been assigned to it in terms of an Act of Parliament; and
  - (d) to perform any other function assigned to it in terms of the Constitution or an Act of Parliament.
- (3) A province shall have the executive authority referred to in subsection (2) only to the extent that it has the administrative capacity to assume effective responsibility.
- (4) In the event of a dispute concerning the administrative capacity of a Province in regard to any function the dispute shall be referred to the NCOP (or an executive intergovernmental structure to be provided for in national legislation) for a resolution of the dispute within 30 days.
- (5) The administration of provincial legislation in a province is an exclusive provincial executive power; but, this subsection does not limit section 95.
- (6) The provincial executive must act in accordance with and within the limits of the Constitution and, if a provincial constitution has been passed for the province, also that constitution.

**DRAFT - 18 APRIL 1996**

**Date:** 18 April 1996  
**Status:** As per the instruction of the ad hoc committee. For discussion by the Constitutional Committee on 18 April 1996.  
**Author:** TRT  
**Time:** 15h45  
**File Name:** i:locgov18.apr

**CHAPTER 10 7**

**LOCAL GOVERNMENT**

**General Objectives**

139. (1) The objectives of local government as a distinct level/sphere of government are -
- (a) to secure democratic government for local communities and to enhance democracy in general; *accountability*
  - (b) to promote the social and economic development of local communities within the framework of national and provincial development policies and to enhance social and economic development generally;
  - (c) to provide the basic socio-economic needs of local communities;
  - (d) to promote the participation of local communities and community organisations in the affairs of local government; and
  - (e) to assist in the development and maintenance of a safe and healthy environment.
- (2) National and provincial government must assist in the realisation of these objectives by actively developing local government and broadening and strengthening its capacity.

**Developmental duties of municipalities**

140. Municipalities must endeavour to achieve the objectives set out in section ~~163~~ and must -
- (a) ~~139~~ align their administrations, budgeting and planning processes to the social, economic and political development of their areas and communities;
  - (b) provide basic services in a sustainable manner within their financial and physical capacity;
  - (c) assist with the implementation of national and provincial development programmes ~~when required to do so~~; and
  - (d) provide mechanisms through which communities and community organisations in their areas may participate in their processes.



**Establishment of local government structures**

141. (1) Local government in the Republic is administered through municipalities exercising power within their respective municipal areas.

(2) Municipalities must be established for the whole of the territory of the Republic.

(4) ~~139~~ In each province, provincial legislation within the framework of national legislation must provide for -

- (a) the establishment of municipalities;
- (b) the oversight of the administration of local government in the province;
- (c) development of local government capacity and viability to manage its own affairs; and
- (d) the demarcation of municipal areas.

(3) ~~140~~ National legislation must determine -

- (a) the different categories of municipality that may be established;
- (b) the powers, functions and other features of local government; and
- (c) other ~~appropriate~~ <sup>relevant</sup> aspects of the system of local government.

**Local self-government**

142 (1) Municipalities ~~may~~ <sup>are entitled to</sup> regulate and manage <sup>on their own</sup> the local government affairs of their communities in a manner consistent with national and provincial legislation.

(2) Each municipality must establish its own municipal council.

**Municipal legislative authority**

143 (1) The legislative authority of a municipality is vested in its council.

- (2) A municipality may <sup>only</sup> legislate in a manner consistent with national and provincial legislation concerning -
- (a) any matter pertaining to the objectives of local government, as listed in section 139, that falls within Schedule 4;
  - (b) any other matter expressly delegated to it by national or provincial legislation; and
  - (c) concerning any matter reasonably necessary for, or incidental to, the effective exercise of its power in terms of this subsection.

→ 2A to be added by drafters

(3) If there is an inconsistency between municipal legislation and national

or provincial legislation that is inoperative because of a conflict referred to in section 137, the municipal legislation remains valid as long as that other legislation remains inoperative.

- (4) National and provincial legislation must not undermine the ability of a municipality to attend to the affairs of its community.

#### **Municipal executive authority**

144. The executive authority of a municipality is vested in its council and confers on the council the power -

- (a) to administer legislation passed by it; and
- (b) to administer, in its municipal area, national or provincial legislation that has been assigned to it in terms of national or provincial legislation. *and any other functions assigned to it.*

#### **Composition of municipal councils**

145. A municipal council consists of the women and men elected as members in accordance with either -

- (a) a system of proportional representation based on a common voters roll for the municipal area and prescribed by national legislation which provides for the election of members -
  - (i) from lists of party candidates drawn up in a party's order of preference; and
  - (ii) in a manner which ensures that the number of members elected reflects the proportions of the votes recorded for the respective parties in the municipal area; or
- (b) both a system described in paragraph (a) and a system of ward representation based on common voters rolls for the wards, and prescribed by national legislation.

*(2) to be added by drafters*

#### **Membership**

146. (1) Every citizen who is qualified to vote for a municipal council is eligible to be a member of that council, except -

- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration in terms of that appointment of service, and who has not been exempted from this disqualification in terms of national legislation;
- (b) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 46(1)(c), (d) or (e) to be a member of the Assembly;
- (c) a member of the National Assembly, a permanent delegate to the National Council of Provinces or a member of a provincial

- legislature; or
- (d) a member of another municipal council; but, this disqualification does not apply to a member of a municipal council representing that council in another municipal council of a different category.

(2) = 46(2) = 5th edition.

**Elections**

147. (1) Elections of municipal councils must take place at intervals of not more than five years.
- (2) A person may vote for a municipal council who -
- (a) is qualified to vote for the National Assembly;
  - (b) ordinarily resides in the municipal area [or is a ratepayer on property within the municipal area]; and
  - (c) is registered as a voter on the municipality's common voters roll.
- (3) If the electoral system for a municipality includes ward representation, provincial legislation within the framework of national legislation must provide for an independent body to demarcate the wards.

**Internal autonomy**

148. A municipal council may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers, functions and procedures of its committees.

**Privilege**

149. Provincial legislation within the framework of national legislation may provide for privileges and immunities of municipal councils.

**Promulgation of municipal legislation**

150. (1) Municipal legislation may be enforced only after it has been published in the official gazette of the relevant province.
- (2) A provincial government must publish municipal legislation upon request by a municipality.

**Organised local government**

151. (1) National legislation must -
- (a) provide for municipalities to organise themselves into a national

- (b) representative body; and determine the powers and functions of that body, including the power to elect / appoint people to consult or interact with national or provincial government on behalf of local government, or to represent local government in -
  - (i) the National Council of Provinces;
  - (ii) any structures of executive intergovernmental relations referred to in section 41(2); and
  - ~~[(iii) the parliamentary review committee referred to in section 71(4).]~~

- ~~(2) Provincial legislation must -
  - ~~(a) provide for municipalities in a province to organise themselves into a provincial representative body; and~~
  - ~~(b) determine the powers and functions of that body, including the power to elect / appoint people to consult or interact with the provincial government on behalf of local government in the province.~~~~

#### **Consultation with local government**

**152.** National and provincial Bills which materially affect the status, institutions, powers and functions of local government may not be introduced in the National Assembly or a provincial legislature unless organised local government has been given a reasonable opportunity to make representations with regard to these Bills.

#### **Provincial executive action in local government**

**153.** The executive council of a province may assume the administration of any legislation, or the performance of any executive function, vested in a municipal council within that province, in terms of national legislation, when it is necessary -

- (a) to maintain essential provincial standards or to establish minimum standards required for the rendering of services; or
- (b) to prevent that municipal council from taking action which is unreasonable and prejudicial to the interests of another municipality in that province, or to the province as a whole.

**Other matters**

**153A All matters concerning local government not dealt with in the Constitution may be prescribed by national legislation, or by provincial legislation within the framework of national legislation.**

