

1/3/2/2/26

TWENTY-EIGHT

**C O N S T I T U T I O N
R E P O R T S**

E I G H T E E N T H R E P O R T

3 NOVEMBER 1993

**EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL**

**EIGHTEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
3 NOVEMBER 1993**

CHAPTER 9

Provincial Government

*(As reformulated in accordance with the draft of Chapter 6 and the instructions of the
Negotiating Council)*

NOTE: *This reformulated text is subject to further changes depending on the finalisation of the wording of section 119, Schedule 5 and the electoral legislation. In the absence of final decisions regarding those matters, the unamended texts of the affected provisions are reflected here.*

Establishment of provinces

100. The provinces of South Africa shall be the Eastern Cape, the Eastern Transvaal, KwaZulu/Natal, Northern Cape, Northern Transvaal, the Northwest, the Orange Free State, Pretoria-Witwatersrand-Vereeniging, and the Western Cape, the boundaries of which are defined in Schedule 1.

NOTE: The names of the provinces have been taken from the reports of the Commission on the Demarcation/Delimitation of Regions.

Provincial legislatures

101. (1) There shall be a legislature for each province with the power to make laws in accordance with and subject to the provisions of this Constitution.

(2) Laws made by a provincial legislature shall, subject to exceptions provided for by Act of Parliament, be applicable only within the territory of the province.

(3) The legislature of each province shall consist of the members elected at the time of the election of Parliament according to a system of proportional representation on provincial party lists as provided for in Schedule 5.

(4) The number of seats in a provincial legislature shall be determined by dividing the total number of votes cast in the province in the election held in terms of subsection (3) by 50 000, approximated to the nearest complement: provided that no provincial legislature shall have less than 30 nor more than 100 seats.

(5) After consultation with the Commission on Provincial Government an Executive Council shall appoint a Secretary and other officers of the Provincial Legislature.

(6) For the purposes of setting up a provisional administration for a provincial legislature, the Transitional Executive Council established in terms of the *Transitional Executive Council Act, 1993* shall appoint for each provincial legislature a provisional secretary who shall hold office as Secretary until an appointment is made in terms of subsection (5) and shall be remunerated out of the Provincial Revenue Fund.

Sessions and Speakers of Provincial Legislatures

102. (1) A session of a provincial legislature shall commence at the time of the first sitting after its election and shall continue until its dissolution.

(2) The first sitting of a provincial legislature after its election shall be convened by the Secretary of the provincial legislature within 7 days after such legislature has been elected.

(3) A provincial legislature shall sit on such days and during such hours as may be determined by the rules and orders referred to in section 107: provided that a provincial legislature may adjourn and fix the time for its next sitting by resolution.

(4) At its first sitting, and after the election of the Premier, the newly elected provincial legislature shall, with the judge presiding in terms of section 114, elect one of its members to be Speaker of the legislature, and one of its members to be Deputy Speaker, who shall be vested with all powers, duties and functions assigned to them by the rules and orders of the provincial legislature.

Qualifications for Election to Provincial Legislatures

103. No person shall be qualified to be a member of a provincial legislature unless he or she:

- (a) is ordinarily resident within the boundaries of the province; and
- (b) is qualified to stand for election as a member of the National Assembly.

Vacation of Seats by Members of Provincial Legislatures

104. (1) A member of a provincial legislature shall vacate his or her seat if he or she -

- (a) ceases to be eligible to be a member of the provincial legislature; or
- (b) ceases to be a member of the party which nominated him or her for election to the provincial legislature; or
- (c) resigns his or her seat in writing addressed to the Premier of the province; or
- (d) absent himself or herself voluntarily from the provincial legislature for 30 consecutive sitting days, without having obtained the leave of the provincial legislature on grounds specified in its rules and standing orders.

(2) If a seat of a member of a provincial legislature is vacated in terms of subsection (1), the party which nominated such member to sit in the provincial legislature shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on the party's election list compiled for the previous provincial election, or if there is no such person, by nominating any member of the party.

Quorum of meetings of provincial legislature

105. The presence of at least one third of the number of members of the provincial legislature other than the Speaker or the presiding member thereof shall be necessary to constitute a meeting of the provincial legislature for the exercise of its powers and for the performance of its functions.

Requisite Majorities

106. (1) Save as provided in this Constitution or in a constitution adopted in terms of section 124, a majority of votes cast shall be sufficient for the passing of any Bill, or the taking of any decision or resolution by a provincial legislature.

(2) The Speaker of the provincial legislature or the person presiding at a meeting of the provincial legislature shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Rules and orders and committees

107. (1) A provincial legislature may make rules of procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate standing orders, including restrictions on access to such committees.

(2) For the purposes of exercising its powers and performing its functions any committee of a provincial legislature established in terms of subsection (1) shall have the power to *subpoena* persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.

Privileges and immunities of provincial legislatures

NOTE: This provision is subject to technical refinement.

108. (1) Notwithstanding the provisions of any other law, no member of a provincial legislature shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or anything which he or she has brought by petition, bill, motion or otherwise or may have said before or in any meeting of the provincial legislature or any committee thereof.

(2) Provision for other privileges and immunities of members of provincial legislatures may be made by law of the provincial legislature concerned.

Assent to Bills passed by the provincial legislatures

109. A Bill passed by a provincial legislature in terms of this Constitution shall require the assent of the Premier to be signified by his or her signature attached to the bill, and the publication of the Act in the *Provincial Gazette* in order to acquire the status of a valid law of a provincial legislature.

Signature and Enrolment of provincial Legislation

110. (1) Any valid law of a provincial legislature which has been duly passed by such legislature, shall be signed by the Premier, published in the *Provincial Gazette*, lodged in the office of the Registrar of the Appellate Division of the Supreme Court and such copy shall be conclusive evidence of the provisions of the law.

(2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff.

Public access to provincial legislature

111. All sessions of a provincial legislature shall be held in public and members of the public and the media shall have access to such meetings: provided that reasonable measures may be instituted to regulate such access, and to search, and where appropriate, to refuse entry to persons.

Duration of the provincial legislature

NOTE: This provision is subject to decisions regarding other provisions relating to the term of Parliament, dissolution of Houses and deadlock-breaking mechanisms.

112. (1) The provincial legislature shall continue until Parliament is dissolved under Chapter 5.

(2) Notwithstanding the dissolution of a provincial legislature, every person who at the date of dissolution is a member of the provincial legislature shall remain a member thereof, the provincial legislature shall remain competent to perform its functions until a legislature replacing it is duly constituted, and the Premier shall be competent to summon it for the dispatch of business.

Executive power of the province

113. (1) The executive power of a province shall vest in the Premier who shall exercise his or her powers and functions subject to the provisions of this Constitution.

(2) A province shall have executive power over all matters regarding which such province has lawfully exercised its legislative competence and matters allocated to it in terms of section 119 or any law, and matters delegated to it under any law.

{This provision is based on the draft of s118(2) submitted to us and may have to be reformulated after s119 has been finalised}

The Premier

114. (1) The Premier shall be elected by the provincial legislature from among its number in the manner, *mutatis mutandis*, provided for in Schedule 8: provided that a Judge designated by the Chief Justice shall preside at the election.

(2) The Premier shall hold office until he or she is removed from office in terms of this Constitution, or until he or she is replaced in terms of the provisions of a provincial constitution adopted in terms of section 124.

(3) The Premier shall be responsible for the observance of the provisions of this Constitution and all other laws by the executive of the province.

(4) The Premier shall exercise all powers and perform all functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law in consultation with the Executive Council.

(5) The Premier shall be competent to exercise the following powers and functions -

- (a) to assent to, sign and promulgate bills duly passed by the provincial legislature;
- (b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by the provincial legislature back for further consideration by such legislature;
- (c) to convene meetings of the Executive Council;
- (d) during an adjournment of the provincial legislature, to convene a special sitting thereof; and
- (e) all other powers and functions conferred on him or her by law.

(6) The Premier shall be removed from office if two thirds of all the members of the provincial legislature adopt a resolution impeaching the Premier on the grounds of

a serious violation of the laws of the land, or misconduct or inability rendering him or her unfit to perform his or her functions.

(7) If the Premier resigns, or is removed from or ceases to hold office for any reason, the vacant office of Premier shall be filled in accordance with the provisions of subsection (1).

(8) If the office of Premier becomes vacant, a Member of the Executive Council designated by a majority of such Council shall act as Premier pending the election in terms of subsection (1).

The Executive Council

115. (1) The Executive Council shall consist of the Premier and not more than 10 Members appointed by the Premier in accordance with the provisions of this section to administer one or more of the departments of the province established by the Premier.

(2) A party holding at least 10% of the seats in the Provincial Legislature shall be entitled to be allocated a number of Executive Council portfolios in proportion to the number of seats held by it in the Provincial Legislature relative to the number of seats held by the other parties represented in the Executive Council.

(3) The Premier shall allocate portfolios to the parties represented in the Executive Council after consultation with the leaders of the parties represented in the Executive Council.

(4) The Premier shall appoint Members of the Executive Council from among the members of the Provincial Legislature to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The Premier shall terminate the appointment of any Member of the Executive Council if requested to do so by the leader of the party which such member represents.

(6) In the event of a vacancy in the Executive Council, occurring for any reason, the Premier shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No Member of the Executive Council may take up any other paid employment, engage in activities inconsistent with membership of the Executive Council, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a Member of the Executive Council and his or her private interests.

(8) A Member of the Executive Council shall preserve the confidentiality of any information entrusted to him or her in such capacity and shall not use his or her position or such information directly or indirectly to enrich himself or herself or any other person.

(9) Every Member of the Executive Council shall make and subscribe to an oath or solemn affirmation in the terms set out in Schedule 6 before the Chief Justice, or a judge designated by the Chief Justice for this purpose.

Procedure in the Executive Council

116. (1) Meetings of the Executive Council shall be presided over by the Premier, or in his or her absence, by a Member of the Executive Council elected by the Executive Council for that purpose.

(2) The Executive Council shall endeavour to reach consensus on all its decisions, in the absence of which, and if any Member of the Executive Council requests a vote, by a % of the Members of the Executive Council present and voting.

Accountability of Members of the Executive Council

117. (1) A Member of the Executive Council shall be accountable individually both to the Premier and to the Provincial Legislature for the administration of the portfolio allocated to him or her, and all Members of the Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.

(2) A Member of the Executive Council shall administer his or her portfolio in accordance with the policy determined by the Executive Council.

(3) If a Member of the Executive Council fails to administer his or her portfolio in accordance with the policy of the Executive Council, the Premier may require the Member concerned to bring the administration of the portfolio into

conformity with such policy, and may, if the Member fails to do so and after consultation with him or her and the leader of his or her party, remove such Member from office.

(4) If a vote of no confidence is passed by the Provincial Legislature in the Premier and the Executive Council, the Premier shall dissolve the Provincial Legislature and call an election.

(5) If a vote of no confidence is passed by the Provincial Legislature in the Premier, but not the Executive Council, the Premier shall resign, and the vacancy shall be filled in accordance with the provisions of section 114(1).

(6) If a vote of no confidence is passed by the Provincial Legislature in the Members of the Executive Council, but not the Premier, the Premier shall either -

(a) reconstitute the Executive Council in accordance with the provisions of section 115; or

(b) dissolve the Provincial Legislature and call an election.

(7) Should the Provincial Legislature be dissolved in accordance with the provisions of this section, the Premier shall continue to hold office until a Premier is elected in terms of section 114, and the Members of the Executive Council shall continue to hold office until a new Executive Council is appointed in terms of section 115.

Remuneration of Premiers, Members of the Executive Council and Members of Provincial Legislatures

117A. The Premier, Members of an Executive Council and Members of the Provincial Legislature shall be paid out of and as a charge on the Provincial Revenue Fund such salary and allowances and pensions, as may be determined from time to time by resolutions of the Provincial Legislature.

Legislative competences of provinces

118. (1) A provincial legislature shall, subject to the provisions of subsections (3) and (4), have concurrent competence with Parliament to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 9.

(2) The legislative competence referred to in subsection (1) shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

(3) An Act of Parliament which deals with a matter referred to in subsections (1) and (2) shall prevail over a provincial law inconsistent therewith only to the extent that -

- (a) it deals with a matter that cannot be regulated effectively by provincial legislation; or
- (b) it deals with a matter that requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic; or
- (c) it is necessary to set minimum standards across the nation for rendering of public services;
- (d) it is necessary for the determination of national economic policies, the maintenance of economic unity, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour or the maintenance of national security; or
- (e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.

(4) An Act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.

(5) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent.

SCHEDULE 9

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at primary and secondary level (the matter of tertiary education stands over)

Health services

Housing

Language policy and language/s as languages of record for use in provincial administrations

Local government subject to the Provision of Chapter 10

Nature conservation, excluding national parks and national botanical gardens and marine resources

Police subject to the provisions of the appropriate chapter

Provincial public media

Public Transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

The following reformulation of section 61 is submitted for consideration:

61. (1) Save for the provisions of subsections (2) and (3) and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 7.

(3) An amendment of section 118 shall be passed by a two thirds majority of the total number of members of the National Assembly and of the total number of members of the Senate: provided that the legislative and executive competences of a province shall not be amended without the consent of its legislature.

Continuation, transfer and consolidation of existing administrative responsibility
REFERRED TO PC/BILATERALS

119. (1) The National Government and provincial governments shall co-operate with each other, and shall, each within their respective areas of competence, rationalise the administrations and institutions referred to in subsection (3) (a), and establish administrations and employ the personnel needed for the performance of their functions.

(2) The National Government and provincial governments in rationalising the administrations and institutions as contemplated in subsection (1) shall, in the event of any disagreement between them, have regard to the advice and recommendations of the Commission on Provincial Government established in terms of section 127 of this Constitution.

(3) Until changes are made as a result of the rationalisation or consolidation of administrations and institutions as contemplated in subsection (1) -

- (a) Administrations and institutions of Provincial Governments, selfgoverning territories, and Transkei, Bophuthatswana, Venda and Ciskei, if reincorporated, which immediately before the coming into force of this Constitution were established within the boundaries of a province, and performed functions within such boundaries, shall continue to perform such functions;
- (b) The Government of the province concerned shall be responsible for and shall exercise control over the performance of those functions referred to in subparagraph (a) and which fall within the scope of the functional areas referred to in sections 118(1) and 118(4), and the National Government shall be responsible for and exercise control over the performance of all other functions;
- (c) A department of state of the Republic of South Africa referred to in section 24(1) of the *Republic of South Africa Constitution Act, 1983*, and which was immediately before the coming into force of this Constitution responsible for the performance of functions within the boundaries of a province, shall continue to be responsible for the performance of such functions;
- (d) The National Government shall be responsible for the performance of and shall exercise control over the functions referred to in subparagraph (c);

- (e) Personnel of all administrations and institutions referred to in this section shall continue in the posts they occupied immediately before the coming into operation of this Constitution, and shall continue to perform the functions which they previously performed;
- (f) The personnel referred to in subparagraph (e), who perform functions in terms of that subparagraph and subparagraph (b) on the instructions of a provincial government, shall be deemed to be in the employ of, and shall be entitled to be remunerated by it on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of that provincial government;
- (g) The personnel referred to in subparagraph (e) who perform functions in terms of that subparagraph and subparagraphs (b) and (d) on the instructions of the National Government, shall be deemed to be in the employ of and shall be entitled to be remunerated by the National Government, on the same basis as they were previously being remunerated, for as long as they continue to perform such functions on the instructions of the National Government.

Administration of existing laws

[Finalisation of this provision is subject to the final wording of section 119.]

120. (1) Existing laws applicable in a province governing the operation of the institutions for which the provincial government assumes responsibility and control in terms of section 119, shall continue to govern those matters until they are amended or repealed by the competent legislature, and references in such laws to any government or organ of government shall be deemed to be references *mutatis mutandis* to the government or relevant organ of government of the province.

(2) The powers, functions and obligations arising from the provisions of the laws referred to in subsection (1), shall vest *mutatis mutandis* in the relevant organ of the province.

(3) Parliament and the legislatures of the provinces shall, each within their respective areas of competence, undertake the consolidation and unification of the laws referred to in subsection (1) as expeditiously as possible.

Provincial finance and fiscal affairs

121. (1) A province shall be entitled to an equitable share of revenue collected nationally to assist it to provide services and to execute its powers and functions.

(2) The equitable share of revenue referred to in subsection (1) shall consist of

(a) a percentage, fixed by Act of Parliament, of income tax on individuals which is collected within its boundaries; and

(b) a percentage, fixed by Act of Parliament, of value added tax which is collected within its boundaries; and

(c) other conditional or unconditional allocations of national revenue made in terms of this section.

(3) The percentages referred to in subsection (2)(a) and (b) shall be of general application to all provincial governments, and shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission.

(4) Allocations made in terms of subsection 2(c) shall be determined by Act of Parliament, with due regard to the national interest and after taking into account -

(a) the provision that has to be made for interest and other payments in respect of the national debt; and

(b) the different fiscal capacities, fiscal performances, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and

(c) the legitimate needs and interests of the national government; and

(d) the recommendations of the Financial and Fiscal Commission.

(5) Provincial legislatures may raise other taxes, surcharges or levies, provided that:

- (a) they are authorised to do so by Act of Parliament, passed after taking into account the recommendations of the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.
- (6) Provincial legislatures shall be competent to enact legislation authorising the imposition of user charges: provided that -
- (a) the criteria to be taken into account in raising such charges may be regulated by Act of Parliament in accordance with recommendations made by the Financial and Fiscal Commission; and
 - (b) they do not discriminate against non-residents of that province who are South African citizens.
- (7) A provincial government -
- (a) shall not be competent to raise loans for current expenditure: provided that loans may be raised for bridging finance, subject to such conditions as may be prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission;
 - (b) shall be competent to raise loans for capital expenditure: provided that it does so within the framework of norms and conditions prescribed by Act of Parliament passed after taking into consideration recommendations of the Financial and Fiscal Commission.
- (8) A provincial government may not guarantee loans, unless:
- (a) the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given; and
 - (b) the giving of the guarantee has been approved by a resolution of Parliament.
- (9) Revenue allocations made by the national government to local authorities shall ordinarily be made via the provincial government within whose jurisdiction the local government falls.

(10) Allocations from national revenue to provincial governments and local authorities shall be made through appropriation acts passed in accordance with the provisions of this section.

(11) There shall be established in each province a Provincial Revenue Fund into which shall be paid all revenue raised by or accruing to the provincial government.

(12) No money may be withdrawn from a Provincial Revenue Fund otherwise than by an appropriation made in accordance with the provisions of law.

ooo0ooo

The following provisions should be inserted in Chapter 11 (Finance):

- x. The national government may not guarantee any loans, unless -
- (a) the guarantee is an explicit requirement demanded by an international financial institution; and
 - (b) the Financial and Fiscal Commission has verified the need for the guarantee and has recommended that it be given.

ooo0ooo

Effect of laws of provincial legislature

122. *Deleted in view of the reformulation of section 118.*

Recommendations to Parliament

123. A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

Provincial Constitutions

REFERRED TO PC/BILATERALS

[To be revisited together with the deadlock-breaking mechanisms (section 68).]

124. (1) A provincial legislature may, subject to the provisions of this Constitution, adopt a constitution for the province by a two thirds majority of all its members.

(2) A provincial legislature may make such arrangements as it deems appropriate for the negotiation and drafting of a provincial constitution.

(3) A provincial constitution adopted by a provincial legislature shall not be inconsistent with the Constitutional Principles enumerated in Schedule 7 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) A provincial constitution shall be developed in consultation with the Commission on Provincial Government established in terms of section 127.

(5) A provincial constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the Constitutional Assembly passed by two thirds of its members.

(6) A provincial constitution adopted by a provincial legislature may be referred to the Constitutional Court by the chairperson of the Constitutional Assembly after being petitioned by one third of the members of the Constitutional Assembly in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.

(7) A provincial constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding provincial Government

REFERRED TO PC/BILATERALS

125. (1) The development of a system of provincial government shall receive the priority attention of the Constitutional Assembly and in this regard it shall take into consideration the recommendations of the Commission on Provincial Government referred to in section 127 and the views expressed thereon by the executives of the various provinces.

(2) The Commission's recommendations to the Constitutional Assembly regarding any matter that falls within the ambit of its objects in terms of section 128 shall include draft provisions for the national Constitution.

(3) The Constitutional Assembly shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the Constitutional Assembly, shall lapse, except if a majority of the members of the Constitutional Assembly present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the Constitutional Assembly, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

Election of new provincial Governments

REFERRED TO PC/BILATERALS

126. A provincial government may at any time after the coming into force of a provincial constitution contemplated in section 124 or of the constitutional dispensation contemplated in section 125, petition the Constitutional Assembly to determine by resolution that an election for the establishment of a new provincial legislature and executive in that province, or in a province incorporating that province in whole or in part, shall be held.

Commission on Provincial Government

Establishment of Commission on Provincial Government

127. A Commission on Provincial Government shall be appointed by the President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

128. (1) The objects and functions of the Commission regarding the establishment of provincial government in terms of this Chapter are to -

- (a) advise the National Government and provincial governments on the establishment and consolidation of administrative institutions and structures

in the provinces and on any matter arising out of the provisions of section 118; and

- (b) make recommendations to the National Government and provincial governments on the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of provincial government.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the Constitutional Assembly in the form of draft constitutional provisions regarding -

- (a) the finalisation of the number and the boundaries of the provinces of the Republic;
 - (b) the constitutional dispensations of such provinces, including the constitutional structures within such provinces as well as the method of their election and their authority, functions and procedures;
 - (c) measures, including transitional measures, that provide for the phasing in of new provincial constitutional dispensations;
 - (d) the final delimitation of powers and functions between national and provincial institutions of government with due regard to the criteria that are set out in subsection (3);
 - (e) fiscal arrangements between the institutions of national government and those of provincial government;
 - (f) the powers and functions of local governments; and
 - (g) any matter which the Commission considers to be relevant or ancillary to its functions.
- (3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -
- (a) The provisions of this Constitution;
 - (b) The Constitutional Principles enumerated in Schedule 7;

- (c) Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;
- (j) Developmental potential;
- (k) Cultural and language realities.

Constitution and impartiality of the Commission

129. (1) The Commission shall be appointed by the President for the period during which this Constitution is in force, and shall consist of not less than 10, nor more than 15 full-time members, as the President may determine.

(2) At least one member of the Commission shall be appointed from each province with the approval of the Premier of the province.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission shall not hold office in any political party or political organisation.

(6) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

130. (1) The President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

(2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

(b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

131. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) If a member of the Commission ceases to hold office, the President may, subject to section 129 appoint a person to fill the vacancy.

Meetings of the Commission

132. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

Committees

133. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time-

(i) delegate any power granted to it by or under section 128 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 128 may be performed by such a committee.

(b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

134. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

135. Members of the Commission and persons referred in section 134 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

136. The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with the Commission for Administration, determine the remuneration and conditions of service of such staff.

Regulations

137. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.