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**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 3

DRAFT REPORT I

LOCAL GOVERNMENT

**BY
PROF F VENTER**

31 JULY 1995

Embargoed until 14h00 Tues 1/8/95

TABLE OF CONTENTS

1	Introduction	Pages 1 - 2
2	Schematic Report	Pages 3 - 12
2	Party Submissions	
	ACDP	Pages 13 - 17
	ANC	Pages 18 - 23
	DP	Pages 24 - 31
	NP	Pages 32 - 50
	PAC	Pages 51 - 54

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REPORT TO THEME COMMITTEE 3 ON LOCAL GOVERNMENT

This report is designed to facilitate discussion by the Theme Committee with a view to the eventual production of a report on local government to the Constitutional Committee.

1. Material available

- In March 1995 Prof Dion Basson summarised submissions by civil society on matters concerning Theme Committee 3. 23 of those submissions dealt with both provincial and local government (reflected in section II of the summary) and 15 dealt with local government as such (section III of the summary).
- A *Framework on Local Government*, drafted by Prof BC Majola, was circulated on 3 April 1995.
- Proposals of the Free State Municipal Association entitled *Local Government beyond 2000*, dated 14 May 1995, was distributed.
- On 15 May 1995 the Theme Committee held a workshop on local government, which apparently centred around a discussion document prepared by the ad hoc committee on local government. The proceedings were transcribed and distributed on 29 May 1995.
- The Commission on Provincial Government submitted their *Preliminary Recommendations on Local Government - Document 9* on 25 May 1995
- A *Special Edition* of submissions on local government was circulated on 12 June 1995.
- Political party submissions on local government were submitted by the ACDP, ANC, DP and NP.

2. Overview of processed material

It has not been possible to process all the above material for the purposes of this report, and therefore the main focus is on the four submissions received from political parties. From those submissions it is however clear that some of the non-political material had significantly influenced the views of the political parties. Thus *Local Government Beyond 2000* has had a discernable impact on at least two of the party submissions and the recommendations of the CPG have also expressly been referred to in one of the party submissions.

3. Positions of the political parties

The table below has, for the purposes of discussion and the development of a report to the Constitutional Committee, been devised around the constitutional issues emerging from the *Framework on Local Government* of 3 April 1995. None of the parties expressly followed the pattern of the *Framework*. In order nevertheless to present the party positions in a concise format, the relevant constitutional issues have been extracted and listed under 10 headings (the first column of the table).

To classify the various positions taken by the political parties as being "contentious" or "non-contentious" is not practicable without the issues having been debated among the parties. From the various submissions it was however possible to list similar positions

taken by parties, positions taken uniquely by a single party and propositions made by parties which clearly deviated from the positions of one or more of the other parties. These have been reflected in the second and third columns of the table below in the hope that their discussion in the Theme Committee would allow the development of further clarity as well as the crystallisation of contentious and non-contentious matters.

The party or parties taking a specific position have been identified in square brackets in the second and third columns. In some instances the relevant Constitutional Principle or the equivalent provision of the present Constitution is indicated.

THEME COMMITTEE 3

*Exposition of the positions of Political Parties on Local Government
for purposes of discussion.*

Constitutional Issues	Similar or unique propositions	Divergent propositions
1. What, regarding local government, should be incorporated into the Constitution.	<ul style="list-style-type: none">• A framework - a chapter -for local government should be contained in the Constitution [ANC, NP, DP, CPrinc.XXIV];• The Constitution should protect the necessary and essential features of local government [ANC];• The basic functions of local government should be listed - not exhaustively - ("a minimum list") in the Constitution [ANC, DP, CPrinc.XXIV];• A provision prescribing a code of conduct for members (and officials [NP]) of local government [ANC, NP, DP, section 180];• A provision dealing with procurement administration [NP, section 187];• A provision affording a local government the right of recourse to a judicial remedy to secure the free exercise of its powers and the principles relating to local government [NP].	A "need for the autonomy, powers and functions of local government to be adequately provided for in the Constitution" [DP].

Constitutional Issues	Similar or unique propositions	Divergent propositions
<p>2. What the relative positions of the national and provincial governments regarding local government should be.</p>	<ul style="list-style-type: none"> • Local government is a matter of both national and provincial interest [ANC]. The respective powers of the national and provincial levels should be clearly defined. (NP, CPG); • Proposed legislation concerning local government should not be introduced without local government having been consulted [NP, DP, section 174(5)]. 	<p>Framework laws enacted at national level, provinces responsible to implement, supervise and manage local government and provinces will have concurrent power to legislate on local government [ANC].</p>
<p>3. What the status of local government as such should be.</p>	<ul style="list-style-type: none"> • Local government not at bottom of hierarchy of levels / is a specific level of government [ANC]; should be recognised constitutionally as a fully-fledged level of government [NP]; local government is to be recognised as a separate sphere (not a "tier") of government [DP]; • Section 174(4) should be retained in the Constitution [NP], in amended form [DP]. 	<p>There should be strong and efficient local government, operating under effective conditions of intergovernmental relations based on the notion of co-operative governance; the term "self-administration" (rather than "autonomy") should be used [ANC]; though local government must be subject to national and provincial legislation, it should not be completely subservient to them - there should be autonomy [NP]; local government should have autonomy [DP]; local government should be autonomous with each district having its own governmental structures [ACDP].</p>
<p>4. Structures and administration</p>	<ul style="list-style-type: none"> • There should be categories of metropolitan, urban and rural local governments [ANC, NP, DP, section 174(2)]; there should be Metropolitan Development Authority Committees that will have jurisdiction over all the major town councils, and a Rural 	<p>Categories of structures should be metro, district, rural and urban [ANC]; (unspecified) categories of local government with differentiated powers, functions and structures; a local government should have the discretion to establish sub-municipal entities [NP, section</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<p>Development Authority with jurisdiction over all areas outside municipal boundaries;</p> <ul style="list-style-type: none"> • All areas within the territory of the Republic must be represented in local government structures [ANC, NP, DP]; • Local government should be given representation in the Senate in the form of a delegation of senators [ANC]; local governments should be represented on the national body of representatives [ACDP]; • A Local Government Commission should be established to be the guardian of local government, advise Parliament and the national government and to initiate laws and 	<p>175(6)); Provincial legislatures should make provision for categories of local governments with differentiated powers, functions and structures [DP].</p> <p>Demarcation should be done on the principle of "one city/town, one tax basis" [ANC]; The norms for demarcation should be based on technical and developmental considerations rather than political expediency [NP]; Local government areas should be demarcated by the provincial legislatures [DP]; The present sections 176 (council resolutions) and 177 (executive committees) should be retained with some amendments and additions [NP]; the present sections 176 and 177 should be deleted from the Constitution [DP].</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<p>policies and conduct research [NP]; the Commission on Provincial Government should be restructured as a Commission for Provincial and Local Government to mediate and adjudicate disputes between provincial and local governments [DP];</p> <ul style="list-style-type: none">• The establishment of national and provincial intergovernmental or co-operative councils for organised local government should be considered [ANC]; provincial intergovernmental forums representative of the provincial government and organised local government should be provided for by provincial laws;• local governments should be entitled to co-operate and form joint bodies and associations (also internationally) [NP].• The administration must be based on sound principles of public administration, good governance and public accountability [ANC, NP, DP, section 178(1)];• The present section 178(1) (sound principles of public administration) should be retained [NP, DP];	<p>The principles pertaining to public administration should apply to local government, but local government should not be regarded as part of the Public Service [NP].</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<ul style="list-style-type: none"> • Provision should be made for administrative supervision of local governments according to procedures that will not allow for undue intervention [NP]. 	
<p>5. The areas in which local governments should provide services.</p>	<ul style="list-style-type: none"> • (At least [NP, DP]) water, transport, electricity, primary health care, (pre-school [DP]) education, housing and security [ANC, NP and DP]. • The present section 221 regarding local policing should be retained [NP]; • Duties may be imposed on local government by national or provincial laws [ANC]; there should be no restriction on national or provincial government to delegate or devolve powers and functions (but finance should follow function) [NP]; 	<p>At least sanitation [NP, DP], physical land-use planning, parks and gardens, stormwater drainage, licences and permits, local roads, libraries, traffic control, fire brigade services, shopping hours, ambulance services, sport and recreation facilities, public halls, markets and pounds, street cleaning, refuse disposal, local economic growth, promotion of integrated and sustainable development, animal and vermin control, public health, air and noise pollution, liquor licensing, civil protection, combating of nuisances, cemeteries and crematoria, municipal police, beaches and amusement facilities [DP].</p> <p>Provincial legislatures may alter the power and functions of a local authority only with its agreement [DP].</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<ul style="list-style-type: none"> • Services should be provided by community-based organisations functioning on a non-profit basis, remunerated by the town councils [ACDP]. 	
<p>6. The nature of the governmental competence of local government to be set out in the Constitution.</p>	<ul style="list-style-type: none"> • There should be a <i>right to local government</i>, being constitutionally authorised to regulate and manage a substantial share of public affairs [ANC]; • Local government should have <i>inherent powers</i>, meaning that they may perform any function not prohibited by law, besides those expressly entrusted to them [NP]; • Local government should have adequate and appropriate legislative and executive powers to allow it to govern effectively with regard to its powers and functions [NP, DP]; • Choice of organisation and personnel, financial authority, planning powers, provision of facilities, "mandatory" functions, by-laws and administrative decisions based on statute [ANC]. • Services should be rendered in a developmental and environmentally friendly manner [ANC]; local government should have such legislative, executive and financial powers and functions enabling it to provide services for and to promote the development of 	

Constitutional Issues	Similar or unique propositions	Divergent propositions
	the communities it governs; the services should be provided within a safe and healthy environment [NP, section 175(3)]	
7. The financial and fiscal arrangements regarding local government that should be made in the Constitution.	<ul style="list-style-type: none"> • A local government will be competent to raise levies, rates and fees, based on a uniform structure, as may be necessary to exercise its functions [ANC, NP, DP]. 	<p>A local government should be entitled to establish "progressive tariffs and rates"; the (fiscal) competency of a local government must be regulated by national legislation [ANC];</p> <p>Financial allocations to local government should be provided for as in the present section 158 and also be further regulated in the Constitution; the uniformity of the taxing structures should be regulated as in the present section 178(2); the right to a share of revenue should be more tightly worded than in the present section 178(3) [NP, taken from CPG];</p> <p>The present section 178(2) should be phrased more tightly by replacing the reference to "a competent legislature" with a reference to the Constitution and the reference to the uniformity of the taxing structures should be retained; the financial resources should be commensurate with the responsibilities;</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<ul style="list-style-type: none">• The recommendatory/advisory role of the F&F Commission regarding intergovernmental transfers should be retained [ANC, NP and DP].• Provisions similar to the present sections 175(3) en 188 regarding borrowing powers for local governments should be included [NP, taken from CPG]; Provisions similar to the present section 193(2) regarding the auditing the accounts and financial statements of local governments should be included [NP, taken from CPG].	<p>financial viability should not mean self-sufficiency; intergovernmental transfers should not give other spheres of government a right to dictate; intergovernmental transfers should be based on objective formulae [DP];</p> <p>Local government should be "constituentially accountable to raise taxes" to be used for specific tasks in the community [ACDP].</p> <p>Local government could be represented on the F&F Commission through a national co-ordinating structure [ANC]; Three members of the F&F Commission should be designated by organised local government, at least one of whom must have expertise in local government finance [NP]; There should be greater representation of local government on the F&F Commission [DP].</p>

Constitutional Issues	Similar or unique propositions	Divergent propositions
<p>8. How local governments should be elected.</p>	<ul style="list-style-type: none"> • Voters should be natural persons ordinarily resident in the area of jurisdiction [ANC, NP and DP]; • Members of provincial legislatures and employees of a local government should (also) be disqualified from being elected [ANC, NP, DP]; • Elections should be held every five years [ANC, DP]; • A dual electoral system (partly proportional, partly wards) should apply [ANC, NP and DP]. 	<p>Persons liable for the payment of property rates, rent, service charges or levies to a local government should also have the vote [NP, DP].</p> <p>Elections should take place at intervals between 3 and 5 years [NP]; Elections should not take place in the same year that national elections occur.</p> <p>60% of the members should be elected by simple majority from wards and 40% proportionally [NP]; Elections should be regulated by national legislation and/or regulations [ANC].</p>
<p>9. Democratic principles</p>	<ul style="list-style-type: none"> • Participatory democracy and mechanisms to give effect thereto are vital; civil society and its various organisations have a crucial role in democratising and transforming South Africa; local government should promote the establishment of forums whereby community organisations can participate in local governance without compromising the powers and functions of elected local government [ANC]; 	

Constitutional Issues	Similar or unique propositions	Divergent propositions
	<ul style="list-style-type: none"> • local government is accountable to its electorate, not to provincial or national government [DP]; • There should be a decentralisation of government power and a devolution of powers with the balance of power residing in the local and regional tiers of civil governance [ACDP]. 	
<p>10. What the role of traditional leaders should be in local government.</p>	<ul style="list-style-type: none"> • Traditional leaders should participate in local government [ANC, ACDP] 	<p>Traditional leaders should serve in and ex officio advisory capacity, subject to the principle of democratic and accountable local government; the provinces should determine the form of participation; [ANC]; Traditional leaders should be remunerated (and thus be accountable to) their people [ACDP]; Traditional leaders should not have guaranteed ex officio membership of any elected government structure; should not receive official remuneration for occupying two different positions in government [DP].</p>

**POLITICAL
PARTY
SUBMISSIONS**

ACDP

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
PRELIMINARY SUBMISSION
TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 3**

LOCAL GOVERNMENT

The definition of democracy as government by the people, from the people for the people is never more true as in a constitutional republic with a strong local government component.

The level closest to the people is, logically, where government can have most effect. South Africa traditionally has not been a country where so-called bread and butter issues have been of paramount importance. This will definitely change as government moves closer to the families it ought to serve.

The ACDP is strongly in favour of decentralisation of government power and a devolution of powers with the balance of power residing in the local and regional tiers of civil governance. This translates into having a very limited national government with specific and constitutionally defined spheres of authority, with the balance of power resting closer to the people.

Being weary of multiplication of actions and functions, even at regional level, the ACDP proposes having Metropolitan Development Authority Committees that will have jurisdiction over all the major Town Councils, the smaller councils having the option of resorting under the Metropolitan Development Authority should it choose to do so. The Rural Development Authority will have jurisdiction over all areas falling outside of the municipal boundaries of all towns resorting under the MDA.

In this way, the differing needs of Rural Development Authorities and Metropolitan Development Authorities can best be met.

The separation of the above allows representation by persons familiar with the specific problems relevant to the identified Regional or Metropolitan area..

Distribution of funds can be more specific and in terms of the budget needs of that RDA or MDA, they could be pinpointed with absolute clarity as to their essential need. Social statistics on which budget decisions are to be based will be much more relevant and determined by the people concerned. A larger population base can only address problems on a global basis and will not deal with the needs of individual communities. RDA and MDA's - being in closer touch with the community - will respond quicker to grievances. Control of funds will be a lot more efficient as the funds will be task specific and not subject to the wiles of politicians. RDA and MDA's will support smaller bureaucracies and control of the bureaucracy will be more efficient as they will be smaller and area bound. The cost of administration is in proportion to the distance from the source of control; by bringing the issue closer to home the cost of resolution can be reduced. When social needs are established, it will be less costly to address those needs from a central government point of view than a blanket budget allocation with non-specific directions. Measurements of poverty and affluence will enable social scientists to assess the social needs of a relatively homogenous population and meaningful comparisons can be made throughout the country for prioritisation of resource allocation. This will allow God's will of equitable treatment of all God's people to be equitably applied.

The ACDP further proposes using community-based organisations functioning on a non-profit basis, remunerated by the town councils having the dual advantage of being closer to the people, thus more accountable than big bureaucracies and rendering a cheaper service - while having a redistributive function, to take over local service provision.

The ACDP further proposes that local and regional government should be autonomous, with each district having its own governmental structures, suiting the particular requirements of that region. The ACDP proposes that the idea behind "the Eritrean experience" is one that might rightly be considered as being extremely well-suited to the South African circumstance. After a three decade old brutal war with Ethiopia the Eritreans had to start rebuilding their war-ravaged country.

Schmidt, writing in *Democracy in Action*, 15 April 1995, notes that the government, in an urgent and serious attempt to halt uncontrolled urbanisation, adopted a policy of radically restricting growth in urban areas.

No cities or major towns may be the building site of new factories and the rural areas are to be the future development centres.

Mentioning the fact that signs of development are everywhere, to be seen in the reconstruction of damaged buildings, the tarring of roads, the reparation of factories and the restoring of agricultural land, Schmidt makes the key observation that Eritrea has been very cautious of accepting foreign aid and that it has apparently very little if any foreign debt.

The ACDP echoes the wisdom of this thinking - building South African esteem from the bottom up, should be a result of the resolve and self-reliance of all South Africans and should not bring about our plunging into even deeper national debt. Dealing then with the aspect of financing at local government level, we support a fiscal system based on the equitable distribution of resources. While we have pointed out in some detail, the ridiculous nature of a taxation system that actually enslave citizens who end up having to work just to keep paying taxes and break even, as against the very small tax percentages that are actually needed if every South African takes up his or her familial responsibilities, thereby to a great extent erasing the need for welfare facilities and care centres for the aged as a starting point. The ACDP fully supports having an authority close to the people, constituentially accountable to raise taxes to be used for easily monitored specific tasks in the particular community, as against an umbrella-body central government who is remote and removed from the specific needs of the serviced community and less easily held accountable.

The Party favours having the local governments and regional governments be represented on the national body of representatives.

This representation should not be a mere "second house of sober thought" as with the British House of Lords, but must be a powerful fully functional and effective watchdog where the representatives can actually represent the interests of their particular constituencies in a system similar to the twin Houses in the USA

Being a country with a traditional leadership, that leadership functioning at a local level, the ACDP proposes having a system of traditional leaders at the local level, integretated with the regional and local leadership structures and remunerated and thus accountable to their people. Having a system with autonomous local and regional governments is conducive to a South Africa where the different cultures, languages and religions can come together as being one people while still recognising the heterogeneous nature and the rich cultural diversity of the families making up the South African subcontinent.

11 July 1995
[LOCAL.WPS]

ANC



AFRICAN NATIONAL CONGRESS

OFFICE OF THE SECRETARY GENERAL

SECRETARIAT, CONSTITUTIONAL COMMISSION
 PARLIAMENTARY OFFICE, V 251, PO BOX 15, CAPE TOWN
 TEL (021) 403-2839 FAX (021) 461-9461

LOCAL GOVERNMENT¹

CONSTITUTIONAL ASSEMBLY
 PROVISIONAL SUBMISSION TO THEME COMMITTEE 3
 PHASE 4

Final Draft 7

DISCUSSION

1. A framework for local government

In general the Interim Constitution resolves the balance between national, provincial and local government to the disadvantage of local government. It should be noted that Constitutional Principle XXIV requires that a *framework* should be set out in the final constitution for local government and that the comprehensive treatment of local government should be the subject of *parliamentary or provincial* legislation, or both. The ANC takes the position that local government is a matter of both national and provincial interest in view of the history of using local government as a tool of apartheid policy, and because it is the main point of delivery of the National Reconstruction and Development Program.

Framework legislation on local government should be enacted at national level, and not *asymmetrically* through separate legislation in different provinces. Provinces should be responsible for the implementation of local government, and the provincial management of local government. It should have power to make laws not inconsistent with the national framework so as to take into account provincial diversity or to adapt to regional circumstances. The framework should also *protect* local government by specifying its powers of self-administration²

2. The status of local government

The ANC has chosen for strong and efficient local government, operating under effective conditions of intergovernmental relations based on the notion of cooperative governance.

1 In this submission intended to include urban as well as rural local government.

2 Because of nation-wide underdevelopment of local government in some areas and their role in the national economy of South Africa and the RDP, the link between local government and the national level could be fleshed out by giving local government representation in the Senate in the form of a delegation of Senators.

A strong hierarchical status concept of local government, the concept of levels ranging from higher to lower, should not be the model applied in South Africa. The allocation of local government as a functional area in the present Schedule 6 creates the wrong impression that local government "falls under" provincial government. Local government is not a functional area in that sense, because it is not simply another functional area mentioned in Schedule 6. Local government can not, for example, as a matter of categorical status, be merely equated with a function like health or housing, because these are functions of government which local government also addresses.³

3. Selfadministration and democracy

It is suggested that the term *self-administration*⁴ be used in respect of local government.⁵ Self-administration duties could be divided into those where the local authority can decide *whether* and *how* to perform the duty, and those where the local authority can only decide *how* to carry out the duty.

The ANC favours a *right to local government*, in the sense of being constitutionally authorised to regulate and manage a substantial share of public affairs under their own responsibility within the framework of an appropriate intergovernmental system.

The ANC insists that local government should be democratically constituted, and function in accordance with democratic principles.⁶ Traditional leaders may and should participate in local government, subject to the principle of democratic and accountable local government. The provinces could determine the precise form that such participation should take.⁷

The ANC strongly favours that local government should endeavour, as far as practicable, to render services in a developmental and environmentally friendly manner. Local government should be structured to allow for the evolutionary role of local government to plan and develop its area. It should be a site of development, and not merely the site of delivery. Local government planning, development and demarcation should be consistent with the constitution.

4. Powers and duties

The final constitution should not exhaustively lists the powers and duties of local government councils. The most basic functions should be described in the constitution and the rest of the detail should be left to the comprehensive parliamentary legislation referred to above.

Local government authorities should have the following basic rights and duties:

-
- 3 As regards the status of local government in intergovernmental relations, consideration should be given to the establishment of national and provincial intergovernmental or cooperative councils for organised local government to foster sound cooperation and coordination. In this regard local government could possibly be represented through a national coordinating structure on the Financial and Fiscal Commission or its equivalent in the new constitution. The Financial and Fiscal Commission shall advise on an equitable amount that is to be allocated through national and provincial transfers to local government to enable them to carry out their functions.
 - 4 Which, while allowing local authorities to act on their own responsibility, leaves open the possibility of interaction with provincial and national government in matters which are, respectively, of provincial or national concern.
 - 5 Rather than *autonomy*, which could mean that interference with the exercise of local authorities' duties by superior authorities may be resisted: an absolutely free sphere of discretion for local authorities may then exist.
 - 6 In this connection the ANC confirms that participatory democracy and mechanisms to give effect thereto are vital to democracy in South Africa, and that civil society and its various organisations have a crucial role in democratising and transforming South Africa. The final constitution, supplemented where necessary by national legislation, should provide for the principles and appropriate/effective mechanisms of participatory democracy, as well as for organs of civil society.
 - 7 Principle VII states that the principle of democratic local government should not derogate from Principle XIII, which provides that the institution, status and role of traditional leaders shall be recognised. It is submitted that the role of traditional leaders is not threatened by democratic local government if they retain an advisory and cultural function in local government within their traditional areas.

- **Choice of organisation and personnel of the local government within the framework of national legislation.**
- **Financial authority:** the right to have its own revenue, determine expenditure and administer financial affairs.
- **Planning powers:** This could include the right to specify types of buildings and the permissible land use in a municipal area.
- **Provision of facilities:** This includes the establishment and operation of public institutions for the benefit of the population.
- **Mandatory functions:** Local authorities should also carry out functions mandated by provincial or national government, provided the necessary financial capacity is or is being made available.
- **By-laws:** Municipalities should have the right to issue by-laws.
- **Administrative decisions:** This is the right to make administrative decisions arising out of the enforcement or implementation of national, provincial and local government laws and by-laws.

These need to be set out in the final constitution.

PROPOSALS

1. General principles

- 1.1 Comprehensive provision for local Government, including its powers functions and structures shall be provided for in national legislation. The constitution should protect the necessary and essential features of local government, including the right to local government.
- 1.2 Local government is a specific level of government, and not merely a function of provincial government.
- 1.3 Democratically elected local government structures shall be:
 - 1.3.1 established in all areas within the boundaries of South Africa,
 - 1.3.2 transparent and based on participatory democracy, and
 - 1.3.3 demarcated on the principle of "one city/town, one tax basis,
- 1.4 Provincial governments will supervise, institute and manage local government in their provinces. They will also have the concurrent power to legislate on local government matters.

2. Structures

- 2.1 Local government shall make provision for the categories of metro, district, rural and urban structures, based on the objective conditions prevailing at the time.

2.2 Recognised traditional leaders/authorities, where they exist, shall form part of local government structures within their area and level of authority in an *ex officio* advisory capacity.

2.3 Local government shall where feasible promote the establishment of forums whereby community organisations can participate in local governance without compromising the powers and functions of elected local government.

3. Powers and functions

3.1 Local government shall be assigned powers and functions, including the power of self-administration, to provide services for the well-being of persons in its area of jurisdiction.

3.2 Local government shall have the power and function to make by-laws not inconsistent with the Constitution, an Act of Parliament or Provincial law.

3.3 Local government may have duties imposed on it by national or provincial laws.

4. Finance and administration

4.1 Local government shall ensure that its administration is based on sound principles of public administration, good governance and public accountability.

4.2 The competency of local government to raise levies, rates and fees and to establish tariffs as may be required to exercise its functions, including progressive tariffs and rates which shall apply uniformly to its area of jurisdiction, shall be regulated by national legislation.

5. Services

5.1 Local government shall be responsible for access by all persons in its area of jurisdiction to basic services like water, transportation facilities, electricity, primary health care, education, housing and security, where it is financially and physically practicable.

7. Elections

7.1 Every natural person shall be entitled to vote in local government elections if he/she is ordinarily resident within that area of jurisdiction.

7.2 No person shall be qualified to become or remain a member of a local government as a councillor if he/she is:

7.2.1 a member of the National Assembly or the Senate.,

7.2.2 a member of a provincial legislature,

7.2.3 an employee of that local government council, or is

7.2.3 not qualified to become a member of the National Assembly.

7.3 Local government elections shall take place every five years, but not in the year that national elections take place.

7.4 The electoral system for local government must be democratic. It may include both propor-

tional representation as well as ward representation, and shall be regulated by national legislation and/or regulations.

8. Code of conduct

- 8.1** All elected local government representatives shall be subject to an enforceable code of conduct which will be detailed in an Act of Parliament.

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DP



PARLEMENT
PARLIAMENT

☎ 4032911 ☎ 15. 8000 FAX 4610092 E-MAIL dpctn@mickey.iaccess.za

**Demokratiese Party
Democratic Party**

**Democratic Party Submission to
Theme Committee 3**

LOCAL GOVERNMENT

1. Fundamental Points of Departure

Local government constitutes a separate sphere of government

Constitutional Principle XVI stipulates that there shall be three levels of government. This should be understood as "spheres" rather than "tiers" of government: there is no pre-determined hierarchy. Local government is the level of government closest to the people, but this does not mean that it is subordinate or merely an adjunct to some other level of government.

Therefore, as with other levels of government, local government's accountability is to its electorate - not to provincial or national government.

For local government to have this autonomy, it is of paramount importance that local government be given the necessary executive and legislative powers and financial resources to execute their powers and functions successfully.

There are numerous benefits in keeping government close to the people - but these benefits will accrue only if local governments have access to guaranteed sources of revenue and the power to raise taxes, draw up budgets and make independent decisions within their spheres of authority.

A vision for local government has been expressed as follows:

Local government should be dynamic, autonomous, democratically elected and financially viable in order to facilitate development and deliver effective and efficient services which will ensure and improve the quality of life and the standard of living of the people it serves.

A direct consequence of the recognition of local government as a separate sphere of government is the need for the autonomy, powers and functions of local government to be adequately provided for in the Constitution.

2. Constitutional Principles

Many Constitutional Principles set out in Schedule 4 of the 1993 Constitution impact on local government. The essence of some of the more important are:

- VII: regular elections, universal adult suffrage, proportional representation
- IX: open and accountable administration
- XIV: participation of minority political parties in legislative process
- XVI: three levels of government
- XX: appropriate and adequate legislative and executive powers and functions to be able to function effectively; allocation of powers conducive to financial viability and effective public administration
- XXIV: framework for local government powers, functions and structures in Constitution; details in national and/or provincial legislation
- XXV: provision in Constitution for appropriate fiscal powers and functions
- XXVI: right to an equitable share of revenue collected nationally
- XXVII: a Financial and Fiscal Commission to recommend equitable fiscal and financial allocations

3. Agreed Principles and Elements

Theme Committee 3, in its report on Block 1, reported on certain agreed principles and elements of local government.

These are:

- local government elected on basis of universal suffrage
- constitution to empower active involvement of ordinary people
- there shall be transparency and accountability
- delivery of services is the prime responsibility of local government
- local government should have guaranteed, transparent, predictable and equitable sources of revenue
- re-iteration of Constitutional Principle XXIV

4. Issues Excluded from this submission

There are a number of issues which are or may be of considerable relevance to local government which are dealt with elsewhere in the 1993 Constitution or by other Theme Committees. These issues are only mentioned in passing or not at all in this submission.

Amongst these issues are administration of justice, some financial and fiscal arrangements, traditional authorities, volkstaat council and police.

5. **1993 Constitution: Local Government Chapter**

Besides the Constitutional Principles referred to above, the 1993 Constitution contains a chapter on Local Government (Chapter 10). To facilitate subsequent reporting, the sections of Chapter 10 will be dealt with sequentially.

6. **Section 174 (1)**

Amend to read: "Local governments shall be established to cover the entire national territory of the Republic for the residents of areas demarcated by the provincial legislatures."

7. **Section 174 (2)**

Amend to read: "A law referred to in subsection (1) may make provision for categories of local governments with differentiated powers, functions and structures."

8. **Section 174 (3)**

Amend to read: "Local government shall, subject to this Constitution, have the right to exercise its powers and regulate its affairs."

9. **New Sub-section**

Insert: "Local government shall have adequate and appropriate legislative and executive powers to allow it to govern effectively with regard to its powers and functions."

10. **Section 174 (4)**

Amend to read: "Parliament or a provincial legislative shall not encroach on or interfere with the powers, functions and structure of local government".

11. **Section 174 (5)**

Amend to read: "Proposed legislation which affects the boundaries of local governments shall not be introduced in a provincial legislature unless the local governments concerned have been consulted and thereafter the proposed legislation published for comment and interested persons given a reasonable opportunity to make written representations in regard thereto."

12. **Section 175 (1)**

Amend to read: "The powers, functions and structures of local government shall be determined in accordance with the provisions of this Constitution."

13. **Section 175 (2)**

Amend to read: "A local government shall be assigned such powers and functions as may be necessary to provide services for and to facilitate the development of the communities it governs".

14. **Section 175 (3)**

The powers and functions referred to in subsection (2) shall at least include matters set out in Schedule X, provided that such services and amenities can be rendered in a sustainable manner and are financially and physically practicable.

The Commission on Provincial Government should be restructured and become a Commission for Provincial and Local Government. Such a Commission could mediate and, where necessary, adjudicate disputes between a provincial legislature and a local government as to whether a particular local government has the capacity to assume or retain specific powers and functions.

Provincial legislatures may alter the power and functions of a local authority or local authorities but only with the agreement of the local authority concerned or of a representative local authority association in that province, as the case may be.

Schedule X, referred to above, would include:

Physical and land-use planning, parks and gardens, stormwater drainage, water and electricity supply, sanitation, licences and permits, local roads, local public transport, primary health care services, pre-school education, housing, libraries, traffic control, fire brigade services, shopping hours, ambulance services, sport and recreation facilities, public halls, markets and pounds, street cleaning, refuse disposal, local economic growth, promotion of integrated and sustainable development, animal and vermin control, public health, air and noise pollution, liquor licensing, civil protection, combatting of nuisances, cemeteries and crematoria, municipal police, beaches and amusement facilities.

15. **Section 175 (4)**

Amend to read: "A local government shall have the power to make by-laws which are reasonably necessary for or incidental to the effective exercise of its powers and functions and are not inconsistent with this Constitution."

16. **Section 175 (5)**

No change suggested.

17. **Section 175 (6)**

No change suggested.

18. **Section 176**

Delete from Constitution.

19. **Section 177**

Delete from Constitution.

20. **Section 178 (1)**

No change suggested.

21. **Section 178 (2)**

Amend to read: "A local government shall, subject to this Constitution, be competent to levy and recover such levies, fees, taxes, tariffs, user charges and property rates and transfer duties as may be necessary to exercise its powers and perform its functions: Provided that within each local government such revenues shall be based on a uniform structure for its area of jurisdiction."

22. **Section 178 (3)**

A local government shall be entitled to an equitable and specifically allocated portion of national and provincial revenue, and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations, taking into account the different categories of local government referred to in section 174 (2).

Local governments' financial resources shall be commensurate with the responsibilities provided for by the Constitution and the law. Therefore, should additional functions be allocated or devolved to local government, the financial resources must follow to ensure successful implementation of the functions ie the "money follows the function" principle must be honoured.

It should be noted, however, that the concept of financial viability in the context of local government should not be taken to mean financial self-sufficiency. A financially viable local government is one which has sufficient revenues from own sources and intergovernmental transfers and grants to carry out its functions. However, intergovernmental transfers do not give other spheres of government the right to dictate to local government.

Intergovernmental transfers should be regarded as an own source of revenue for local government and should not be dependent on annual lobbying and pleading. Transfers should be based on objective formulae, using transparent criteria, so that transfers are guaranteed and certain which allows long-term planning to take place.

The provision of transfers and grants should not remove the basic freedom of local governments to exercise policy discretion within their own jurisdictions.

There should be greater representation of local government on the Financial and Fiscal Commission.

23. **Section 179 (1)**

Delete the proviso and the words "not less than three and"

24. **Section 179 (2)**

No change suggested.

25. **Section 179 (3)**

No change suggested.

26. **Section 179 (4)**

No change suggested.

27. **Section 179 (5)**

In sub-section (b): Add "or provincial legislature"

Sub-section (d) to read: "is an employee of a local government."

28. **Section 180**

To read:

"An enforceable and justiciable code of conduct for members of local government shall be provided for by provincial law."

29. **Traditional Authorities**

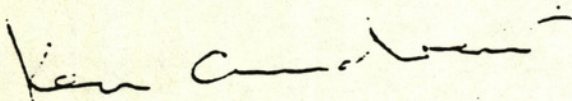
This submission is not dealing with traditional authorities as such. However, it is appropriate to make a few comments in the context of local government:

- (a) Traditional leaders should not have guaranteed ex officio membership of any elected government structure.
- (b) Traditional leaders should not be entitled to official remuneration for occupying two different positions in government.
- (c) Traditional leaders should not hold powers or functions at the expense of any people forfeiting their right to a democratic vote against their will.

30. Conclusion

Many of the ideas and words in this document have been taken from submissions made to the Constitutional Assembly directly or at workshops etc. They have deliberately not been individually identified or acknowledged to encourage all proposals to be evaluated on their merits, irrespective of the source.

Legal and "quasi-legal" terminology is frequently used for the sake of brevity and in an attempt to be precise. It is not suggested that those words and phrases are all necessarily the most suitable ones for a constitution.



Ken Andrew MP
13 June 1995

NP

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 3

LOCAL GOVERNMENT

A. INTRODUCTION

The National Party believes that sound local government is the cornerstone of a healthy and viable democratic system. Local government brings decision-making closer to the people and affords them better opportunities to become involved in government processes in respect of matters affecting their daily lives. In addition, strong local government that performs effectively and enjoys the support of the people can in many ways achieve more than other levels of government in the fight against crime, poverty and other social problems and in creating stable, peaceful and prosperous local communities. For these reasons we believe that local government deserves our closest attention in the constitution-making process.

B. POINTS OF DEPARTURE

1. Local government should be **recognised constitutionally as a fully-fledged level of government**. Not only will that give effect to Constitutional Principle XVI; it will lay the foundation for sound local government in South Africa.

2. In accordance with Constitutional Principle XXIV, a specific chapter of the constitution should provide for a **constitutional framework for local**

government. On the question whether to adopt a maximalist or a minimalist approach in such a framework, it is suggested that a middle course be followed.

3. With regard to the **relationship between local government and other levels of government**, in particular the question whether a hierarchical approach should be followed or whether we should aim at creating different spheres of government, we believe that local government should be subject to national and provincial legislation, but that does not mean that local government should be completely subservient to any higher level. Any legislative or other action by higher levels with regard to local government must be in terms of and subject to the framework for local government entrenched in the constitution. This is how the constitutional recognition of local government will be given practical effect and meaning.

4. With regard to the **autonomy** of local government, we fully support the fundamental premises expressed in the European Charter of Local Self Government, especially article 4.2, which reads: "Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority." This is the same approach that has been followed in section 174(3) of the transitional constitution.

5. With regard to the **actual powers and functions** of local government, the *ultra vires* approach was followed in the past, meaning that a fixed list of local government functions was determined outside the ambit of which local government could not go. On the other hand there is the "inherent powers" approach, which means that a local government can exercise all powers and perform all functions as its community agrees to and is willing to pay for, except if specifically prohibited by national or provincial legislation. We lean towards the latter approach, although we recommend (see paragraph 4.3) the inclusion in the constitution of a minimum list of

matters to which local government must attend. The idea is to entrust a local government with the responsibility to provide access for its community to a minimum number of basic services, without denying them the opportunity to perform any other function not prohibited by law.

6. There should be no restriction on either national or provincial government to **delegate or devolve** powers and functions to local government. However, the principle that finance follows function should be a prerequisite in such cases.

C. SPECIFIC CONSTITUTIONAL PROVISIONS

For the sake of convenience, we refer to the various provisions of the transitional constitution which we consider to be relevant in this regard.

1. Definition

The term "**competent authority**" as used in chapter 10 of the transitional constitution and in these proposals should be defined for the purposes of the final constitution in order to differentiate between legislation of Parliament and the provincial legislatures in respect of local government matters. (As suggested by the Commission on Provincial Government (document 9 paragraph 3.15), this could probably be done with reference to their respective powers in terms of the constitution.)

2. Section 158: Financial allocations by the national government

This provision should be retained unamended, so that financial allocations by the national government -

(a) to a provincial or local government, shall be made in terms of an appropriation act; and

(b) to a local government, shall ordinarily be made through the provincial government of the province in which the local government is situated.

3. Section 174: Establishment and status of local government

3.1 We propose the following provision. It corresponds with the proposals contained in the document *Local Government beyond 2000*, except for the underlined amendments:

"174. (1) Local government shall be established to cover the national territory of the Republic for residents of areas demarcated by law of the competent authority. The law of such a competent authority dealing with demarcation shall base its norms for demarcation on technical and developmental considerations rather than political expediency.

(2) A law referred to in subsection (1) may make provision for categories of local government with differentiated powers, functions and structures.

(3) A local government shall be autonomous and, within the limits prescribed by or under the law of a competent authority, shall have the right to exercise its powers to regulate its own affairs and shall have adequate and appropriate legislative, executive and financial powers to allow it to function effectively with regard to its entrusted powers and functions."

3.2 The present subsections 174(4) and (5) can be retained unamended:

"(4) Parliament or a provincial legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.

(5) Proposed legislation which materially affects the status, powers or functions of local governments or the boundaries of their jurisdictional areas, shall not be introduced in Parliament or a provincial legislature unless it has been published for comments in the Gazette or the Provincial Gazette, as the case may be, and local governments and interested persons, including organised local government, have been given a reasonable opportunity to make written representations in regard thereto."

4. Section 175: Powers and functions of local government

4.1 The present section 175(1) can be retained:

"175. (1) The powers, functions and structures of local government shall be determined by law of a competent authority."

4.2 In pursuance of the suggestion in *Local Government beyond 2000*, p 11, the following subsection 175(2) is proposed:

"175. (2) A local government shall be assigned such legislative, executive and financial powers and functions as may be necessary to provide services for and to promote the development of the communities that it governs."

4.3 The present subsection 175(3) should be retained but amended as indicated:

"175. (3) A local government shall, to the extent determined in any applicable law, make provision for access by all persons residing within its area of jurisdiction to at least water, sanitation, transportation facilities, electricity, primary health services, education, housing and security within a safe and healthy environment, provided that such services and amenities can be rendered in a sustainable manner and are financially and physically practical."

4.4 The present subsections 175(4) and (5) can be deleted if subsection (2) is amended as proposed.

4.5 The present subsection 175(6) should be retained as subsection 175(4):

"175. (4) A local government may, in its discretion, by means of a resolution of its council, provide for the assignment of specified functions to local bodies or sub-municipal entities within its area of jurisdiction as prescribed and regulated by or under law where, in the opinion of the council, such assignment of functions will facilitate or enhance the provision or administration of services, the adherence to municipal bye-laws or, more generally, good governance in the public interest: Provided that such assignment of functions -

(a) shall not be inconsistent with an Act of Parliament or an applicable provincial law; and

(b) shall not diminish the accountability of such local government."

5. Section 176: Council resolutions

The section should be retained as amended:

"176. Matters before the council of a local government pertaining to -

(a) the budget of the local government, shall be decided by a resolution of the council adopted by a majority of at least two-thirds of all its members; and

(b) land use planning, shall be decided by a resolution of the council adopted by at least a majority of all its members: Provided that a council may delegate the power to make decisions on matters pertaining to land use planning to the executive committee or to a committee or officials designated for this purpose: Provided further that section 177 shall apply *mutatis mutandis* to the appointment and functioning of a committee appointed for this purpose."

6. Executive committee(s)

The present section 177 should be retained as amended:

"177. A council of a local government shall elect, according to a system of proportional representation as may be prescribed by law, from among its members, an executive committee or committees to

exercise such powers and perform such functions as may be determined by such council: Provided that -

(a) the council shall determine the number of members of and the quorum for the executive committee or committees;

(b) all committees shall endeavour to exercise their powers and perform their functions on the basis of consensus among their members; and

(c) if consensus on any matter cannot be achieved, such matter may be decided by a committee by resolution of a majority of at least two-thirds of all its members, or the committee may, if a majority of the committee so decides, submit a report and recommendation (if any) on the matter to the council for a decision."

7. Section 178: Administration and finance

Again we follow the suggestions made in *Local Government beyond 2000*, p 15.

7.1 Subsections 178(1) and (2) can be retained unamended:

"178. (1) A local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.

(2) A local government shall, subject to such conditions as may be prescribed by law of a competent legislature after taking into consideration any recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its functions: Provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction."

7.2 In pursuance of a suggestion by the Commission on Provincial Government (p 10 of document 9), the following subsections should be substituted for the present subsection 178(3):

"178. (3) Subject to subsection (4), a local government shall be entitled to an equitable share of revenue collected nationally so as to ensure that it is able to provide basic services and exercise the powers and perform the functions allocated to it.

(4) The Financial and Fiscal Commission shall make recommendations regarding -

(a) the percentage of revenue collected nationally to be allocated to local government in each province; and

(b) the criteria for the allocation of an equitable portion of the percentage allocated to a province in terms of paragraph (a) to local government within the province, taking into account the different categories of local governments provided for in a law of the competent authority."

8. Section 179: Elections

The following provision suggested in *Local Government beyond 2000*, as amended, is proposed:

*179. (1) A local government shall be elected democratically, and such election shall take place in terms of an applicable law and at intervals of not less than three and not more than five years.

(2) Sixty percent of the elected members of a local government shall be elected according to a simple majority system on the basis that each member shall represent a ward and forty percent of the elected members shall be elected according to the system of proportional representation applicable to an election for members of the National Assembly.

(3) Subject to section 6, every natural person shall be entitled to vote in an election of a local government if he or she -

(a) is ordinarily resident within the area of jurisdiction of that local government or is under the law liable for the payment of property rates, rent, service charges or levies to that local government; and

(b) is registered as a voter on the voters' roll of that local government.

(4) Subject to subsection (2), a voter shall not have more than one vote per local government.

(5) No person shall be qualified to become or remain a member of a local government if he or she -

(a) is not eligible to vote in terms of subsection (3);

(b) is a member of the National Assembly or the Senate or a provincial legislature;

(c) is not qualified to become a member of the National Assembly;

(d) is an employee of a local government; or

(e) is disqualified in terms of any other law."

9. Section 180: Code of conduct

The provision prescribing the adoption of an enforceable code of conduct for members and officials of local government is commendable and should be retained.

10. Section 182: Indigenous leaders and local government

The participation of indigenous communities and leaders in local government has been dealt with in another submission.

11. Section 187: Procurement administration

We propose that this provision, which applies to all levels of government, be retained unamended.

12. Section 200: The Financial and Fiscal Commission

Although the Financial and Fiscal Commission is not in the first place a negotiating forum with regard to allocations to the various spheres of government, we believe that the representation of local government in the Commission should be strengthened. Accordingly, we propose the following provision dealing only with the composition of the Commission:

"200. (1) The Commission shall consist of -

(a) a chairperson and deputy chairperson, appointed by the President in consultation with the Cabinet;

(b) a person designated by each of the various Executive Councils of the provinces, who shall be appointed by the President;

(c) four members appointed by the President on the advice of the Cabinet; and

(d) three members designated by organised local government, at least one of whom shall have expertise in local government finance, who shall be appointed by the President."

13. Section 207: Commission on remuneration of representatives

This provision, which applies to all levels of government, is dealt with in another submission.

14. Section 212: Public administration

Although the *principles* pertaining to public administration should apply to local government, local government does not, in practice, fall under the provisions of the constitution with regard to the Public Service. It is suggested that local government should only be regarded as part of the Public Service as an institution to which the relevant principles apply, and not in terms of its structure and function.

15. Section 221: Local policing

The existing provision can be retained unamended as far as local government is concerned.

D. NEW PROVISIONS

1. A Local Government Commission

In pursuance of the suggestion in *Local Government beyond 2000*, p 29, we propose the establishment of a Local Government Commission as follows. (Our amendments to that suggestion are underlined.):

"(1) There is hereby established a Local Government Commission for the Republic which shall have the powers and functions entrusted to it by this Constitution or by law of Parliament.

(2) The Commission shall consist of a chairperson and the number of members determined and appointed by the President: Provided that at least sixty percent of the members of the Commission shall be appointed from nominations made by organised local government in a manner which shall ensure equitable representation of local

government in each province as well as minority groupings within local government.

(3) The object of the Commission shall be to be the guardian of local government and to facilitate the establishment, development, maintenance and recognition of local government, for the achievement of which the Commission shall be competent to -

(a) advise Parliament with regard to all legislation affecting local government;

(b) advise the national government with regard to policies regarding local government systems, processes, institutions, powers and functions;

(c) initiate any law or policy referred to in paragraphs (a) or (b); and

(d) initiate and conduct research with regard to any law or policy referred to in paragraphs (a), (b) or (c).

(4) No draft legislation affecting the status, powers or functions of local government shall be tabled in Parliament unless the Commission has had reasonable opportunity to consider such draft legislation and has made its report and findings thereon available."

2. Provincial Intergovernmental Forums for Local Government

We propose that such forums be established as suggested in *Local Government beyond 2000*, p 30, in order to protect the autonomy of local

government, and to ensure that adequate consultation between local and provincial legislatures and executives takes place before legislation and policies affecting local government are adopted:

"A provincial law shall provide for the establishment of a provincial intergovernmental forum for local government consisting of the member of the executive council responsible for local government in that province, not more than four members of the provincial legislature concerned elected by such legislature, and an equal number of members of local governments in the province nominated by organised local government in that province: Provided that the representatives of organised local government equitably reflect the various interest groups elected as councillors."

3. Borrowing powers

We support the observations made by the Commission on Provincial Government (paragraph 3.12 of document 9) in this regard. The borrowing powers of local governments are not dealt with explicitly in the transitional constitution. However, section 188 implicitly recognises such a competency, but prohibits the national government to guarantee a local government loan unless it complies with norms and conditions set out in a law of Parliament, and unless the Financial and Fiscal Commission has made a recommendation concerning compliance with such norms and conditions. Section 175(3) also prohibits a provincial government to guarantee a local government loan unless the need for the guarantee has been verified and recommended by the Financial and Fiscal Commission. We recommend that similar express provisions be included in the constitution.

4. Auditing

Once again, the remarks by the Commission on Provincial Government (paragraph 3.14) pertains. Section 193(2) of the transitional constitution empowers the Auditor-General to audit and report on all the accounts and financial statements of any local government. It has been suggested that local governments should arrange for the auditing of their own accounts. However, we agree that an independent body is needed to protect the interests of the taxpayers at all levels of government. Furthermore, as local governments will receive a portion of revenue collected nationally and may also receive other grants or allocations from national or provincial government, it is advisable that the Auditor-General shall do the auditing at all levels of government. We recommend that the provisions of section 193(2) be incorporated in the constitution in respect of local government as well.

5. Local governance

We believe that, although local governments has the primary responsibility to ensure their sound administration (see section 178(1)), higher levels of government, which have a certain measure of legislative and executive authority over local government, share that responsibility. At the same time, however, administrative supervision by higher levels of government should not amount to control as practised in the past and should not encroach on the affairs of local governments. Accordingly, we recommend the inclusion of the following provision, which corresponds to article 8 of the European Charter of Local Self Government:

"(1) Any administrative supervision of local governments may be exercised only according to such procedures and in such cases as are provided for by the constitution or another law.

(2) Any administrative supervision of the activities of local governments shall normally be directed only at ensuring compliance with the law and with constitutional principles. Administrative supervision may, however, be exercised with regard to expediency in respect of tasks the execution of which has been delegated to local governments.

(3) Administrative supervision of local governments shall be exercised in such a way as to ensure that the intervention is kept in proportion to the importance of the interests which it is intended to protect."

6. Co-operation among local governments

Article 10 of the European Charter of Local Self Government contains a provision in this regard and we propose that a similar provision be included:

"(1) Local governments shall be entitled, in exercising their powers and functions, to co-operate and, within the framework of the law, to form joint bodies with other local governments in order to carry out tasks of mutual interest.

(2) Local governments' competence to form and belong to associations for the protection and promotion of their mutual interests and to belong to international associations of local governments shall be recognised.

(3) Local governments shall be entitled, under such conditions as may be provided for by law, to co-operate with local governments in other countries."

7. Legal protection of local self government

The following provision of the European Charter of Local Self Government (article 11) should also be included:

"Local governments shall have the right of recourse to a judicial remedy in order to secure the free exercise of their powers and respect for such principles of local self government as are enshrined in the constitution or any other law."

E. CONCLUSION

As explained, we believe that ensuring strong local government will be in the best interests of South Africa and all its people. We believe that a chapter of the constitution that contains provisions as proposed in this submission will give due recognition to the importance of local government in our constitutional system, and will facilitate the establishment and protect the existence of strong local government. We should do everything in our power to work together in its implementation.

PAC



PAN AFRICANIST CONGRESS (P.A.C.)
OF AZANIA
PARLIAMENTARY OFFICE

Marks Building
Rooms 560/1/2
Parliament

Phone: 403-3524/5

Fax. 461-9596

REF:

YOUR REF:

8 JUNE 1995

Preliminary submission

LOCAL GOVERNMENT

The PAC does recognise the centrality of the Constitutional Principle XVI that :

"Government shall be structured at national, provincial and local levels"

The PAC understands Local government to mean that :

It is a Democratic Local Government that is part of the government of a state comprising of democratically elected representatives of the enfranchised residents of a defined geographical area within that state, who, as a legal entity separate of its individual members, is vested with prescribed governmental authority which it may exercise relatively independent from state control.

It follows from the above that the following must be the minimum guiding principles of these local governments, that they :

1. will first and fore most be accountable to the people it serves
2. will be accessible
3. will promote a participative and inclusive approach in all decision that are to be taken
4. will redress imbalances of the past and improve conditions of the previously neglected communities with special attention to the rural communities

5. will be effective and efficient local administration and government
6. will provide affordable and sustainable service delivery with the utilisation of local expertise where possible
7. be represented in the proposed Local Government Commission that would deal with relation with other levels of government

The PAC thus submits that the Local government must be autonomous democratically elected and financially viable in order to facilitate development and deliver effective and efficient services which will ensure and uplift the quality of life and the standard of living of the people it governs.

It needs to be emphasized that the delivery of services to and facilitation of development of the communities becomes the essence of these Local Governments.

Relationship of the Local Government with other levels of Government

The need to understand the form of state becomes more relevant when one has to deal with with the question of relationship(s) between the three tiers of Government, especially during this period of **Reconstruction And Developments** wherein state institutions should be utilised to further enhance that goal (of the RDP and to further address the backlog of apartheid). On this basis, there is thus a need for control to be exercised over the Provincial and Local Governments and other like institutions to ensure that the grand policy is being applied. The PAC's preliminary submissions are based on this irrefutable fact.

The PAC acknowledges the limits imposed on it by the Interim Constitution in the form of Constitutional Principles but would nevertheless make the following submissions:

that there should be a strong Central Government and the other two tiers of governments becoming mere administrative institutions. That the relationship(s) between the three levels of government will be dealt with in the various Commissions, the Commission on Provincial Government, the Commission Local Government and the Fiscal and Financial Commission respectively.

The PAC strongly contends that the question of Traditional Leaders needs equally a strong concern. Whether one should accommodate them in the Local Government structure, what role they should play in that scenario -- these are issues to which consensus is needed.

The PAC submits that the Constitution should only contain a framework of Local Government powers, functions and structures. The detail should be dealt with in the National Legislation wherein the opinions of the various Commissions would have been solicited.

Ms Patricia De Lille (MP) PAC