

8 November 1993

In bilateral discussions between the SA Government and the African National Congress the following document on the Public Service was formulated for submission to the Technical Committee on Constitutional Issues. This is a preliminary draft and both parties may propose modifications in due course

A222

CONSTITUTIONAL PRINCIPLES REGARDING PUBLIC SERVICE

[222]

1. There shall be a public service which shall -
 - (a) be non-partisan, career-orientated and based on equitable principles;
 - (b) be obliged to promote a broadly representative and efficient public service;
 - (c) serve all members of the public in an unbiased and impartial manner;
 - (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service; and
 - (e) loyally support the government of the day in the execution of its governmental functions.
2. Every member of the public service shall be entitled to a fair pension.
3. Notes: (1) It is proposed that constitutional principle 25 on labour rights be amplified with the inclusion of the principle of protection against unfair labour practises.

- (2) It is further proposed that an urgent meeting be convened with the relevant employee organisations in the public service.

INTERIM CONSTITUTION: THE PUBLIC SERVICE

PUBLIC SERVICE COMMISSION

180. There shall be a Public Service Commission for the Republic which shall have the powers, functions and duties provided for by this Constitution and by law, and it shall be accountable to Parliament through the President.
181. (1) The Commission shall have the power to -
- (a) make recommendations, give directions and conduct inquiries regarding -
 - (i) the organisation and administration of departments and the public service;
 - (ii) the conditions of service of members of the public service and matters related thereto;
 - (iii) personnel practices in the public service, career incidents of members of the public service and matters connected with the employment of personnel;
 - (iv) the promotion of efficiency and effectiveness in departments and the public service; and
 - (v) a code of conduct applicable to members of the public service;

- (b) advise the President, a Minister or a political office bearer in regard to any matter relating to the public service or to any institution or body which receives funds wholly or partly appropriated by the national or SPR legislature;
 - (c) exercise such other powers, perform such other functions and carry out such other duties entrusted to it by any law; and
 - (d) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law.
- (2) Until amended by law, the powers of the Commission set out in subsection (1) will be subject to existing statutory limitations.
- (3) A recommendation or direction of the Commission shall be implemented within 6 months from the date it has been made unless:
- (a) the President rejects and refers such a recommendation or direction back to the Commission before implementation thereof; and
 - (b) such recommendation or direction involves expenditure from public funds and approval from the treasury has not been obtained.

- (4) The Commission shall have such powers, personnel and other resources that are reasonably necessary to perform its functions and carry out its duties.
 - (5) On recommendation of the Commission the President may assign any power, function or duty of the Commission to an SPR service commission.
 - (6) The Commission shall annually frame a report on matters which have been dealt with by the Commission and transmit it to the President who shall place it before Parliament.
182. (1) (a) The Commission shall consist of no fewer than three members and no more than five members appointed by the President, one of whom shall be designated as chairperson by the President.
- (b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently and no Act of Parliament or the executive shall amend the conditions of service in terms of which a Commissioner was appointed in a manner which may adversely impact upon the impartiality and independence of, or unfairly discriminate against, the Commission.
- (c) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his functions.

- (d) A member of the Commission may be removed from office by the President on account of ~~misconduct~~ or ~~unfitness~~ for his or her duties or incapacity to carry them out efficiently or if, for reasons other than his or her ~~unfitness~~ or incapacity his or her removal from office will promote efficiency, and the removal and the reasons therefor shall be communicated by the President by message to Parliament within 14 days after such removal or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
- (2) A person shall be qualified to be appointed to the Commission if he or she -
- (a) is a South African citizen; and
 - (b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.
- (3) The composition, appointment, tenure, vacation of office, conditions of service and functioning of the Commission shall be as determined by Act of Parliament, and shall be such as to ensure the independence and impartiality of the Commission and the efficient and effective exercise of its powers, performance of its functions and carrying out of its duties.

THE PUBLIC SERVICE

183. (1) There shall be a public service for the Republic, consisting of employees employed to perform the functions assigned to departments of the state.
- (2) Such public service shall -
- (a) be non-partisan, career-orientated and based on equitable principles;
 - (b) be obliged to promote a broadly representative and efficient public service;
 - (c) serve all members of the public in an unbiased and impartial manner;
 - (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service;
 - (e) loyally support the government of the day in the execution of its governmental functions; and
 - (f) be organised in departments and other organizational components and the head of such department or organizational component shall be responsible for the efficient management and administration of his department or organizational component.

- (3) Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law for employment in such service.
- (4) In the making of any appointment or the filling of any post in ~~(a) the~~ public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.
- (5) Nothing in this Constitution shall preclude measures to promote the objectives set out in subsection (2).
- (6) Provision shall be made for a pension for a member of the public service by means of a pension fund(s) by law and members of the public service who are required by law to be members of a pension fund shall be entitled to fair representation on the body which manages the applicable pension fund(s).
- (7)
 - (a) In the event of changes to the law governing pension funds, the real value of the accrued benefits of a member of a fund and his or her beneficiaries, as represented by his or her actuarial liability, shall be maintained.
 - (b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.

- (8) Notes: (1) It is proposed that section 27 on labour rights be amplified with the inclusion of the principle of protection against unfair labour practises.
- (2) It is further proposed that an urgent meeting be convened with the relevant employee organisations in the public service.

SPR SERVICE COMMISSIONS

- 184 (1) A SPR legislature may provide by law for an SPR service commission and, subject to the national norms and standards, such Commission shall, in respect of public servants employed by the SPR, have -
- (a) the power to make recommendations, give directions and conduct inquiries -
- (i) pertaining to the establishment and organisation of departments of the SPR;
- (ii) relating to career incidents of such public servants; and
- (iii) regarding the promotion of efficiency and effectiveness in departments of the SPR;

- (b) the power to -
- (i) advise the Premier or a political office bearer in regard to any matter relating to the public service or to any institution or body which receives funds wholly or partly appropriated by the SPR legislature; and
 - (ii) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law; and
- (c) such other powers, functions and duties of the Public Service Commission assigned to it by the President with the approval of the Premier of the SPR.
- (2) The measures contained in sections 181(2),(3) and (4), and 182(1)(a), (b), (c) and (d), (2), and (3) pertaining to the Public Service Commission shall *mutatis mutandis*, apply to the SPR service commissions established by SPR legislation, save that any reference to an act of Parliament, Parliament or to the President shall be deemed to be a reference to an SPR act, SPR legislature or the Premier of the SPR respectively.

TRANSITIONAL ARRANGEMENTS

185. (1) The public service as regulated by legislation at the time of the commencement of this Constitution, shall continue to exist subject to

changes made thereto by or in accordance with law.

- (2) (a) Any person employed in a public service immediately before the commencement of the Constitution shall remain in employment subject to the provisions of this Constitution and the laws governing employment in the public service.
- (b) Subject to the provisions of subsection (6), the terms and conditions of service of any person employed in a public service immediately before the commencement of the Constitution, shall continue to apply to him or her, until amended by or under any law including a law enacted in order to establish uniformity of conditions of service in accordance with those generally prevailing at the commencement of this Constitution.
- (3) The persons who immediately before the commencement of the Constitution occupied the positions of chairperson, member or members of the Commission for Administration, shall continue to hold their respective positions under their current terms of employment, subject to the provisions of any law regulating their discharge or vacation of office or redetermination of their terms of office.
(To be revisited by the ANC.)
- (4) Notwithstanding the provisions of this section, the conclusion or amendment of contracts, the appointment, promotion, the award of

terms and conditions of service and other benefits occurring between 27 April 1993 and 30 September 1994 in respect of any person or class of persons employed by a public service or public service institution referred to in this Constitution may, within one year of the coming into operation of this Constitution, be reviewed by a judicial Commission and if not proper or justifiable in the circumstances, the judicial commission may reverse or alter the contract, appointment, promotion, terms and conditions of service and award of benefits.

- (5) Subject to section 119, section 185(3) shall apply to the persons who, immediately before the commencement of the Constitution, occupied the positions of chairperson and member of the public service commissions of Transkei, Bophuthatswana, Venda, Ciskei, if reincorporated, or a Self-governing Territory.

(To be revisited by the ANC.)

- (6) Subject to section 185(4) and any law relating to unfitness or incapacity to carry out duties efficiently or improper or unauthorised award of terms and conditions of service, the pensionable salary or pensionable salary scale of a member of any public service shall not be reduced below that applicable to such member as at the commencement of the Constitution.

- (7) (a) In order to give effect to section 119, provision shall be made by law for the establishment of an expeditious procedure before the Labour Appeal Court to hear and adjudicate all claims arising and determine all disputes out of the application of section 119 provided that the laws regulating employment in the

public service as at 1 November 1993 shall apply.

(b) Notwithstanding the provisions of any law, the procedures contained in the sub-section (a) shall be the exclusive procedures and the decision of the Labour Appeal Court shall be final and binding.

(c) The provisions of this sub-section shall lapse one year after the commencement of this constitution.

(Subject to confirmation by the RSA Government.)

186. Provision shall be made by law for the payment of pensions from the exchequer for such persons, and dependants of such persons, who have not served in any public service, prior to the commencement of this Constitution, but who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order and who qualify for such pensions in terms of the relevant law.

(Subject to further consideration by the RSA Government.)

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