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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

**COMMISSION ON PROVINCIAL
GOVERNMENT**

**INPUT BY
THOZAMILE BOTHA**

25 January 1995

Draft

COMMISSION ON LOCAL GOVERNMENT

This draft copy as far as possible reflects Mr Botha's words.

I wish to thank the members of this Theme Committee for allowing me this short intervention on the work of the Commission. We have been looking forward to this opportunity because we feel that there are a number of overlaps between the work we do and the work that the Theme Committees, especially this Theme Committee, is doing.

We have been interacting with the Management Committee. We have had some meetings with the Chairperson and Deputy Chairperson of the Constitutional Assembly to discuss the structure of our work and how we are going to interact with the CA.

First of all I think that is import to briefly explain what the Commission is all about and what it does. The work of the Commission is in two parts.

One deals with the transitional arrangements assisting to set up the Administrations of the nine Provinces. It deals with the setting up of structures, division of assets, rationalisation of legislation and personnel, and where the needs arises it deals with the division of resources both human and financial between National and Provincial.

Perhaps the one level of the work of the Commission on the Constitutional side it is responsible for the drafting of a Constitutional text on the Provincial dispensations. It is expected that it would submit that text to the CA after it has been commented upon by the Provincial Governments. It is important to note that the Provincial Governments are not defined narrowly only to mean the executives of the Provinces. It is defined in its broad sense to include the legislatures.

We have had a number of discussions with the Provinces and with the Speakers. We attended a meeting of the Speakers late last year in Bishu where all the Speakers of the Provincial Legislatures were discussing how they are going to be involved themselves in the discussion of the Constitution among other things. It became clear there is no structured way in which the Provinces are going to deal with the Constitution. Some Provinces have established the Committees within their Legislatures dealing with the Constitution. But not all Provinces have got those committees.

The question that we are faced with is that if we are to make our submissions for comment to those committees that do not represent the Government in terms of the way in which the Constitution is structured. So we have to ask the Provinces to explain to us how they are going to giver comments which would carry the mandate of the Constitution, namely that these would be regarded as comments coming from the Governments of the Provinces.

It became clear that there were no structures and the Provinces themselves were not clear. A suggestion that we put forward, although we have not put it forward formally to all the Provinces, but to some of the Speakers, was that they should follow the methods that are followed by the CA. That is transform themselves as

a Legislature into a Constitution discussion body when they are dealing with Constitutional matters. After all many of the Legislatures are not big bodies. They can form themselves into Committees if they want to divide themselves. But when they want to discuss broadly they can discuss this in the larger body of 80 or less than that in some of the Legislatures. That seems to be generally accepted at least from those Speakers I have spoken to. But that is not yet formalised. We were hoping that from the side of the CA the same sort of message would be communicated to the Provinces so that there is one structure that we would all use. When we receive inputs we would know that those inputs would be coming from that body and when we make our submissions we would refer those submissions to that body.

Presently we are busy developing a document that we are going to send out. At the beginning we were uncertain about how to set the process in motion. Whether we should start by inviting submissions from the Provinces or whether we should draft a document to guide the discussion so that the submissions are following the format of the document that we have drafted. We realise that if we just ask for general submissions we will end up with a lot of submissions and it will be very difficult to know where we begin or act. We therefore followed the latter route namely that we would draw up a framework document which is going to stick fairly closely to the Constitutional Principles.

What we have then done is look at the issues. We started by defining issues as contentious and non-contentious. We later decided to remove contentious and non-contentious and just put issues. But we have told ourselves in our minds that are certain issues which are contentious. That guided us in selecting the issues. We have listed a number of issues in this document and in listing those issues we state what the Constitutional Principal says around those, just in summary form and then pose a number of questions which would lead us to develop, or those who are discussing that document to come up with possible options.

For example, in the Senate there are all sorts of issues that are arising about the structure of the Senate, how it relates to the Provinces, how it is elected, who does it represent and so forth. It posed questions such as 'Should a Senate represent the Executive of the Province or the Provincial Legislature or should it represent the constituencies?' And then people would discuss that along those line so that they would then give some indication of what they opting for or what they favour.

Same thing with the Executives. We posed questions such as 'There are different types of Executives - which type of Executive in the Provinces are we going to be going for?'

I am just giving these as illustrations of the way in which we are going about the first draft of the document. Then we are hoping that we would get inputs from the Provinces. That document is also going to be released beyond the Provinces. Anybody who wants to comment on it and submit will submit including the Theme Committees.

What we had done before that, we had invited through the Government Gazettes of all the Provinces, comments and submissions. We have received some

submissions but the response was not overwhelming. Some of the responses has nothing to do with the Constitution - they were dealing with the transitional issues. We have been going through the submissions and selecting what is Constitutional and what is administrative.

Once we have received those submissions we are going to start drafting what we refer to as a 'lay persons draft' - again not in the form of a strictly Constitutional text. We will try to draft a document which will be fairly close to what we will end up with, again in an unfinished manner, and then release that and especially discuss that with the Provinces. We will have in between a number of Think-tanks and workshops. I think we have given a document to the Secretariat to circulate to the members of the Committee so as to look at our timeframes and how we are going to go about doing our job.

We have a Core Group which you can think of as our Technical Committee which involves political scientists, economists, lawyers and so forth. The group consists of 12-15 people, not more than that. This group is brainstorming some of these inputs and processing the documents as they come in. But I must emphasise the point that we are not simply receiving the document and just grouping items - we have to submit a text to the CA as the Constitution requires.

The way we have gone about it is that we don't want to be prescriptive. We will develop a minimum of three options on each topic. We would obviously argue for one of those options and state reasons why we favour such an option. As we receive submissions from the different Provinces and other players we are hoping to exchange that information with this TC and other TC's that overlap. So that what happens here is also informing what we are doing in our Commission and vice versa. Our intention is that we should exchange information. As we draft we would have rough sketchers of the areas - if its a Senate we would submit to you the rough draft of the document that we are busy working on so that you could look at it and you may want to incorporate it into your own submission.

We would like to get some of those documents that your are receiving in terms of information, or submissions so that we can take on board some of the options that are emerging.

That is the approach that we would like to follow. The only problem that we are faced with at the moment is that your time-frames are much tighter than ours. Or should I say the time-frames of the CA do not give us sufficient time to actually go through the discussion process with the Provinces. Therefor if we have to make submission to the TC by June we would not have had the time to go through thorough discussions which would enable us to have a Constitutional text for submission to the CA.

We then prepared ourselves to make our first rough draft submission which is close to what we would submit by August. So we go beyond the time you have, because we have to draft not just collate information and process the data. That presents us with a problem in that in August if the CA wants to release a draft it may have to append to that draft our draft submission as well. We have not yet discussed whether at that time we would have had enough time to incorporate it

into the main text, whether our submission would go as an appendix.

That in a nutshell is the way we are going about our work

QUESTIONS

Mr Smith You mentioned that the CPG would provide three possible options and then you would make a possible recommendation on the one allowing the other two, as options, to be perused. Does that refer simply to the draft report or to the text itself? In other words, will there be three versions of the Constitutional text with your recommendation or just three versions in layman's language plus one text?

Mr Botha In fact the last point you are making is the intention. We would not do a detailed text on all three options. The other two would be written in a lay-persons language. We would write only the one that we opt for in the legal sense.

Dr Rabinowitz I would like to know what basis the 15 members of the Core Group were selected?

Mr Botha What we did was to look around and ask some organisations to give us names of people - we did it randomly, let me put it that way. There was no systematic way of doing it. We drew in people whom we know and of course in so doing although you will know the sensitivity of the work we are supposed to be not above what is above being discussed by parties, but yet be much more objective and not be influenced by the trends of the political parties. In selecting people we also tried to get experts, academics, and what have you who are also belonging broadly speaking to a variety of schools of thought. I don't want to say they are aligned to political parties but we have taken that on board in drawing people.

Mr Smith The issue of preparing a text for submission to the CA after it has been commented on by the Provinces - when you say after comment by the Provinces, does this amount to *in consultation with* or *after consultation with*, or are you entirely autonomous in terms of whether you choose to accept what the Provinces suggest as proposals? Is there any obligation to take on board what the Provinces put forward if they do so for example collectively?

Mr Botha The Constitution doesn't use the word 'after' or 'in' consultation with in respect to this. I am not sure of the exact formulation. However it amounts to that whatever submission that we make must take on board the submissions of the Provinces. But obviously as you know how complex this issue is, it is very difficult if at the end of the day we have got to

submit an independent, technically objective submission to the CA, we will have to take those on board at the end of the day we have got to present something that we can defend. So what will do in taking on board these we will accommodate some of these into these options and we will argue why we think a particular option is not workable. So that at the end of the day we are going to present a viewpoint that comes from the Commission which will have taken on board. Obviously if there are 5,6 or 7 different options we won't take all them.

Dr Rabinowitz

Coming back to what Mr Gordan said before Mr Botha started to speak I mentioned that we should use a framework which would be based on the one that we have already used for our submissions in reports. I am suggesting that we should have some consistency between our framework and your framework and the framework the Secretariat uses to stipulate the submissions that come from the public. As Mr Botha says it is going to be a very complex and confusing procedure if we want to integrate all our inputs. As I say I don't know if this is the final one but I am suggesting we use the same framework. I am interest to know what framework would they need for the drafting of their submissions of the issues.

Mr Botha

The framework that our administrative staff and the Secretariat (CA) have been looking at are very close to each other. There is no major disparity. The topics and the sequence are fairly close - there may be slight differences in terms of the order of things. Our list may not be exhaustive. We have said that if there are new issues which come up these will be added and we can reorder the document as we draft it later on.

Ms de Lille

I think we need to look at Mr Gordon's proposal as how are we going to organise ourselves now that we have had the overview from Mr Botha. I am not sure whether we are going to do that in this TC because what we have to keep in mind also is the recommendation by the MC that the first block as recommended by them must be followed. Thereafter we can start changing our programme but this and next week we have to complete what is recommended. How do we deal with Mr Gordons proposal? Are we going to refer that to the CG to come up with a proposal and bring it back to the TC or are we going to discuss it now?

Mr Smith

I am not sure as your question refers to two things - organising our work and secondly organising our work in terms of the CPG. It seems that if their text will only be submitted in August at the earliest, the only way I can think that we could liaise in the interim in a constructive fashion would be if we were aware of for example of the initial draft that is going out to the Provinces concerning the issues. Perhaps if we were a

little more aware of the process from now until August it would help us to see to what extent there is an overlap that could allow us to structure things to fit it. It seems that if we have one report and then the Provinces are getting together and having a series of meetings month after month until we end up with these options I don't know how we get involved in that process or how we structure ourselves to fit it. Maybe there isn't a necessity to do so. We might have to accept at the end of the day that there is two parallel processes and we simply feed each other information out apposed to structuring work together.

Ms de Lille

We will receive and collate submissions. The actual debate will take place in the CC and they are expected to deliver a Constitutional text by August. As the TC we are the group that must link up and work closer with the Commission because we are not going to present the final draft.

Mbasa

The TC and the CPG are both receiving submissions - is there a way that we could have access to the CPG's submissions?

Mr Botha

The intention of the co-operation with the TC is precisely to exchange information. There may be reports or submissions that we will receive that you may not receive, or papers as referred to by Mr Gordan as other documents. It may be that we interact with other bodies, international experts and so forth. We are also commissioning people to write papers on specific themes to give us an international perspective on certain issues. We will exchange those documents with yourselves and we would expect the same from your side. But also if you go and hear evidence from the other Provinces, especially if we are dealing with the Government, we may be able to co-ordinate that. Especially with regard to the first block which appears to follow very closely ours.

Secondly although we are saying we would have a fairly complete text by August, in the interim we will start drafting section by section which follow those blocks. Therefore we would want to interact with yourselves so that what you collate might also take on board some of the preliminary ideas that are emerging from the documents that we are getting. We will have section by section in a lay persons draft, not the final text. We will revisit whatever we have to to agree here to do that. We will be refining the draft beyond June.

Dr Rabinowitz

I suggest that if we think the CPG has an important role to play, and they are at the very heart of the issue we are grappling with, and to ask them to do work that cannot relate to relate to ourselves because we have a time issue and a process issue and more important a substantive issue - it is

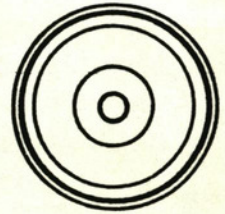
defeatist and counter-productive. Therefore I would to say at the outset that we organise parallel time schedule and if necessary move our date from June to August and move forward constructively.

Mr Gordhan

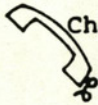
I think that we must be careful conflate the TC with the CA as a whole. The principle relationship with the CPG is with the CA not with the TC. The discussions that we are having are not limited to the TC itself. Very soon some of these issues as the first reports appear from the TC's in respect of the blocks, the debates will take place in the CC and then in the CA as well. By next week we will have received the document that Mr Botha speaks about that sets out their timeframes. I think we would be more interested in understanding the substantive issues that the CPG is looking at rather than the process issues that we have talked about. The sooner we have access to for example one of the topics on which they have commissioned papers. Are any available now? We could then work out what our relationship would be as a TC.

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9 January 1995

Attention Theme Committee III

The Secretariat
 Constitutional Assembly
 P O Box 15
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Dear Sirs,

INVITATION FOR SUBMISSIONS

The Johannesburg Metropolitan Action Group (JOMAG) was formed over 15 years ago with the object of obtaining direct public participation in planning process and related matters affecting the Johannesburg metropolitan area. Its members are over 50 ratepayers' and residents' associations.

JOMAG has served on many committees, study and work groups dealing with diverse matters concerning land use and transportation and is represented on the National Transport Policy Forum and the National Housing Forum. JOMAG had observer status on the Central Witwatersrand Metropolitan Chamber and was very active in several of its groups. JOMAG members currently serve as councillors in the Greater Johannesburg Transitional Metropolitan Council and its Substructures.

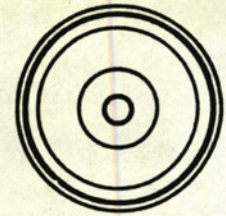
In our close engagement with local government affairs, particularly in the transitional period, we have observed a proliferation of costs, confusion and power struggles which will inevitably be carried over into the envisaged metropolitan tier of local government. This tier will interrupt communication between Regional Government and local authorities.

We believe that perpetuating this tier in the future local government elections is non-productive, conflict-creating and wasteful of funds which should be used on the ground. JOMAG is therefore submitting to Theme Committee III our proposals entitled "Integrity of Local Government".

Our submission is intended to be constructive. We should welcome the opportunity to meet with Theme Committee III for discussion.

A C Palmer (Chairman)

Johannesburg Metropolitan Action Group
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Submission to the Constitutional Assembly

INTEGRITY OF LOCAL GOVERNMENT

1. The gist of this submission is that the traditional role of local government in South Africa should be strengthened as opposed to the current trend in major conurbations to weaken it through the imposition of a new tier or quasi-tier of government, namely metropolitan government.
2. There can be no more efficient governmental instrument to maintain and develop environments which are experienced on the day-to-day level by citizens than elected councils whose members are directly answerable to neighbourhood constituents. Any local government system which obscures such answerability will inevitably lead to inefficiency and citizen frustration.
3. It has been correctly argued that local authority areas which are clustered into de facto metropoli are interdependent. Apartheid caused business to take root in "safe", white areas which benefitted from the revenue while impoverished black areas became overcrowded dormitories serving a white driven industrial and commercial machine.
4. However, the truth in point 3 above does not logically validate the creation of metropolitan government. The question should be asked - what system is likely to generate more restorative energy, (a) directly answerable local authorities empowered to compete with neighbouring local authorities or (b) umbrella metropolitan authorities whose elected councillors are able to argue their performances in terms of generalities from administrative bases far removed from any neighbourhood constituency ?

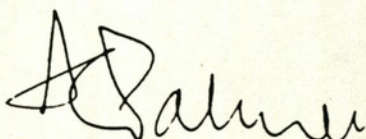
5. The further question should be asked - what is the better method of achieving metropolitan co-ordination, (a) highly motivated, autonomous entities negotiating and bargaining for their own wellbeing or (b) a placeless, politically unthreatened, metropolitan authority funded and empowered to engage in "grand plans" ?
6. The history of attempts to "plan" and "run" metropolitan areas through organs such as Regional Services Councils and the Urban Transport Act is dismal. Nothing was achieved that could not much more efficiently and democratically be done through the voluntary co-operation of independent local governments, equitably funded but fiscally discrete.
7. The need for equitable funding of interdependent local authorities does not validate metropolitan government. Statutory revenue sharing, managed by Regional Government, would not only achieve the desired fairness but would preserve the autonomy and, above all, the accountability of local government. Revenue sharing should be a formula-driven process, resulting in discrete local budgets.
8. Similarly the need to co-ordinate municipal services does not validate metropolitan government. Metropolitan co-ordination forums, involving both the elected town councils and civic stakeholders, would achieve optimum co-ordination. Regional Government would be well positioned to resolve or arbitrate upon impasses.
9. For example, it is a fact that the Transvaal Provincial Administration in its heyday, while most people would disagree with its political context, its priorities and style, and while black "Group Areas" were generally excluded from its authority, conducted its statutory task of supervising local authorities successfully. A vastly reduced region, such as Gauteng, surely requires no other level of government to assist it in the same area of management.

10. Locally, the concept of Metropolitan government has dubious motivation. It has been promoted by political parties wanting more seating opportunities for party faithfuls and in some cases a power base to rival Regional Government. It has been promoted by Civic Associations as a fast track into a high level of formal politics. It has been promoted by professional consultants, some in the guise of NGOs, anxious to create substantial and well-disposed clients for elegant broad-scale studies. Sceptical voices were denigrated by these interests in the Local Government Negotiating Forum and elsewhere. South Africa cannot afford the extravagant product of these closed-shop negotiations.
11. At the moment there may well be a shortage of expertise to drive all local authorities successfully. However, this is an enormous opportunity for the development of skills and one in which both Central Government and Regional Government can play a valuable role. "Solving" skills shortages by creating metropolitan government will perpetuate local disempowerment. Assistance agreements negotiated among local authorities can bridge skills shortages.
12. Metropolitan government is seen by some as the only means to disrupt the laagerisation of the relatively rich into residential and commercial neighbourhoods where upmarket skills and resources are concentrated at the expense of the general citizenry. Only through centralised control of Town Planning Schemes and infrastructure, it is argued, can the rich be forced to share their spoils with the poor. This viewpoint is morally appealing to a constituency abused and deprived by apartheid.
13. The view in point 12 above however perpetuates the fallacy, limited previously to totalitarian socialist regimes, that wealth creation and expertise can be commanded. Wealth and skill coincide with mobility. Attempts to coerce them are like clutching at the wind. Rather, / . .

Rather, wealth and expertise should be encouraged, through reasonable rewards, to become committed to society at large. While this inevitably means some exclusivity, it stands the best chance of founding a truly big society in South Africa.

14. There has been an attempt in interim local government settlements to overcome disparities by creating relatively large interim municipalities in addition to interim metropolitan councils. While the ideal of having as representative as possible the mix of races and wealth in a municipal area should be supported, it should be balanced against the loss of quality of local government that comes with size. Large municipal administrations tend towards loss of morale, answerability and efficiency. Johannesburg is a good example. Where such administrations are put in place by decree, they are likely to exhibit these failures even more painfully.

15. In consequence of all the above arguments, we ask the Constitutional Assembly to entrench the principle that there should be no tier or quasi-tier of government between Regional and Local Government, but that Local Government should have maximum autonomy or delegated powers over traditionally municipal matters, with Regional Government overseeing necessary revenue-sharing mechanisms and co-ordination. Co-ordination forums should have no executive authority - this should remain with participant local authorities. The Constitution should also limit the population to be administered by any local government at successive delimitations to a maximum of 400 000 people.



A C Palmer (Chairman)



GESTIG 1903 ESTABLISHED

24/01/95 → see 23/01
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13/8/2

12 Januarie 1995

PROPOSAL ON LOCAL GOVERNMENT

**THE WAY TO TRUE FEDERALISM/CONFEDERALISM FOR THE RSA:
A LOCAL GOVERNMENT MODEL ON THE BASIS OF FEDERAL AND CONFEDERAL
PRINCIPLES IN THE BELGIAN AND SWISS CONSTITUTION**

**THE WAY TO TRUE FEDERALISM/CONFEDERALISM FOR THE RSA:
A LOCAL GOVERNMENT MODEL ON THE BASIS OF FEDERAL AND CONFEDERAL
PRINCIPLES IN THE BELGIAN AND SWISS CONSTITUTIONS**

1. **INTRODUCTION**

The present interim constitution of the RSA is mainly based on the following out-dated principle: "All powers are vested in the State to divide them at its discretion." As a result the provinces and local authorities are merely territorial sub-components of the State, namely subordinate forms or levels of government. The national legislation has almost unlimited competence to determine - directly or indirectly - what provincial and local government functions and competences are. Local government is even more inhibited in so far as provincial government to a large extent exercises control over local government and can enforce joint management. This is a radical impairment of the autonomy of local government and a complete negation of true federal/confederal principles.

What is federalism? It is a balanced relationship between the powers of the State and the autonomy of the federal entities. Federalism is therefore based on the division of sovereignty characterized by the following three elements:

1. Autonomy - communities and provinces must have their own legislative and executive bodies as well as legislative powers.
2. Participation - the federal entities must have an effective voice for writing the constitution and other acts through direct representation in the legislative body of the State by way of a second chamber.
3. Co-operation - only by entrenching autonomy and participation can co-operation be ensured. Collectively these three elements are based on the legal principle "sui generis", i.e. a federal sub-component cannot be dissociated from its distinctiveness in respect of ethnic, cultural, linguistic,

religious, political, geographic, economic, historical and even ideological realities. Only when the constitution entrenches own decision-making regarding these realities is direct democracy and tolerance brought about.

The reverse of the coin is the positivistic philosophy according to which the principle "auctoritas non veritas facit legem" applies, i.e. authority and not justice writes the law, and therefore the State as origin of the law can amend this law arbitrarily. This has unfortunately been the typical African experience after each "liberation" that leaders who came into power were power-hungry and transformed Montesquieu's words "Power must limit power" into "Power creates more power". As leader of the majority group the enforceability of the will of the leader and of the majority group is seen as the basis of new democracy. This is a misconception of democracy, which democracy is only possible when self-determination for minority groups is built into the constitution and when the State renounces its self-usurped divine throne and realizes that true democracy and federalism arise from local and not central level. In summarising the primary principle of democracy is therefore not the principle of majority, but the guaranteeing of minority rights.

It must immediately be conceded that this ideological approach to democracy and federalism not only results in high financial implications, but is also characterized by complexity and sometimes by a delay in decision-making, as proven by the Belgian model of Community Councils. However, the drawbacks of cost, complexity and the postponement of decision-making do not weigh up to a final solution ensuring peace and tolerance. In addition, the minority problem must not be regarded as a unique South African enigma, but as a universal phenomenon. It is also not only just an ethnic problem, but also concerns religion, culture, traditions, language, etc. It is also a misconception that people who speak the same language belong to the same nation. Language invites people to unite, but does not force them together in the same nation. Germans, Austrians and the Swiss; Americans and the English; and Latin Americans and Spaniards are but a few examples of people who speak the same language, but represent different nations.

2. BELGIAN COMMUNITY COUNCILS

Where some federations are based on the centripetal principle that allows only subordinate competences to the federal entities, the Belgian constitution lays down centrifugal federalism in so far as the communities and regions are authoritative powers at the same level as the central or national authoritative power. Each level of government has its own legal validity with its own legal system and its own legislative and executive bodies.

2.1 Basic principles

In a federal state the division of powers between the central government and its federal entities is clearly entrenched in the constitution and may be amended only in concurrence with these federal entities. This can only be brought about by a double majority in both Parliament and a second chamber, in which these entities are equally represented.

Communities exercise their legislative authority by promulgating by-laws (decrees) that have legal validity within the area for which they are meant. These decrees may repeal, amend, extend or replace existing statutory provisions. The powers of communities are either exclusive powers or shared exclusive powers, parallel powers, totally concurrent powers or limited concurrent powers - all powers specified as such in the constitution. A conflict or dispute of authority is referred to the Court of Arbitration whose decision is final.

2.2 The particular powers of Community Councils

2.2.1 The powers "ratione materiae"

These powers refer to language, culture, education and personalized rights, e.g. health, co-operation between communities, as well as international co-operation. Culture encompasses, among other things, the protection and

promotion of own language, fine arts, cultural heritage, libraries, museums, own radio and television stations, education, tourism, research, etc. The different communities have control over the language usage in education, administrative matters and labour affairs between employer and employee.

As far as international co-operation is concerned, they may enter into international agreements within the competences ascribed to them by the constitution.

2.2.2 The powers "ratione loci"

The "ratione loci" powers are determined via the concept of language zone as area of jurisdiction. Within this zone a specific language community has exclusive jurisdiction, i.e. where a specific language group represents the majority.

2.2.3 Deficiencies in the division of power in Belgium

Many of the powers granted to regions rather belong to local government, e.g. town-planning, parks, stormwater drainage, water supply and purification, sewerage, electricity supply, licences and permits, local roads, local public transport and taxis.

By granting these powers to regional governments, government is removed from the people most closely affected by it, namely the Community Councils.

2.3 Co-operation between the Federation and the Federal Entities (Communities and Regions)

The Belgian Federation has moved away from double federalism, according to which the unitary state and the federal entities are juxtapositioned, towards inter-dependence and mutual influence in respect of exercising powers and competences. This form of co-operation is, however, not contained in written legislation, but exists in possible mutual representation in management and decision-making, in collaboration agreements and consulting procedures. A Consulting Committee comprising members of the central government and the Executive Committee of the communities and regions deals with these procedures. It reflects an attempt at "Bundestreue" to evoke a feeling of belonging to one nation parallel to the diversity of constituent entities. However, it is unsuccessful because a citizen of the country is first Flemish or a Walloon, and then a Belgian.

2.4 Finance

The Belgian Public Law determines that fiscal powers belong exclusively to the authority in which the powers are vested in accordance with the constitution. The only restriction is that communities and regions may not levy taxes where taxes have already been levied by the State. However, most of their revenue comes from transfers from national tax revenue. The granting thereof is based on the principle of fair return, in other words in relation to the tax collected in a specific region. In respect of education this grant is calculated in accordance with the ratio of pupils.

To sum up it can therefore be concluded that the communities have substantial financial sources with which the competences allocated to them can be financed.

2.5 Internal structures of the Federal Entities

2.5.1 The Councils

The meetings of the Councils are accessible to the public, and they decide by majority decision on decrees and other matters. A member of the Executive Committee may, however, request a second reading of a draft decree already accepted by the Council.

2.5.2 The Executive Committees

The number of members of the Executive Committee varies from three to eleven members, and a President is appointed from its own ranks. According to the principle of collegial deliberation a resolution must be passed on a consensus basis. If consensus cannot be reached, a member must either concede or resign.

The Executive Committee must answer to the Council which may place a vote of no confidence in the Executive Committee and force it to resign.

2.6 Number of Community Councils

There are only three Community Councils in Belgium, namely the Flemish, French and German-speaking Councils. The Flemish Council consists of 188 members and simultaneously serves as Regional Council. The French Community Council consists of 130 members, whereas the Walloon Regional Council consists of 104 members. The German-speaking Council consists of 25 members and for this community there is no Regional Council.

3. THE BRUSSELS MODEL

3.1 Background

Unlike the entire Belgium where \pm 60% of the population is Flemish-speaking, the French-speakers comprise 85% of the Brussels metropolitan area. To protect the Flemish minority a unique model has been designed to represent both language groups in regional and community context in both individual and joint matters.

3.2 Powers

The same powers "ratione materiae" granted to the other two regions have been granted to this region, except that Brussels has the competence to promulgate ordinances instead of decrees. However, unlike decrees, ordinances are subject to limited judicial revision by courts other than the Court of Arbitration.

3.3 Internal structure

3.3.1 The Council

The Council consists of 75 members, currently 64 French speaking and 11 Dutch speaking, and is directly elected for a five-year term.

As in the case of the national government, the alarmbell procedure may be put into operation by way of a motion signed by 75% of the members of a specific language group.

According to this, a debate on a specific matter is suspended to afford both the French speaking and Dutch speaking groups the opportunity to consult with each other. This

procedure prevents the French speaking group as majority from promulgating an ordinance that could seriously affect the relationship between the two language communities. The motion is then referred to the Executive Committee for a decision.

The President and Vice President of the Council must belong to different language groups and the Management Committee members must include at least a third of the minority group. Ordinary resolutions can be passed only by a double majority, in other words a majority in both chambers. Consequently six Dutch speaking members can block a resolution. Here there is no guarantee of numbers, but a minority guarantee that protects not only a language group, but also all cultural and other interests. Decision-making is therefore based purely on a principle of compromise.

3.3.2 The Executive Committee

The Committee consists of five members, the President of which is elected by the Council from its members, and two members elected by the two language groups each from its own ranks. Furthermore, three Regional State Secretaries are elected in the same way, one of whom must come from the minority group.

The Executive Committee passes resolutions by consensus, and no procedure for solving a deadlock is provided for in the constitution. Each member of the Committee has guaranteed competences. A vote of no confidence can be adopted in the Committee as a whole or in an individual member.

3.3.3 Community Commissions

Apart from the Council and Executive Council, the constitution makes the establishment of a French and a Flemish Community Commission mandatory. This institution has been expressly incorporated and separately deals with those competences in respect of own affairs delegated to them by the various Community Councils (Flemish and Walloon) through the constitution, for example own schools and libraries.

The two united Community Commissions constitute the Joint Community Commission, also an incorporated institution, to pass resolutions on general affairs. Resolutions are once again passed by a majority in both language groups, whereby minority rights are once again protected.

4. CONCLUSIONS

The Belgian constitution, and specifically the Brussels model, illustrates that ordinary geographic federalism does not sufficiently accommodate the complexity of language and cultural differences. The constitution therefore expressly protects the autonomy and sovereignty of minority groups. The principle of autonomy over own affairs and joint control over general affairs is entrenched and thus maintained and can be amended only with majority support of both groups in Parliament. Although the Flemish group is by far a minority group in Brussels, effective participation in government institutions is constitutionally entrenched in a disproportionately large extent in relation to size of the group. In no respect is this group a mere minority group exposed to continual dominance. Concurrent majorities, autonomy in own affairs committees, joint committees and equal participation in the executive authority protect the minority group.

The Belgian constitution as a whole is based on the central principle of division of competences with autonomous control over these competences at the level of government to which the competence has been allocated. Although this may cause discrepancies and grant powers disproportionately to numerical strength, the system is accepted and respected by everyone as embodying democracy. A complex principle of subsidiarity balances the autonomous competences to prevent abuse of power.

The Belgian model furthermore illustrates two Central European lessons. On the one hand Europe has been ravaged by wars over the centuries, which were eventually ended after 1945 by the demarcation of borders within which own language and culture could be realized freely and independently. On the other hand the present action regarding the European Council shows that, in spite of increasing economic mixing and interdependency, own cultural identity and autonomy over own affairs has not become part of this melting pot. Just as own identity and the principle of free association are maintained in the Brussels model at micro level, so too is the own identity of nations fostered at Central European macro level.

5. THE SWISS CANTON SYSTEM AND COMMUNITY COUNCILS

Switzerland is divided into 26 cantons, and at the basis for the establishment of the different cantons are language and religious differences. Everything is decentralized to the cantons and therefore the cantons are Switzerland and not vice versa. The Swiss confederalism is therefore similarly based on the principle of co-operation and concurrence.

The confederal entities have the character of an independent state and each has its own constitution. They are autonomous in respect of legislative, judicial and executive authority and each canton is entitled to enter into international agreements.

Each canton has its own territory guaranteed by the constitution. To change a canton's boundaries the consent of all cantons must be obtained, namely the consent of the confederation of cantons or, that is to say, the government.

The central philosophy is that the basis of confederalism is the preservation and maintenance of diversity and that both individual and minority rights must be protected. It is only by establishing a constitutional framework that recognizes and entrenches social differentiation in respect of ethnic, cultural, religious and linguistic realities that a minority can be made an inherent element of a constituent federal or confederal state. Therefore all decision-making processes must be constituted in such a way that promotion of consensus, conflict management, a compromise-orientated negotiation process and self-determination regarding own affairs is possible. Only in this way can minority rights have the character of state rights.

The cantons each have their own identity because they -

- each have their own constitution;
- each have their own court system;
- decide themselves what the relationship between church and state is;
- grant autonomous jurisdiction to the districts and local authorities within the canton in accordance with their own cultural and economic tradition.

Such is the autonomy of a canton that the co-operation between canton and state is not regulated by legislation, but is based on tradition and informal concurrence.

Actual political power is therefore not vested in the confederal central government, but in the cantonal governments - a true decentralized state with sovereign self-determination for the individual canton.

The cantonal legislation divides jurisdiction, powers and competences among the cantonal government, district authorities and local governments. Each community promulgates an act that regulates its local government affairs and

has the character and authority of a constitution. Since some cantons have a strongly centralized constitution and others a decentralized constitution, the powers and competences of local governments differ from canton to canton and from local authority to local authority.

The local authorities, cantons and confederation each share one third of the gross revenue and one third of the expenditure to finance the State's policy. The citizens of the cantons and local authorities have a strong influence on the activities of all three government levels, through which the Swiss direct democracy was effected. The amendment of statutes or the canton's constitution is for example submitted to a public meeting of the citizens, which meets only once a year on a Sunday morning. Therefore it takes between five and ten years to amend a statute or constitution.

Direct democracy is, however, not only limited to legislative decisions, but also applicable to financial matters when they have a bearing on public expenditure. At municipal and cantonal level budget decisions and control are divided between government and residents. In this way the residents have control over tax and tariff determinations. Unforeseen expenditure and overspending can only be approved by a referendum among the residents. In addition, ordinary citizens have the right to submit proposals for constitutional amendments of the confederal constitution, as well as amendments to acts at cantonal level.

Resolutions regarding constitutional amendments are passed by a double majority, namely by the cantonal government and the citizens. In this way direct democracy is ensured and the principle that equal protection is the core of democracy is realized.

As there are more than 3 000 local authorities in Switzerland and differentiated powers are granted to them by the cantons, these general impressions of Swiss confederalism will suffice.

6. CONSTITUTIONAL MODEL FOR LOCAL GOVERNMENT IN THE RSA

6.1 Introduction

After studying constitutional models in Belgium and Switzerland it is clear that these models cannot merely be cloned onto the area outside a Volkstaat in the RSA. There are, however, important principles in these models also applicable to the RSA and they can be implemented with certain adjustments. Centrally underlying both Belgian and Swiss constitutions is the principle that there is no federalism if autonomy is not granted to local government, if there is no self-determination over own affairs and if there is no territorial regulation within whose boundaries a minority group can realize its own identity without dominating other groups or being dominated by them.

At micro level the proposed model concentrates on the different cultural and language groups within a specific local authority's geographic area and is based on the above three federal/confederal principles, which harmonize own decision-making with the principle of co-operation and subsidiarity.

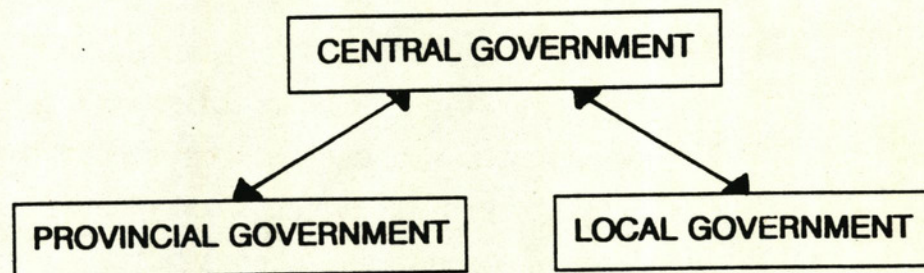
6.2 Local Government in the RSA

In accordance with centrifugal federalism local government must be an authoritative power with original competences at the same level as the national and provincial authoritative powers. In accordance with this, local government must have its own legal validity with its own legal system and its own legislative and executive bodies.

6.2.1 Basic principles

The division of powers, functions, competences and finance among Central, Provincial and Local Government must be entrenched in the constitution. An amendment to the

constitution in respect of any one of these aspects may be carried through only with the concurrence of all three these government levels. This is only possible if the following structure is established:



In terms of this structure a second chamber (provincial) and a third chamber (local) are established for the purposes of constitutional affairs. Amendments to the constitution can take place only by a threefold two-thirds majority in all three chambers. Local and provincial government must have equal representation in the second and third chambers respectively (e.g. 45 members each, namely five members from each of the nine provinces).

Local government exercises its legislative authority by promulgating by-laws with legal validity within its specific area of jurisdiction. These by-laws may only have a bearing on the competences granted to local government in terms of the constitution and may amend, extend or replace existing statutory provisions. In the case of original or exclusive powers these by-laws are not subject to judicial revision, but may not be contrary to constitutional principles. In the case of concurrent powers such by-laws will be promulgated only with the approval of all the government levels affected by this.

A dispute or a by-law contrary to the constitution or in respect of concurrent powers is referred to the Court of Arbitration/Constitutional Court for a final ruling.

6.2.2 Court of Arbitration/Constitutional Court

The purpose of a Court of Arbitration is to exercise judicial revision of legal rules with legal validity: Special majority laws (that may be adopted only in accordance with a special e.g. cultural/language group majority), ordinary laws (statutes), by-laws, ordinances and constitutional principles.

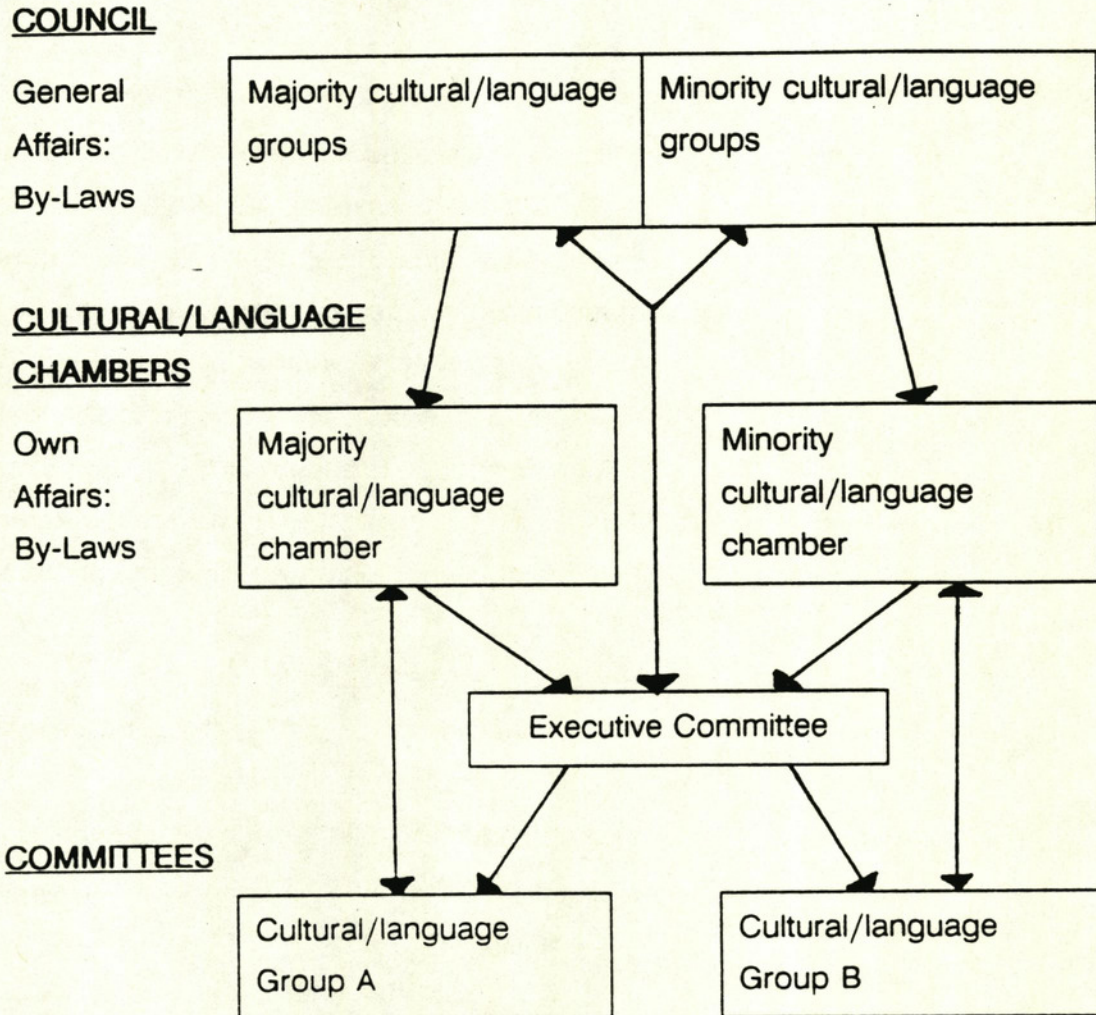
The executive bodies of the State, Provinces or Local Governments, two thirds of the members of any corporate body or committee, or any natural person or body corporate that can prove his/its interest may request the Court of Arbitration to test the compatibility of a legal rule in respect of the above matters with a view to the repeal thereof.

The members of the Court of Arbitration are appointed by the President from a list of candidates equal to the number of members of the Court of Arbitration with an alternate member for each primus member. This list is compiled in such a way to reflect the nominations of the political parties in Parliament on a proportional basis. Candidates must be qualified lawyers. Rulings of the Court of Arbitration must take place by way of consensus, and these rulings are final.

6.2.3 The internal structure of Local Government

The basic principles underlying the internal structure of Local Government are general affairs and own affairs, language and cultural identity and the protection of minority rights. These

principles can only be manifested satisfactorily in the following structure:



6.2.3.1 The Council

The Council is elected directly from the candidates who make themselves available for a specific cultural/language group. For each cultural/language group there is a separate list of candidates. Each cultural/language group makes provision for the different political parties on its list. The quota of seats for each local government is

determined by a local authority's grading classification. After an election has taken place, each cultural/language group's votes are divided by the quota to determine how many seats must be allocated to each cultural/language group. Thereafter the seats in each cultural/language group are allocated to the political parties on the basis of the list systems according to which the election took place. Before an election a candidate must therefore indicate the cultural/language group and the party for which he is making himself available for election. The voter decides for which cultural/language group he wishes to vote and then decides on the political party he wishes to support. The seats are contested on the basis of wards.

Language is used as the most important criterium since a mother tongue is the legitimate expression of culture, traditions and association. A nation's great past lies in its language, which is manifested in its religion and its writings and is its vehicle for cultural expression. He who denies and ignores his past also loses the future. To live in peace and happiness one needs a fatherland and a mother tongue in order to realize one's identity. As a fatherland cannot be realized at local community level, a system must be created according to which free association and own cultural/language identity is allowed within a system of communality in respect of general affairs. This can only be achieved within a system of one chamber for general affairs and different chambers for own affairs.

The Council meets once a month, except in December, and its meetings are open to the public. From its own ranks the Council annually and during the same month, elects a Mayor who is also the Chairman of Council Meetings, a Deputy Mayor and the Chairman of the Executive Committee. Each cultural/language group elects its representatives for the Executive Committee from its own ranks proportionally to the votes cast for a specific political party, subject to the conditions set out under paragraph 6.2.3.4. All other Committees (e.g. the Section 60 Committee) are constituted in the same way.

6.2.3.2 Decision-making in the Council

Resolutions in the Council are only passed if a majority is gained under each cultural/language group, namely a double or multiple majority. This will prevent a majority group from ignoring the rights of or forcing its will on a minority group. Therefore decision-making is in essence based on the principle of making a compromise. The Council considers only matters of general interest and which competence has been established by way of the Constitution.

If a resolution in the Council cannot be passed owing to an insufficient double or multiple majority, the matter is referred back to the chambers for own affairs for further consideration and consultation.

The Council not only passes resolutions of general interest, but also promulgates by-laws to regulate

these affairs. These by-laws must be published in the Provincial Gazette to have validity. Furthermore, the Council also has the competence to determine a fine for contravening a specific by-law.

6.2.3.3 Cultural/Language Chambers for Own Affairs

Members elected from a specific cultural/language group's list have a seat at this second level in this separate Cultural/Language Chamber to consider those issues relating to own affairs. The meetings of the Cultural/Language Chambers are also held monthly on separate days and are open to the public.

A Cultural/Language Chamber considers those matters allocated to it as competence by way of constitutional provisions and dealing with own affairs and over which it has exclusive competence. Resolutions are passed by an ordinary majority. If a deadlock occurs, the Chairman has a casting vote. The Chairman is elected by the specific cultural/language group from its own ranks annually during the same month in which the Mayor is elected.

A Cultural/Language Chamber also has the competence to publish by-laws regarding its own affairs in the Provincial Gazette and to determine fines for contravening the by-laws. These by-laws have the same legal validity as the Council's by-laws.

6.2.3.4 The Executive Committee

The Executive Committee consists of at least five members or any other odd number of members in accordance with the quota of members allowed for a specific local authority in terms of the grading system. In all cases the Council elects the Chairman of the Executive Committee from its own ranks, whereas the other members receive equal representation from the cultural/language groups, in other words in twos, in threes, etc.

The meetings of the Executive Committee are not open to the public or other Councillors, and the meeting can be attended only on the invitation of the Executive Committee. The Executive Committee meets at least twice a month and considers general matters to submit recommendations to the Council for consideration. The Executive Committee also submits a draft budget to the Council for consideration regarding those matters falling within the Council's exclusive competence. The Executive Committee has no disposal competence, except in respect of specific competences delegated to the Executive Committee by a Council Resolution.

A resolution in respect of a delegated competence is only passed if there is consensus in the one cultural/language group and at least the Chairman of the other cultural/language group votes for it. If a resolution cannot be passed in terms of this formula, the matter is referred back to the Council to be dealt with in terms of paragraph 6.2.3.2.

A vote of no confidence can be placed in an individual member or the full Executive Committee

by two-thirds of the members of a Cultural/Language Chamber.

The two Cultural/Language Chambers within the Executive Committee also meet separately twice a month to consider those matters falling within the exclusive competence of a specific Cultural/Language Chamber. This separate Cultural/Language Chamber of the Executive Committee has no disposal competence, unless such competence is delegated to it by the Cultural/Language Chamber. It only makes recommendations to the Cultural/Language Chamber on those matters that the Cultural/Language Chamber must consider during the relevant month. It also annually draws up a draft budget for the Cultural/Language Chamber to which it is submitted for consideration.

6.2.3.5 Officials

The Council appoints its own officials at the post level and remuneration/salary scale prescribed by the applicable Industrial Council. Each province must establish a separate Industrial Council which must function in the same way as the present system.

The officials serve the Council in its entirety, in other words also the Cultural/Language Chambers, Executive Committee and the separate Cultural/Language Chambers of the Executive Committee. The Departmental Heads and the Chief Executive/Town Clerk attend all Council meetings,

as well as meetings of the Cultural/Language Chambers and the Executive Committee and its separate Cultural/Language Chambers. Proper minutes are kept at each meeting and resolutions are implemented by the officials.

6.2.4 Powers of the Council and the Cultural/Language Chambers

- The powers of the Council and the Cultural/Language Chambers must be entrenched in the constitution and may be amended only in accordance with the provisions under paragraph 6.2.1.

6.2.4.1 Powers of the Council

The Council's powers deal with general matters and are, with the exception of those powers dealt with as own affairs matters by the Cultural/Language Chambers, the original powers presently vested in local authority.

- (i) Intra-urban roads.
- (ii) Industrial planning.
- (iii) Water supply.
- (iv) Electricity supply.
- (v) Sewage purification works and sewage discharge mains.
- (vi) Stormwater drainage.
- (vii) Passenger transport services.
- (viii) Traffic matters and fire brigade.
- (ix) Municipal police.
- (x) Abattoirs.
- (xi) Refuse dumping sites.
- (xii) Markets.

- (xiii) Licences.
- (xiv) Airports.
- (xv) Civil protection.
- (xvi) Environmental conservation.
- (xvii) Tourism.
- (xviii) Economic development and job creation.
- (ixx) Housing.
- (xx) Keeping up to date and processing of municipal statistics and data.
- (xxi) Taxis.
- (xxii) All administrative functions Local Government presently has, with the exception of those functions referred to the Cultural/Language Chambers as own affairs.

6.2.4.2 Powers of the Cultural/Language Chambers

- (i) Religion.
- (ii) Education at pre-primary, primary and secondary levels.
- (iii) Health: Hospitals and clinics.
- (iv) Cultural/language policy - also in administrative matters.
- (v) Fine arts.
- (vi) Cultural heritage: Museums, monuments and historical sites.
- (vii) Cemeteries and crematoriums.
- (viii) Libraries.
- (ix) Sport and recreation.
- (x) Radio, including advertisements, and other media.
- (xi) Youth policy.
- (xii) Intellectual, moral and social education.

- (xiii) Research.
- (xiv) Social welfare, including safety.
- (xv) Town-planning in respect of majority occupation of specific residential areas and land-uses within these areas, as well as permits in respect of these areas.
- (xvi) Movement of people within residential areas.
- (xvii) Re-appropriation within residential areas.
- (xviii) Homes for the aged.

6.2.4.3 Concurrent powers of the Council and the Cultural/Language Chambers

- (i) Parks and open spaces.
- (ii) Structure Plan in respect of central business district.
- (iii) Town-planning in respect of central business district.
- (iv) Health regulations.
- (v) Extension and maintenance of infrastructure services.
- (vi) Determination of cultural/language group boundaries and boundaries of wards in co-operation with the Delimitation Board in respect of the latter only.
- (vii) Land-uses in the central business district and industrial area.
- (viii) Movement of public transport within residential areas.
- (ix) Consumer protection.
- (x) Voters' rolls and lists of candidates.

Resolutions regarding the above competences are passed in accordance with paragraph 6.2.1.

7. QUALIFICATIONS FOR CANDIDATURE

A person may make himself available as candidate for local government only if he meets the following qualifications:

- (i) Citizenship.
- (ii) Franchise.
- (iii) Registered resident of the municipal area.
- (iv) Providing he was not convicted of an offence during the previous five years.
- (v) Not a member of the National Government.
- (vi) Does not have any outstanding municipal service charges or taxes.
- (vii) Is not an employee of the local government concerned.

8. THE FRANCHISE AND CITIZENSHIP

The vote is subject to citizenship. Citizenship is obtained on the following grounds, as determined in the constitution:

- (i) Natural birthright.
- (ii) Child adopted by a SA citizen.
- (iii) A child under the age of 18 years born outside the borders of the RSA and who returns to the RSA.
- (iv) Immigrants may apply for citizenship after residing permanently in the RSA for five years.

Apart from the above qualifications a person may only have the franchise if he is a registered voter of that municipal area of jurisdiction and is above the age of 18 years. The franchise is possible only within one municipal area of jurisdiction and a person has only one vote per ward and one vote per proportional party list.

9. FINANCING OF LOCAL GOVERNMENT

It is interesting to note that the Swiss tax revenue is divided as follows:

One third of the total revenue goes to each of the central, provincial and local governments. As a result local government has immense financial autonomy. In Belgium a portion of VAT accrues to the local government (Community Councils) to finance education. From the total 1992 budget in the amount of 2,174 milliard Belgian francs (\pm R242 milliard), 478 milliard Belgian francs were allocated to local government as intergovernmental grants, in other words almost 25% of the total revenue in addition to the VAT revenue.

In the RSA local government must retain its current revenues from taxes, services, licences, permits, etc. However, additional income must be provided from the State coffers to be able to finance own affairs Cultural/Language Chambers. However, in every other respect the budget of a local government is separate from the budget of other levels of government, but is subject to the Financial By-laws of the Director-General of Finance and his approval.

The Council's budget must be approved by a double or multiple majority of the cultural/language groups. The duration of a financial year is from 1 July to 30 June of the following year.

9.1 Autonomous and general fiscal powers

The general fiscal powers of local government must be entrenched in the constitution. It has to be an autonomous power without any control by a higher authority other than the Director-General of Finance. The Constitution must determine which taxes may not be levied by a local government.

9.2 Intergovernmental transfers

These transfers must take place on the basis of the locality of the tax revenue, in other words the principle of fair return. Local government should receive a portion of personal tax, VAT and fuel levies as a form of shared taxes. A formula for determining these transfers must be negotiated at a national level, for example the VAT transfer can be determined as a percentage of the VAT, and the ratio of pupils within the municipal area of jurisdiction will determine the amount allocated for education. (This is of course a deviation from the principle of fair return, but is probably the most logical method in terms of which education financing can be dealt with.)

9.3 Budget

The Council's budget is submitted in draft form by the Executive Committee for consideration. The Cultural/Language Chambers' budget is submitted in draft form to the Cultural/Language Chambers by the separate cultural/language groups of the Executive Committee. The Council jointly has one coffer which is divided between the Council and the cultural/language groups according to a fixed formula. However, the Council has exclusive competence regarding the allocation of its funds, and also the cultural/language groups separately regarding the funds they receive from the central coffer.

9.4 Services, tariffs and tax

The tariffs for services and taxes are determined by the various Cultural/Language Chambers for their control areas, but are subject to revision by the full Council where a resolution can, however, only be passed by a double or multiple majority of the different cultural/language groups. This mechanism is built in to comply with the following criteria:

- (i) Provision must be made for differentiated tariffs in respect of differentiated qualities of service and infrastructure.

- (ii) An incompatible discrepancy between tariff structures of different cultural/language groups must be obviated.

Taxes and tariffs for the central business district and industrial area are determined by the Council.

10. ELECTIONS

Councillors are elected for a five-year term. A Councillor ceases to serve as a member of his Council if he leaves his cultural/language group.

11. MUNICIPAL ASSOCIATIONS (MA's)


- 11.1 Provincial MA's must be continued with the right of cultural/language groups to establish an identity and cultural/language MA on the basis of the right of freedom of association. The Council is obliged to pay membership fees for all cultural/language groups over to their MA's.
- 11.2 National MA's must come into being for specific cultural/language groups, as is the case at provincial level, and likewise the Council must stand surety for membership fees.
- 11.3 A Joint National Co-ordinating Council for Local Government must be established where the Minister for Local Government is advised on national legislation by elected representatives of local government.
- 11.4 The provincial and national MA's will be served by directorates appointed by the members of the MA's. At provincial level the officials of a local government can handle such a directorate, but at national level it has to be an independent directorate.

12. IN CONCLUSION

This model does not wish to pretend to be perfect or even negotiable in all its consequences. This is a document for discussion to arrive at a final negotiation model.

Furthermore, there are still the following aspects that must be addressed by specialists:

- 12.1 Financial aspects and formulae.
- 12.2 Education.
- 12.3 Health.
- 12.4 Conversion of Regional Services Councils into Sub-regional Councils and representation on Sub-regional Councils (SRCs) according to the principle of buying into services on a quantifying basis.
- 12.5 Constitutional and Ordinance amendments to accommodate the proposed procedures and structures.
- 12.6 The constitution and functioning of a Local Government Chamber for Constitutional Affairs at national level.


P J FOUCHE
PRESIDENT

vb/ap