

SUBMISSION BY THE AFRICAN NATIONAL CONGRESS TO THE TECHNICAL SUB COMMITTEE ON ~~CONSTITUTIONAL ISSUES~~

T.E.C

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RESTRUCTURING LOCAL GOVERNMENT POLITICAL, FINANCIAL AND ADMINISTRATIVE STRUCTURES DURING THE PRE-INTERIM PERIOD

1. Introduction

This submission is based on a framework that has been adopted by working group one (Legal and Constitutional) of the Local government Negotiation Forum (LGNF), and incorporates the proposals presented by the non-statutory delegation to the LGNF.

This proposal is located within the following understanding of the timeframes and process of the transition to democracy in South Africa.

The 'interim phase' begins with elections for the establishment of a Constituent Assembly/ Constitution-making body (CA) and an Interim Government of National Unity (IGNU). The interim phase ends when the CA has completed its work, and the IGNU is replaced following elections on the basis of a new constitution.

The period prior to these elections is defined as the pre-interim or pre-elections phase, during which the Transitional Executive Council (TEC) and the sub-councils are established.

2. What is our conception of the process of transition for local government?

The removal of apartheid at local government level cannot take place in isolation from a national framework.

There is a need for interim local government structures to address the crisis of local government. However, interim local government structures should be consistent with constitutional principles adopted at CODESA. Local government restructuring should not be used as a means to delink the local transition from the national constitutional process. Our concern is that such delinking will result in pre-empting certain key constitutional issues, and finalise the local government system during the interim period.

Having said this, while the process of local government transition is to some extent dependent on, and will need to be co-ordinated with national multi-party negotiations, delays in such negotiations should not prevent the introduction of pre-interim measures at local government level.

3. **In terms of local government restructuring, what do we want to achieve during the pre-interim period, i.e. in the period prior to elections for interim local government?**

- 3.1 The pre-interim period must address the crisis of service provision at the local level. The immediate aim should be to ensure that municipal services are properly provided during the interim period. In addition, all residents should pay for services received.

In order to address these related issues, six specific problem areas need to be addressed during the pre-interim phase:

* **Legitimacy**

Interim local government structures, that are more widely acceptable, need to be put in place as part of the solution to the services and the payments problem.

* **Arrears**

The writing off of arrears is a key issue for all parties to resolve in order to move towards better service delivery and resumption of payments.

* **Quantity and quality of services**

A system of **measurable improvements** in the quantity and quality of services needs to be introduced during the pre-interim phase. This system needs to produce clear results that are visible to all residents.

* **Maintenance of services**

Services, once provided, need to be properly maintained. Existing Black Local Authority administrations are not in a position to maintain services to a **sufficient standard**, and agency agreements with neighbouring local authorities have only provided short-term relief to the problem. This problem needs to be addressed through the introduction of new interim administrative arrangements.

* **Affordability**

There are two parts to this problem.

Firstly, as long as tariffs for services are calculated on the basis of segregated unviable budgets (as is the current case with BLAs), the general criteria of affordability will be very difficult to achieve. Therefore, single budgetary

processes, on the basis of 'one city, one tax base' need to be introduced.

Secondly, there are large number who are unable to afford the cost of even minimum levels of services. Interim tariff mechanisms, including internal subsidisation and other measures need to be put in place in order to address the issue of affordability for the very poor.

* **Public Education**

Many families who have not been paying charges for services have become accustomed to use their disposable income in other ways. A system of public education, that outlines and promotes a set of negotiated interim political, financial and administrative measures, and assists families with a re-budgeting process, needs to be put in place.

The above criteria have been put forward in an attempt to resolve the problems of services and payments during the interim period. They are based on practical experiences of civics and other organisations of some of the shortcomings of locally-negotiated agreements over the past three years. Interim measures need to deal with the **structural** problems of local government in a far-reaching manner. The so-called 'culture of non-payment' is a symptom of these structural problems that needs to be addressed. The problems of non-payment are broader than the issue of the rent boycott.

- 3.2 The pre-interim phase should lay the basis for the transition to democracy at a local level. This should include the removal of existing local government councils, and their replacement with interim councils. The boundaries within which such structures exercise their powers must consolidate what was previously fragmented on the basis of race.

Pre-interim structures should establish multi-party control over local government **resources**. Such structures will enable joint responsibility and authority to be taken by **all local** government stakeholders.

It **is also** critical that unilateral restructuring be stopped. The only effective prevention of this is through the establishment of interim political structures.

- 3.3 A legal framework should be enacted to establish local negotiation forums. Local negotiations should be encouraged as a means to ensure inclusive local involvement in the process of local government transition.

Local forums should discuss any issue that is relevant to the running of local government during the pre-interim and interim periods or relevant to proposals for the establishment of new local government systems.

Local negotiations's will be an important and necessary component regarding the running of local government in the pre-interim period. These forums will need to involve local stakeholders and consensus proposals emanating from such forums should be considered to be binding on all parties to the local forums.

Such forums should formulate proposals concerning future local government models.

Once interim structures have been elected the role of the negotiation forums will change. Final political say regarding the running of local government and the submission of proposals for future local government systems in the area concerned, will be vested in the elected body.

3.4 The LGNF and local forums should begin debating final local government models, for submission to the Constituent Assembly/ Constitution-making body.

4. **The ANC supports the following option for the restructuring of the local government political structures during the pre-interim period: Dis-establish existing local government political structures (i.e. governing councils), and replace with appointed Interim Local Councils (ILCs)**

4.1 **Interim local government councils:** It is proposed that existing racially defined constitutional structures be dissolved and replaced with single local government bodies based on non-racial boundaries. These new structures will be local government bodies legally and practically.

These temporary local government bodies will be responsible for the running of local government in the pre-elections phase and preparing for local elections. They should take the form of appointed Interim Local/Metropolitan/District Councils's (ILC).

Ideally this appointment should occur after the appointment of the National Transitional Executive Council, but delays at the national level should not stall the appointment of ILC's.

4.2 **Powers and functions:** The powers and functions of ILC's will be based on existing deracialised legislation or ordinances which should be amended and/or repealed and made uniformly applicable (i.e. applicable across what were previously racially defined local authority boundaries).

4.3 **Appointment of ILC's:** Every local level negotiation forum will be required to make recommendations for the membership of the ILC, within a certain period of time. The ILC will be constituted on the basis of parity between statutory and non-statutory delegations.

In addition, each ILC could be chaired by an independent chair, assisted by two

assistant chairs (one from each delegation)

Appointment of the ILC could be by the proposed Local and Regional Government Sub-Council if this structure is in place. In its absence, appointments could be made by the LGNF (or a sub-committee thereof) in terms of the existing powers of Provincial Administrators.

The sub council or the LGNF, whichever makes the appointments, should be obliged to accept consensus proposals emerging from local forums, where they have been established in terms of national guidelines). The regional and national structures of the LGNF could establish deadlock breaking mechanisms to assist where local forums cannot reach agreement.

- 4.4 **Decision making:** ILC's should strive to make decisions on the basis of consensus, however, the chair and assistant chairs should act as a deadlock breaking mechanism.

In the event of the ILC's failure to reach a decision, the chair should meet with his/her assistant chairs and act as arbitrator whose decision will be final and binding.

All ILC decisions would be required to fall within the applicable legal framework.

- 4.5 **Finance, services and administration:** Service delivery, financial and administrative arrangements should be restructured according to the following principles:

4.5.1 Single budgets should be drawn up by unified administrations which shall take full financial responsibility for the whole area within their jurisdiction, under the direction of interim local authorities;

4.5.2 Services should be provided on a co-ordinated basis by unified administrations, under the direction of interim local authorities;

- 4.6 **Preparation for local government elections:** ILC's should begin making the necessary preparations for elections for interim local government, in conjunction with the LGNF and the sub-council on local and regional government. These preparations should include voter registration and voter education.

5. Implications for changes to local government boundaries

- 5.1 The appointed interim councils should exercise control over all local government functions on the basis of jurisdictions that cut across existing racially defined boundaries.

Interim local government boundaries should be based on recommendations from local negotiation forums.

- 5.2 In many cases however, the demarcation of interim boundaries will be an extremely complex process. In order to address this complexity a representative local government boundary delimitation commission should be established to hold hearings and make recommendations where conflicts arise within or between local, sub-regional or metropolitan areas.
- 5.3 The effect of pre-interim structures must be to ensure a single authority exercises political authority over all resources in a given **single** jurisdiction, based on non-racial boundaries. This may have to be achieved in different ways in different local contexts:
- * **Metropolitan regions:** In order to avoid pre-emptive restructuring it will be necessary to draw a single political boundary around the metropolitan areas. Such boundaries could be in terms of RSC boundaries or functional criteria. In order to achieve non-racial jurisdictions (and avoid pre-emptive restructuring) political authority will need to be concentrated at the top. Existing local boundaries should be used as deconcentrated administrative boundaries under the single political authority, and resources (currently concentrated in the white local authorities) should flow freely between the administrative boundaries.
 - * **Stand alone cities/towns:** The process of disestablishing apartheid local government and establishing interim single political structures, administrations and budgets must be defined and implemented during the pre-interim and interim periods. This is a process, and a separation of administrative and political boundaries should be made to assist with that process.
 - * **Rural local government:** It is envisaged that interim district councils (IDCs) be established. An option in this regard would be the establishment of strong political IDCs, which excludes small towns within the rural district.

It is proposed that restructuring of boundaries for all three of the above categories include homeland (self-governing and TBVC) boundaries as well.

6. **Interim legislation**

Legislation should deal with running of local government in the interim and pre-interim periods. The legislation regarding the running of local government should be both enabling and mandatory in character.

On the one hand measures regarding the dissolution of apartheid local government bodies and the establishment of institutional structures and financial frameworks aimed at improving service delivery should not be made optional. Such measures must be mandatory.

On the other hand the broad mandatory framework should be complimented by an enabling framework aimed at enhancing the capacity of the local structures and

stakeholders to address issues in the pre-interim phase in a manner that is responsive to local needs and conditions.

The legislation would need chapters on finance, administration, political structures, electoral procedures, boundaries, service delivery, negotiation forums, national and regional authorities as far as local government is concerned etc. The legislation will probably need a section of general frameworks as well as chapters to deal with local government in the self-governing territories and the TBVC states, and differing arrangements within different local contexts will need to be provided for.

7. **Role of the Local Government Negotiation Forum (LGNF)**

The LGNF is an important negotiation forum, in that it brings together many local government stakeholders and expertise.

One of the main functions of the LGNF should be to put forward proposals for new legislation to replace the **Interim Measures for Local Government Act, 1991**, and section 28 and 29 of the **Provincial and Local Authorities Affairs Amendment Act, 1992**. This should be done as soon as possible, in order to address the current local government crisis.

The LGNF should have a structured relationship with the TEC sub-council on local and regional government.

TEC Sub council on regional and local government: proposed terms of reference

1. The sub council should exercise executive jurisdiction over the existing provincial administrations, self-governing territories, TBVC states, and related central government departments (e.g. Foreign Affairs, Finance, Regional and Local Government, Land Affairs).
2. A set of committees should be established by the sub-council to deal, *inter alia*, with the following issues:
 - * **Finance:** Co-ordination and review of 93/94 budgets, and additional budgetary appropriations;
 - * **Land:** Alienation, allocation and transfers;
 - * **Administration:** Reorganisation of administrative structures and processes, personnel and training; review of strategic plans;
 - * **Services:** e.g. planning, health, housing, infrastructure, education and transportation, to ensure continuity, co-ordination and provision of such services;
3. The committees should deal with the above issues at both regional and local level, where appropriate.
4. The committees should:
 - * Review existing statutory proposals and legislation;
 - * Initiate proposals for legislation, budgets, restructuring of administrations;
 - * Supervise any transitional measures that are introduced by the TEC;
5. The ~~main~~ **role** of the committees, and the sub-council as a whole, is to give effect to multi-party control over certain key areas, in order to level the playing fields prior to elections. The sub-council, and its committees, would cease to operate after national elections for a constituent assembly, and an interim government of national unity.
6. In respect of local government, the sub-council should have the following terms of reference:
 - * Address the current crisis of local government, particularly the collapse of services in certain areas, and the shortfall of finances;
 - * Supervise the appointment of interim structures for the pre-interim period;
 - * Create the necessary conditions for local government elections;

- * Liaise directly with the Local Government Negotiation Forum on proposals for electoral systems, boundary demarcation processes, voter registration and the structure, powers and functions of elected interim local government;
- * Establish a representative local government boundary demarcation board;