

Lombard until 1800 on Saturday 30/10/93

28 October 1993

In bilateral discussions between the SA Government and the African National Congress the following draft Chapter 10 on Local Government 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.

A194

[194]

CHAPTER 10

140: Subject to the provisions of this Act [the Constitution], the following principles shall apply to local government:

(1)(a) The third tier of government shall consist of autonomous local governments in various categories and models for metropolitan, urban and rural areas not inconsistent with national and SPR legislation.

(b) The local electoral system shall make provision for both proportional and ward representation.

(2) Every local government shall be a body corporate with perpetual succession capable in law of doing all those things and performing all those acts which a local government may and shall by law do and perform.

(3)(a) The powers and functions of local government shall be set out in national and SPR legislation: Provided that the said powers and functions shall not be less than the existing powers and functions of local government.

(b) The SPR government shall not exercise its powers so as to encroach upon the geographical, functional or institutional integrity of any local government.

(4) Local government shall have appropriate and adequate legislative powers to make bylaws not inconsistent with laws at national and SPR levels as well as executive powers to function effectively.

(5) The council of a local government shall ensure that its administration is based on sound principles of public administration so as to render efficient and effective services to the inhabitants within its area of jurisdiction.

(6) Any existing law applicable to local government shall continue to be of force and effect until amended or repealed by the competent legislature and any reference in any such law to

any other tier of government shall mutatis mutandis be deemed to be a reference to the national or the SPR government.

(7) The council of every local government shall govern and represent the residents within its area of jurisdiction and act generally for the maintenance of good rule and government as well as for the convenience, safety and comfort of the afore-said areas of jurisdiction.

(8) Subject to the provisions of subsection (11), the members of the council of a local government shall be elected democratically according to SPR legislation which shall be consistent with the National Electoral Act, 1993.

(9) The members of a council of a local government shall be elected at intervals of not less than three and not more than five years, provided that the first elections shall take place on the same day.

(10) No person shall become a member of a council of a local government if -

(a) he is a member of any other tier of government;

(b) he is disqualified to become a member of the National Assembly in terms of section 42 (1)(a) - (d) of this Act;

or

(c) he or his spouse is an employee of the local government concerned or any other local government: Provided that the elected executive authority of the SPR government concerned may exempt any such person if he is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination of such person.

- (11) "1. Any -
- 1.1 natural person who is -
- 1.1.1 a South African citizen or resident within the Republic of South Africa for a period of at least 5 years; (Item to be discussed at another forum)
- 1.1.2 at least 18 years of age;
- 1.1.3 resident within the area of jurisdiction of the local government or liable for the payment of assessment rates, service charges or levies to the local government concerned; and
- 1.1.4 not subject to any of the disqualifications set out in the Electoral Act, 1993; and
- 1.2 Juristic person who is:
- (i) the owner of immovable property within the area of jurisdiction of a local government; and
- (ii) registered on the voters roll of that local government,

shall be entitled to vote in an election for members of the council of such a local government: Provided that a natural and/or juristic person shall only exercise one vote per local government.

(12) There shall be an enforceable ethical code of conduct for members and officials of local governments.

(13) The council of a local government shall be accountable to the registered voters within the area of jurisdiction of such local government and the SPR concerned for the effective and efficient administration of its affairs.

(14)(a) The Finance and Fiscal Commission shall recommend equitable and assured fiscal and financial allocations to local government.

(b) Each SPR legislature shall be responsible for local government, and shall provide for equitable fiscal and financial allocations to supplement local government income from revenue collected at SPR level.

(c) Each local government shall be competent to levy and recover such property rates, levies, fees, taxes, tariffs and charges as may be necessary to enable it to exercise its powers and to perform its duties and functions.

(d) Each local government shall have a uniform tax and tariff structure for its area of jurisdiction.

(15)(a) The primary political responsibility for providing and ensuring the availability of all local government services shall be vested in local government. Local, national or SPR government may be jointly and severally responsible for financing, planning and implementation.

(b) All citizens shall be entitled to access to water, sanitation, transportation facilities, electricity, primary health, education, housing and security: Provided that it is financially, physically and practically possible for such services to be rendered in an environmentally sustainable manner.

(c) The immediate priority is to provide services to all levels that meet basic health and functional requirements for each person.

(16) National or regional policies and legislation affecting local government shall not be developed, adopted or implemented without prior consultation with organized local government and local government stakeholders.

(17) The Local Government Transition Act, 1993, shall regulate restructuring at local government level until after elections at local level have taken place as provided in section 10 of the Local Government Transition Act, 1993, whereupon the function of restructuring local government shall, subject to the provisions of this Act [the Constitution], vest in the national and SPR legislatures which may amend or repeal the Local Government Transition Act, 1993: Provided that the national and SPR legislatures shall maintain the principles embodied in this Chapter and this Act as a whole [the Constitution].