

PROPOSED DRAFT
For discussion only
(1993-10-01)

LOCAL GOVERNMENT TRANSITION BILL

BILL

To provide for revised interim measures with a view to promoting the restructuring of local government; and for that purpose to provide for the establishment of Regional Local Government Committees in respect of the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of local government; for the issuing of proclamations by the Administrators of the various provinces; for the establishment of appointed transitional councils in the pre-interim phase; to provide for the delimitation and election of transitional councils of local unity in the interim phase; for the establishment of Local Government Demarcation Boards in respect of the various provinces; to provide for the exemption of certain local government bodies from certain provisions; and for the repeal of certain laws; and for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

PART I
APPLICATION OF ACT

Definitions

1.(1) In this Act, unless the context indicates otherwise-

"Administrator" means the administrator as defined in section 1 of the Provincial Government Act, 1986 (Act No. 69 of 1986), acting in concurrence with the Committee concerned: Provided that where the administrator is required to exercise any power in respect of any local government body which is situate within that part of the province which forms part of a Self-governing Territory, the administrator shall act also with the concurrence of the Chief Minister of that Self-governing Territory: Provided, further, that at the establishment of an SPR Government for the province concerned, any reference to the administrator shall be construed as a reference to the elected executive authority of that province and any reference to a province shall be construed as a reference to the corresponding state, province or region;

"Board" means the Local Government Demarcation Board established for a state, province or region in terms of section 10(1)(a);

"Committee" means the Regional Committee for Local Government established for a province in terms of section 3(1)(a);

"interim phase" means the period commencing immediately after elections for transitional councils of local unity as envisaged in section 9 and ending with the implementation

of final arrangements to be enacted by any competent legislative authority;

"local government body" means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and includes-

- (a) any local government body established by or under any law in force in a Self-governing Territory;
- (b) any local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);
- (c) any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act, 1927 (Act No. 38 of 1927);
- (d) a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
- (e) any committee referred to in section 17 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983);
- (f) any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 84 of 1989);
- (g) the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989);
- (h) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (i) any joint services board established under section 4 of the Kwa Zulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990);
- (j) any joint decision-making body, joint local authority or single local authority referred to in paragraphs (c), (e) and (f) of section 8 of the Interim Measures for Local Government Act, 1991 (Act

No. 128 of 1991), and established by proclamation issued under that Act;

(k) any person, institution or body declared under subsection (2) to be a local government body for the purposes of this Act;

"metropolitan area" means any area -

(a) which has multiple local government jurisdictions;

(b) which is densely populated having an intense movement of people, goods and services within the area;

(c) which is extensively developed or urbanised having more than one central business district, industrial area and concentration of employment; and

(d) which, economically, forms a functional unit comprising various smaller units which are interdependent economically and in respect of services;

"Minister" means the Minister of Local Government;

"negotiating forum" means any negotiating forum referred to in section 5;

"Official Gazette" means the *Official* or *Provincial Gazette* of the province concerned;

"pre-interim phase" means the period commencing at the date of commencement of this Act and ending with the commencement of the interim phase;

"province" means any existing province, and at the establishment of a SPR Government for the province concerned, shall mean the corresponding state, province or region;

"Self-governing Territory" means any area declared under the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory within the Republic;

"transitional council" includes both a transitional local council and a transitional metropolitan council;

"Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. XX of 1993);

"transitional joint council" means a joint council for the pre-interim phase performing specified powers, duties and functions of local government bodies as contemplated in section 6(1)(c);

"transitional local council" means a single council for a non-metropolitan area of local government as contemplated in section 6(1)(b)(i) for the pre-interim phase and as contemplated in section 8(1)(a) for the interim phase;

"transitional metropolitan council" means the upper tier council of a two tier system of local government for a metropolitan area of local government as contemplated in section 6(1)(b)(ii) for the pre-interim phase and as contemplated in section 8(1)(b) for the interim phase;

"transitional metropolitan substructure" means the lower tier council of a two tier system of local government for a metropolitan area of local government as contemplated in section 6(1)(b)(ii) for the pre-interim phase and as contemplated in section 8(1)(b) for the interim phase.

(2) The Administrator may, in respect of the province for which he is appointed, by notice in the *Official Gazette* declare any person who or institution or body which in his opinion performs local government functions in respect of a particular area to be a local government body for the purposes of this Act.

Inclusion of Self-governing Territories

2. The provisions of this Act or any proclamation or regulation issued thereunder-

- (a) shall, notwithstanding anything to the contrary contained in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), be of force and effect in any Self-governing Territory;
- (b) shall be construed as if the legislative assembly and the executive government of any Self-governing Territory do not have legislative and executive powers over matters dealt with in this Act or any such proclamation or regulation.

PART II

REGIONAL COMMITTEE FOR LOCAL GOVERNMENT

Establishment of Regional Committee for Local Government

3.(1)(a) The Transitional Executive Council shall establish for each province a committee to be known as the Regional Committee for Local Government (hereinafter referred to as the Committee) which shall exercise the powers and functions and perform the

duties conferred or imposed upon it by this Act.

(b) For as long as the Transitional Executive Council is in existence, the Committee shall, subject to the provisions of this Act, be deemed to be a subcommittee contemplated in section 7(1)(h) of the Transitional Executive Council Act, 1993 (Act No. XX of 1993).

(c) The Committee shall be disestablished on the day immediately preceding the day determined in terms of section 9(1) of this Act.

(2) The Committee shall consist of not more than seven members appointed by the Transitional Executive Council: Provided that a member shall both reside within the province concerned and be a representative of a participant in the Transitional Executive Council: Provided, further, that not more than one representative of any such participant shall be appointed as a member of the Committee.

(3) The Committee shall from among its members appoint a chairperson and a vice-chairperson and other office-bearers either on a fixed or rotational basis.

(4) When the chairperson is absent or unable to perform his functions in terms of this section, the vice-chairperson shall act in his stead, and while so acting he may exercise all the powers and shall perform all the duties of the chairperson.

(5)(a) A member of the Committee shall hold office as a member during the pleasure of the Transitional Executive Council, and, at the establishment of a SPR Government for the province concerned, at the pleasure of the elected executive authority of that SPR Government.

(b) Any vacancy in the membership of the Committee shall be

filled by a person appointed by the Transitional Executive Council in accordance with the provisions of subsection (2): Provided that if any vacancy occurs when the Transitional Executive Council is not in existence, it shall be filled by a person appointed by the elected executive authority of the SPR Government concerned: Provided, further, that any person so appointed shall reside within the province concerned.

(6)(a) The Administrator shall in writing notify the Committee of his intention to exercise any power or function or to perform any duty conferred or imposed upon him by this Act.

(b) On receipt of a notice referred to in paragraph (a), a meeting of the Committee shall be held within a reasonable time for the purpose of furnishing the Administrator with the written decision of the Committee in regard to the exercise of a power or function or the performance of a duty referred to in paragraph (a).

(7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Committee in so far as they are applicable to the functions of the Committee.

(8)(a) A meeting of the Committee shall be held at such time and place as the chairperson may determine.

(b) A decision of the Committee shall be taken by a two-thirds majority.

(c) The Committee may make rules in relation to the holding of and procedure at meetings of the Committee.

(9)(a) The conditions of service, remuneration, allowances and other benefits of members of the Committee shall be determined by the Minister in concurrence with the Minister of Finance.

(b) Any member of the Committee who receives remuneration, allowances or other benefits by virtue of his employment by or position in any government or public service or any transitional executive structure and who continues to receive such remuneration, allowances or other benefits while serving on the Committee shall not receive any remuneration, allowance or other benefits in terms of paragraph (a), except to the extent required to place such member in the position in which he would have been were it not for such employment or position.

(10)(a) The Committee may appoint one or more subcommittees consisting of one or more members of that Committee and such other persons as the Committee may co-opt as it deems fit to serve in any such subcommittee to advise and make recommendations in writing to the Committee regarding the exercise of any power or function or the performance of any duty conferred or imposed upon the Committee by this Act, subject to the directions of the Committee, and -

(i) where such subcommittee contains more than one member of that Committee, the Committee shall designate one such member to be chairperson; or

(ii) where such subcommittee contains only one member of that Committee, such member shall be chairperson,
of such subcommittee.

(b) The provisions of subsections (7), (8) and (9) shall apply *mutatis mutandis* in relation to a subcommittee appointed under paragraph (a) of this subsection and any member of such subcommittee.

(11) The administrative work incidental to the performance of the functions of the Committee shall be performed by officers of the respective provincial administrations designated for this purpose by the director-general concerned.

PART III
EXEMPTION FROM CERTAIN PROVISIONS

Administrator may exempt certain local government bodies from certain provisions of Act

4.(1) The Administrator may in writing exempt any local government body referred to in paragraph (j) of the definition of local government body, from the provisions of Parts IV and V of this Act if the Administrator is satisfied that such local government body is non-racial and inclusive and has brought about stability at local level through effective government, orderly financial management and a single local government administration.

(2) From the date of an exemption granted by the Administrator as contemplated in subsection (1) -

(a) Parts IV and V of this Act shall not apply to an exempted local government body referred to in subsection (1) and any proclamation issued under the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), whereby such local government body was established, shall subject to the provisions of this Act, continue to be of force up to the day immediately preceding the day determined in terms of section 9(1);

(b) the local government body concerned shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);

(c) the provisions of the law applying to local authorities in the province concerned shall *mutatis mutandis* apply to

such local government body; and

(d) any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to any such local government body.

PART IV
PRE-INTERIM PHASE
NEGOTIATING FORUMS

Recognition and establishment of forums

5.(1) The Administrator may, on the written application of any forum established before the commencement of this Act, recognise such forum if the Administrator is satisfied on a balance of probabilities on the evidence presented in the application that such forum has been established substantially in accordance with the principles and procedures embodied in Schedule 1, whereupon such forum shall be deemed to be a negotiating forum for the purposes of this Act.

(2)(a) Any negotiating forum established after the commencement of this Act shall be established substantially in accordance with the principles and procedures embodied in Schedule 1.

(b) Any negotiating forum established after the commencement of this Act shall refer any dispute within the forum as to whether such forum has been established substantially in accordance with the principles and procedures embodied in Schedule 1, to the Administrator for a final decision which shall be binding on the forum.

Negotiating matters

6.(1) Notwithstanding anything to the contrary contained in any other law, a negotiating forum shall -

(a) negotiate on the forum area contemplated in Schedule 1;

(b) subject to the principles and procedures embodied in Schedule 1, negotiate on the establishment of -

(i) any transitional local council for a non-metropolitan area of local government;

(ii) any transitional metropolitan council with metropolitan substructures for a metropolitan area of local government,

within the forum area by a proclamation contemplated in section 7(1) as a possible option for the pre-interim period: Provided that where any such option is agreed upon, the following matters shall, where applicable, also be negotiated:

(i) the powers, duties and functions of any transitional metropolitan council and substructures: Provided that the powers, duties and functions of any transitional metropolitan council shall be at least the powers, duties and functions referred to in items 1 - 21 of Schedule 2 to the Regional Services Councils Act, 1985 (Act No. 109 of 1985);

(ii) the total number of seats in a transitional local or metropolitan council and substructure, taking the number of existing seats of all local government bodies within the forum area as a point of departure;

(iii) the nomination of persons for appointment as members of a transitional local or metropolitan council and substructure; and

(iv) the delimitation of the areas of jurisdiction of any transitional local or metropolitan council and substructure into wards, the establishment of ward

councils for such wards, and the powers, duties and functions of such ward councils;

(c) negotiate on the establishment of a transitional joint council of the local government bodies within the forum area having certain specified powers, duties and functions with the individual councils of the local government bodies retaining all other powers, duties and functions within their areas of jurisdiction: Provided that where such option is agreed upon, the following matters shall also be negotiated:

(i) the powers, duties and functions of the transitional joint council: Provided that the powers, duties and functions of any transitional joint council shall be at least the following powers, duties and functions:

(aa) the approval of and control over the implementation of the budgets of the individual councils of the local government bodies;

(bb) decisionmaking in regard to the financial resources of the individual local government bodies, including the allocation of accumulated surpluses of the individual local government bodies, the allocation and distribution of intergovernmental grants to the individual local government bodies, the allocation of funds from the local government bodies referred to in paragraphs (h) and (i) of the definition of local government body to the individual local government bodies, and the approval of tariffs for services rendered within the areas of jurisdiction of the individual local government bodies;

(cc) the approval of the by-laws of the councils of the individual local government bodies;

(dd) the alienation and disposal of land; and

- (ee) the management of the process of urbanisation;
- (ii) the total number of seats in such transitional joint council and the representation on such council of the local government bodies within the forum area and such other persons nominated by the forum;
- (iii) the nomination of persons for appointment as members of such transitional joint council; and
- (iv) the delimitation of the area of jurisdiction of any local government body within the forum area into wards, the establishment of ward councils for such wards, and the powers, duties and functions of such ward councils,

and shall submit any agreement reached to the Administrator within such period as the Administrator may determine or within any extension of such time which the Administrator may allow, whereupon the Administrator shall exercise the powers conferred upon him by section 7(1) incorporating the provisions of such agreement in the proclamation contemplated in section 7(1).

(2) Where an agreement as contemplated in subsection (1) is not submitted to the Administrator within the period determined by the Administrator as contemplated in that subsection, or within any extension of such time which the Administrator may allow, the Administrator shall determine which option referred to in paragraphs (b) and (c) of subsection (1) shall be applied to the local government bodies within the forum area concerned and shall thereupon exercise the powers conferred upon him by section 7(1) incorporating the provisions of such determination in the proclamation contemplated in section 7(1).

PART V
TRANSITIONAL MEASURES
FOR BOTH THE PRE-INTERIM AND INTERIM PHASES

Powers of Administrator

7.(1) For the purposes of this Act the Administrator concerned may in respect of the area of jurisdiction of the province for which he is appointed -

(a) by proclamation in the *Official Gazette*, make enactments not inconsistent with this Act with a view to the transitional regulation of any matter relating to local government;

(b) provide in any such enactment for the amendment or repeal of any law, including any Act of Parliament or the legislative assembly of any Self-governing Territory, in so far as it relates to any such matter and applies in the province; and

(c) provide in any such enactment that any law, including any Act of Parliament or the legislative assembly of a Self-governing Territory, or any provision of any such law, pertaining to local government affairs shall, subject to the adjustment or amendment of such law or provision as he may make in such enactment, apply to any local government body, transitional council or metropolitan substructure referred to in section 15 or to any category of such local government body, transitional council or metropolitan substructure,

and he may make different such enactments in respect of different areas, agreements, local government bodies, transitional councils or metropolitan substructures.

(2) The Administrator may in like manner by proclamation in the *Official Gazette* amend or repeal a proclamation made under subsection (1).

(3) Without derogating from the generality of the power conferred by subsection (1), a proclamation contemplated in that subsection may provide for -

(a) the establishment, under a name set out in the proclamation, of any transitional council or metropolitan substructure;

(b) the termination of the terms of office of members of any local government body and the appointment of persons as members of any transitional council or metropolitan substructure;

(c) the termination of the terms of office of members of any local government body, transitional council or metropolitan substructure and the appointment of one or more persons or any body to manage and control the affairs of such local government body, transitional council or metropolitan substructure and on behalf of such local government body, transitional council or metropolitan substructure to exercise, perform and fulfil the rights, powers, functions, duties and obligations of such local government body, transitional council or metropolitan substructure;

(d) the application to any such local government body, transitional council or metropolitan substructure of any law which in the opinion of the Administrator relates to local authorities or local authority matters to the extent stated in the proclamation, or the regulation with reference to any such local government body, transitional council or metropolitan substructure of any matter

contained in any such law;

(e) the suspension of or exemption from any provision of any law which relates to the establishment, dissolution or combination of local government bodies or the determination or alteration of the areas or regions thereof;

(f) the dissolution of any local government body, including-

(i) the transfer or admission of persons to or in the service of any transitional council or metropolitan substructure, subject to conditions not less favourable than those under which they serve;

(ii) the winding-up or transfer of the assets, liabilities, rights and obligations of any local government body, including the protection of such assets from attachment and sale in execution; and

(iii) the continued application of the resolutions, by-laws or regulations of such local government body;

(g) the delimitation of the area of jurisdiction of any local government body, transitional council or metropolitan substructure into wards, the establishment of ward councils for such wards, and the powers, duties and functions of such ward councils;

(h) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a transitional metropolitan council with metropolitan substructures for a metropolitan area of local government, including the delimitation of such an area, and the constitution, functioning, functions, powers, duties, assets, rights, employees and financing of such transitional metropolitan councils and substructures:

Provided that the powers, duties and functions of any transitional metropolitan council shall be at least the powers, duties and functions referred to in items 1 - 21 of Schedule 2 to the Regional Services Councils Act, 1985 (Act No. 109 of 1985): Provided, further, that such transitional metropolitan council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;

(i) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a body to be known as a services council, sub-regional council or district council to jointly exercise and carry out powers and duties in relation to certain local government functions for a non-metropolitan area of local government by transitional local councils, transitional joint councils or local government bodies within such areas, including the delimitation of such an area, and the constitution, functioning, functions, powers, duties, assets, rights, employees and financing of such body: Provided that the powers, duties and functions of any services council, sub-regional council or district council shall be at least the following powers, duties and functions:

- (i) the approval of and control over the implementation of the budgets of the individual councils of the local government bodies;
- (ii) decisionmaking in regard to the financial resources of the individual local government bodies, including the allocation of accumulated surpluses of

the individual local government bodies, the allocation and distribution of intergovernmental grants to the individual local government bodies, the allocation of funds from the local government bodies referred to in paragraphs (h) and (i) of the definition of local government body to the individual local government bodies, and the approval of tariffs for services rendered within the areas of jurisdiction of the individual local government bodies;

(iii) the approval of the by-laws of the councils of the individual local government bodies;

(iv) the alienation and disposal of land; and

(v) the management of the process of urbanisation:

Provided, further, that such services council, sub-regional council or district council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;

(j) the protection of the rights, benefits, remuneration and allowances of employees of a local government body.

PART VI
INTERIM PHASE
TRANSITIONAL COUNCILS OF LOCAL UNITY

Delimitation of transitional councils of local unity

8.(1) A transitional council of local unity for which elections

shall be held as provided for in section 9, shall be known as a -

- (a) transitional local council for a non-metropolitan area of local government;
- (b) transitional metropolitan council with metropolitan substructures for a metropolitan area of local government.

(2) The Administrator shall -

- (a) after considering the advice and written recommendations of the Board, delimit the area of jurisdiction of transitional councils of local unity and metropolitan substructures;
- (b) determine the powers, duties and functions of any transitional metropolitan council and substructures;
- (c) determine the number of seats in a transitional local or metropolitan council and substructure in accordance with the formula embodied in Schedule 2;
- (d) after considering the advice and written recommendations of the Board, delimit the areas of jurisdiction of any transitional local or metropolitan council and substructure into wards;
- (e) determine the basis on which ward councils for wards shall be elected; and
- (f) determine the powers, duties and functions of ward councils.

(3) After making a delimitation and determination contemplated in subsection (2), the Administrator shall thereupon exercise the powers conferred upon him by section 7(1) incorporating the provisions of such delimitation and determination in the proclamation contemplated in section 7(1).

Elections for transitional councils of local unity

9. (1) Notwithstanding anything to the contrary contained in any

law, the first election, after the commencement of this Act, of the members of any transitional council of local unity and metropolitan substructure in the province concerned, shall take place on a day determined by the Administrator by notice in the *Official Gazette*.

(2) Notwithstanding anything to the contrary contained in any law, the Administrator may by proclamation in the *Official Gazette* -

(a) make regulations regarding -

- (i) the determination of wards and polling districts;
- (ii) voters and voters' lists, including determination of the qualifications of voters;
- (iii) members of transitional councils of local unity and metropolitan substructures, including the qualifications and term of office of members;
- (iv) the conducting of and procedures at the election;
- (v) election expenses;
- (vi) corrupt and illegal practices and other related offences; and
- (vi) any other matter which the Administrator considers necessary or expedient to prescribe in order to achieve or promote the objects of this section, and the generality of this provision shall not be limited by the preceding subparagraphs of this paragraph;

(b) declare that any law or any provision of any law pertaining to the election of members of any local government body in the state, province or region concerned shall, subject to the adjustment or amendment thereof set out in that proclamation, for the purposes of an election referred to in subsection (1), apply to any transitional council of local unity and metropolitan substructure referred to in subsection (1).

(3) Regulations made under subsection (2)(a) may prescribe penalties for a contravention thereof or a failure to comply

therewith, of a fine or imprisonment for a period not exceeding two years.

(4) Any regulation made under paragraph (a) of subsection (2) and any declaration contemplated in paragraph (b) of that subsection, shall be in accordance with the principles listed in Schedule 3.

PART VII
LOCAL GOVERNMENT DEMARCATION BOARDS

Establishment of Local Government Demarcation Board

10.(1)(a) There is hereby established for each province a board to be known as the Local Government Demarcation Board (hereinafter referred to as the Board).

(b) The Board shall be disestablished on the day immediately preceding the day determined in terms of section 9(1) of this Act.

(2) The Board shall consist of such number of members as may from time to time be determined and appointed by the Administrator in accordance with the criteria listed in Schedule 4.

(3) The Administrator shall designate a member of the Board as chairperson and another member as vice-chairperson.

(4) When the chairperson is absent or unable to perform his functions in terms of this section or if no person has been designated as chairperson, the vice-chairperson shall act in his stead, and while so acting he may exercise all the powers and shall perform all the duties of the chairperson.

(5) A member of the Board shall hold office as a member, and a member designated as chairperson or vice-chairperson shall hold office as chairperson or vice-chairperson, during the pleasure of the Administrator.

(6)(a) The Board shall, notwithstanding the provisions of any other law, at the request of the Administrator investigate and make recommendations in writing regarding any demarcation, redemarcation or the withdrawal of the demarcation of any area pertaining to local government affairs, including the area of any negotiating forum and the area of jurisdiction of any local government body or transitional local or metropolitan council and the delimitation of wards within the area of jurisdiction of any local government body or transitional local or metropolitan council.

(b) When the Board advises the Administrator as contemplated in paragraph (a), it shall do so within a reasonable time and take into account the criteria listed in Schedule 5.

(7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Board in so far as they are applicable to the functions of the Board.

(8)(a) A meeting of the Board shall be held at such time and place as the chairperson may determine.

(b) The majority of the members of the Board shall form a quorum for a meeting of the Board.

(c) The decision of the majority of members of the Board present at any meeting thereof, shall be a decision of the Board: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his deliberative vote.

(d) The Board may make rules in relation to the holding of and procedure at meetings of the Board.

(9) The provisions of section 3(9) shall apply *mutatis mutandis* in relation to the remuneration, allowances and other benefits of a member of the Board.

(10)(a) The Board may appoint one or more committees consisting of one or more members of that Board and such other persons as the Board may co-opt as it deems fit to serve in any such committee to investigate any matter referred to in subsection (6)(a), and -

(i) where such committee contains more than one member of that Board, the Board shall designate one such member to be chairperson; or

(ii) where such committee contains only one member of that Board, such member shall be chairperson,

of such committee, and any such committee shall for the purposes of any such investigation exercise all the powers conferred and perform all the duties imposed upon that Board in respect of any such investigation.

(b) A committee appointed under this subsection shall submit to the Board a written report in respect of any investigation by it in regard to any matter which the Board is in terms of subsection (6) required to investigate, and the Board may thereupon act in regard to that matter as if the Board had itself undertaken such investigation.

(c) The provisions of section 3(9) shall apply *mutatis mutandis* in relation to the remuneration, allowances and other benefits of a member of a committee appointed under this subsection.

(11) The administrative work incidental to the performance of the functions of the Board shall be performed by officers of the respective provincial administrations designated for this purpose

by the director-general concerned.

PART VIII
GENERAL

Regulations

11. The Minister may, after consultation with the Administrator, make regulations in respect of any matter referred to in this Act which in his opinion are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.

Repeal of Act 102 of 1982, and transitional measures connected therewith

12.(1)(a) Subject to the provisions of this Act, the Black Local Authorities Act, 1982 (Act No. 102 of 1982), is hereby repealed.

(b) Where the Administrator has in terms of section 8 of the Local Authority Affairs Amendment Act, 1991 (Act No. 127 of 1991), declared certain provisions of the Black Local Authorities Act, 1982, applicable to any other local authority or committee as provided for in that section, such provisions shall form part of the law applying to such local authority or committee.

(c) Notwithstanding the provisions of paragraph (a), any council or committee established under the provisions of the repealed Act, shall continue subject to the provisions of this Act, and shall for all purposes be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act

(Act No. 32 of 1961).

(2) The provisions of the law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 7(1), apply *mutatis mutandis* to any local government body referred to in paragraph (b) of the definition of local government body.

(3) Any resolution, by-law or regulation of a local government body referred to in subsection (2), shall continue to be of force until amended or repealed by a proclamation contemplated in section 7(1) or by a resolution, by-law or regulation of a transitional council or metropolitan substructure.

(4)(a) The Administrator may by notice in the *Official Gazette* define for the purposes of this subsection an area outside the area of a local government body referred to in paragraph (b) of the definition of local government body and exercise in such area the powers conferred upon a local authority in a local authority area under the laws applicable to local authorities in the province concerned.

(b) An area defined by the Administrator in terms of section 2(11) of the Black Local Authorities Act, 1982, and an area deemed to be so defined in terms of section 2(12) of that Act, shall, subject to the provisions of this Act, be deemed to be a defined area referred to in paragraph (a) of this subsection.

(c) Any reference in any law, including this Act, to a local government body referred to in paragraph (b) of the definition of local government body shall be deemed, in respect of an area referred to in paragraph (a) of this subsection, also to be a reference to the Administrator of the province concerned.

Repeal of Act 128 of 1991 and sections 28 and 29 of Act 134 of 1992

13.(1) Subject to the provisions of subsection (2), the Interim Measures for Local Government Act, 1991, and sections 28 and 29 of the Provincial and Local Authority Affairs Amendment Act, 1992 (Act No. 134 of 1992), are hereby repealed.

(2) Notwithstanding the provisions of subsection (1), any proclamation issued under the Interim Measures for Local Government Act, 1991, in connection with any matter referred to in section 8 of that Act, shall, subject to the provisions of this Act, continue to be of force until amended or repealed by a proclamation contemplated in section 7(1).

Repeal of other laws

14.(1) Subject to the provisions of subsection (2), the Regulations governing the Administration and Control of the Areas Clermont and Edendale, 1974 (Proclamation No. R. 163 of 1974), the Regulations for the Administration and Control of certain Urban Areas in Natal, 1982 (Proclamation No. R. 86 of 1982), the regulations for the Administration and Control of certain Urban Areas in Natal, 1983 (Proclamation No. 67 of 1983), and the Regulations for Local Authorities, 1988 (Government Notice No. 405 of 1988), are hereby repealed.

(2) Any area in respect of which the laws referred to in subsection (1) applied shall, subject to the provisions of this Act, be deemed to be a defined area referred to in section 12(4)(a).

Transitional provision

15.(1) Any transitional council or metropolitan substructure established by a proclamation contemplated in section 7(1) of this Act, shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961.

(2) Subject to the provisions of this Act and any proclamation issued thereunder, the provisions of the law applying to local authorities in the province concerned shall *mutatis mutandis* apply to any transitional council or metropolitan substructure referred to in subsection (1): Provided that, notwithstanding anything to the contrary contained in any law, any resolution of such transitional council or metropolitan substructure shall be taken by a two thirds majority.

(3) Any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to any transitional council or metropolitan substructure referred to in subsection (1).

Short title

16. This Act shall be called the Local Government Transition Act, 1993.

SCHEDULE 1

*Principles and procedures referred to in section 5***Area of forum**

1.(1) Subject to the provisions of the Act, a forum shall be established for each economically and historically bound urban area, ranging from a stand alone town with its satellites to a complex metropolis.

(2) Criteria for the establishment of a forum include commercial/industrial linkage, daily commuting patterns, provision of services, the areas of jurisdiction of local government bodies, including pre - 1971 areas of jurisdiction of such local government bodies, where applicable.

2.(1) Where a negotiating forum is not recognised by the Administrator as contemplated in section 5(1) of the Act or not established spontaneously as contemplated in section 5(2)(a) of the Act, the Administrator may determine the area of a forum and submit it to the town clerks of the local government bodies falling within such forum area.

(2) In determining the area of a forum, the Administrator shall take into consideration the criteria referred to in paragraph 1(2), including -

- (a) the area of any existing forum;
- (b) the area of jurisdiction of any local government body referred to in paragraph (j) of the definition of local government body in section 1(1) of the Act established by a proclamation in terms of the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991).

(3) Upon receipt of a submission contemplated in subparagraph (1), the town clerks concerned shall -

- (a) arrange an inaugural meeting of the forum with all potential members and observers contemplated in paragraph 2: Provided that the Administrator may nominate one town clerk to arrange such inaugural meeting; and
- (b) submit the submission to their respective councils for information.

(4) Within 30 days of the receipt of a submission contemplated in subparagraph (1), the forum shall either confirm the forum area determined by the Administrator, or subject to the provisions of paragraph 1(2), propose a new area for the forum and submit such proposal to the Administrator who may -

- (a) confirm the proposed area; or
- (b) refer the matter to the Board established in terms of section 10(1)(a) of the Act to investigate the matter and make written recommendations to him as contemplated in section 10(6) of the Act.

(5) The decision of the Administrator -

- (a) to confirm the proposed forum area as contemplated in subparagraph (4)(a); or
 - (b) on the written recommendations of the Board as contemplated in subparagraph (4)(b),
- shall be final and binding on the forum.

Membership of forum

2.(1) Membership of a forum shall be in accordance with the principle of inclusivity and representativity: Provided that the process shall continue despite the refusal or neglect of any person, body or organization to participate in any such forum.

(2) Observers, which shall be entitled to attend and to

participate fully in forum meetings, but shall not be entitled to vote, may be appointed to the forum.

(3) To qualify for membership or observer status, such prospective member or observer shall, where applicable, submit in writing to the forum its constitution, a list of office-bearers and details of activities and membership.

(4)(a) Membership of a forum shall be available to -

- (i) local government bodies;
- (ii) local organizations representing substantial sectors of the wider community having a vested interest in the political restructuring of local government, such as civic associations, residents associations and the local structures of political parties.

(b) Bodies such as local chambers of commerce and industry and sakekamers, the Development Bank of Southern Africa and supplier bodies such as Eskom and Water Boards, shall have observer status.

Negotiating matters and objectives

3.(1) A forum shall negotiate on the matters referred to in section 6(1) of the Act.

(2) A forum may generally, as local circumstances dictate, explore and propose short, medium and long term practical solutions to the problems of local government in the area of such forum to be submitted to the Administrator for consideration.

Nomination by forum of persons for appointment as members of transitional councils

4.(1) For the purposes of negotiating the nomination of members of a transitional council and metropolitan substructure as contemplated in section 6(1)(b) and (c) of the Act, members of the forum may be required to indicate whether they are to be regarded as part of -

- (a) the statutory component, comprising the existing local government bodies and the political parties or organisations represented on such local government bodies;
- (b) the non-statutory component comprising any other bodies not contemplated in subparagraph (a) having a vested interest in the political restructuring of local government and as approved by the forum;
- (c) the observer component which fall into neither category contemplated in subparagraphs (a) and (b).

(2) The statutory and the non-statutory components shall each complete a list of potential candidates, whereupon a representative committee comprising members from each component shall meet to attempt to reach consensus on the persons to be nominated by the forum for appointment as members of any transitional local or metropolitan council and substructure: Provided that at least half of the persons nominated should be acceptable to the statutory component and at least half to the non-statutory component: Provided, further, that a list of additional candidates in order of preference, shall be submitted by the statutory and non-statutory components to facilitate the filling of any vacancy which may occur.

(3)(a) One half of the nominations shall, as far as possible, not disturb the pre-existing proportionate representation of parties in the local government bodies concerned.

(b) The other half of the nominations shall comprise equitable representation of all those sectors of society which in the past did not participate in the electoral process in the area of that forum.

(4) Any person nominated as a member of any transitional council and metropolitan substructure shall meet the qualifications of a member of one of the participating local government bodies.

(5) Lists of persons nominated as members of a transitional council and metropolitan substructure by the forum shall be submitted to the Administrator as part of an agreement contemplated in section 7(1) of the Act.

(6) If the forum fails to reach agreement on whether a member is to be regarded as part of the statutory or non-statutory components contemplated in subparagraphs (a) and (b) of subsection (1), the forum shall refer the matter to the Administrator for a final decision which shall be binding on the forum.

(7) If the forum fails to reach agreement on the nomination of persons as contemplated in subparagraph (2), the forum shall refer the matter to the Administrator who may appoint a mediator or mediators to assist the forum to reach consensus.

Secretarial services

5.(1) The forum shall appoint a secretariat to provide for the secretarial services.

(2) The local government bodies concerned shall be jointly and severally responsible for the expenses incurred by the secretariat.

(3) The secretariat shall submit certified copies of all resolutions passed by the forum pertaining to matters referred to in section 6(1)(a) - (c) of the Act to the Administrator.

Procedures at meeting of forum

6. The standard rules of procedure embodied in the Annexure are recommended for adoption by each forum as its rules of procedure for meetings of the forum.

ANNEXURE
STANDARD RULES OF ORDER OF FORUM

Chairperson

1.(1) The inaugural meeting shall be convened by a person to be nominated by the Administrator for that purpose.

(2) At its first meeting the Forum shall designate a chairperson or co-chairpersons who need not be a member of the forum: Provided that any reference in this document to the chairperson shall also be deemed to be a reference to the co-chairperson.

(3) A chairperson shall not, after being so designated remain a member of the delegation of any of the members.

(4) A chairperson may for good cause be removed from office by the Forum by a vote of no confidence. If a chairperson is removed from office, another person shall be designated in his place.

(5) Whenever both chairpersons is for any reason absent or unable to act at a meeting, the Forum shall by a majority of the members present in person, designate a person from among its members to take the chair for that meeting.

Meetings and minutes

2.(1) In addition to their delegations, members and observers may bring officials and advisers to meetings of the Forum, and such persons may with the consent of the chairperson participate in the proceedings. All such persons are hereinafter referred to as "participants".

(2) Meetings of the Forum shall be open to the media or the public unless it on any occasion otherwise decides.

(3) If negotiations on any matter are contemplated any member may request that the meeting go into committee, and the meeting shall comply.

(4) The agenda for any meeting of the Forum may be made available to the public or the media before or at that meeting. The secretariat may in its discretion withhold any particular document from the press and public until otherwise directed by the chairperson or the meeting.

(5) The Forum shall, from time to time, set a programme of dates, times and venues for its ordinary meeting.

(6) Leave of absence from any meeting may be applied for by or on behalf of a member or observer either before or at the meeting concerned.

Notices of meetings

3.(1) The secretariat shall give each member and observer written notice of each meeting.

(2) Each notice shall set out the time, date and place of such meeting and shall include an agenda and any other information which the secretariat deems necessary to enable the participants to prepare for the meeting.

(3) Meetings shall be convened on not less than 7 calendar days notice.

(4) Not fewer than one quarter of the members of the Forum may submit to the secretariat a written request for a special meeting

to be convened on the grounds set out therein. The secretariat shall within 7 calendar days thereafter issue a notice convening such a meeting.

(5) Service of such notices shall normally be by hand delivery or by telefacsimile to numbers supplied to the secretariat by members; but notices may be mailed to members whose offices are more than 10 kilometres away from the Secretariat's office and which have not provided telefacsimile addresses. Changes of address should be notified to the secretariat in writing.

(6) The accidental omission to serve notice on any member or observer shall not affect the validity of the meeting concerned.

Quorum

4.(1) At least half of the total number of members, each represented by one or more delegates personally present, shall constitute a quorum for a meeting of the Forum.

(2) Whenever during a meeting there is no quorum, the chairperson shall suspend proceedings for twenty minutes and if at the end of that period there is still no quorum, he or she may declare the meeting to be at an end.

Attendance register

5. The Secretariat shall keep an attendance register, in which every participant present at a meeting shall sign his name and indicate the member or observer body which he is representing.

Order of business

- 6.(1) The order of business at a meeting shall be as follows:
- (a) Opening;
 - (b) Application for leave of absence;
 - (c) Statements and communications by the chairpersons;
 - (d) Settling the agenda, including decisions on the release of documents to the media and public;
 - (e) Confirmation of minutes of previous meeting;
 - (f) Matters arising from the minutes (if not covered by agenda item);
 - (g) Consideration of report by a joint technical committee referred to in paragraph 12, including its working groups and task teams (if any);
 - (h) Consideration of any matters of common concern or interest relating to the region;
 - (i) Matters of urgency or necessity in terms of subparagraph (4);
 - (j) Possible press statement.
- (2) The chairperson may give preference to any item on the agenda with the consent of the meeting.
- (3) No business shall be transacted at a meeting other than that specified in the agenda relating thereto.
- (4) The chairperson may as a matter of urgency or necessity accept a matter which could not have been notified to the secretariat in terms of paragraph 7 in which case a properly motivated written request for such a matter to be raised shall be conveyed to the secretariat a reasonable time before the meeting.
- (5) A request in terms of subparagraph (4) may be submitted to the secretariat immediately before the meeting, or during an

adjournment called for the purpose.

(6) The chairperson shall rule on the acceptability of any urgent request, and on the need for other participants to be given appropriate time to prepare for discussion thereof.

Notice of matters for discussion

7.(1) Written notice of any matter contemplated in paragraph 6(1)(h) shall be given to the secretariat not fewer than 10 days prior to the date of each meeting of the forum and such notice shall be sent by the secretariat to each member in terms of paragraph 3.

(2) A notice of matters for discussion shall deal with one matter only and shall be relevant, which relevance shall be determined by the chairperson at the meeting where it is to be considered.

Proposals during the course of a meeting

8.(1) The following proposals may also be made during a meeting:

- (a) To amend a motion, proposal or recommendation of a joint technical committee or a working group.
- (b) That the Forum do now adjourn.
- (c) That a debate be adjourned.
- (d) That a matter be referred back to the joint technical committee or a Working group.
- (e) That consideration of the matter be deferred or held over.

- (f) That a decision be taken on the matter under consideration.
- (g) That it be accepted that consensus cannot be reached.
- (h) That the meeting go into committee, i.e. by excluding media and the public.
- (i) That the media and the public be allowed back into the meeting.

(2) Every proposal in terms of subparagraph (1) shall be seconded.

(3) Any business uncompleted at an adjourned meeting shall be dealt with at the next meeting unless the Forum decides otherwise or the chairperson convenes a special meeting to dispose thereof.

(4) Any proposals to refer a matter back shall indicate to which body the matter shall be referred and the aspect on which reconsideration is required.

Proceedings at meetings

9.(1) The chairperson shall have all powers necessary to control and conduct a meeting and may for such purpose issue directions to any participant or person, and in his discretion adjourn the meeting at any time.

(2) Whenever the chairperson speaks during a meeting, any participants then speaking or intending to speak shall be silent and all persons present shall be silent so that the chairperson may be heard without interruption.

(3) A participant who speaks shall address his speech strictly

to the motion or proposal under discussion or to an explanation or point of order and no discussion shall be allowed which will anticipate any matter on the agenda.

(4) Any participant may ask the chairperson for permission to address the meeting -

(a) on a point of order with a view to calling attention to any departure from the prescribed procedure; or

(b) in personal explanation, in order to explain some material part of his former speech which may have been misunderstood,

and any participant so asking shall be entitled to be heard forthwith unless the chairperson rules the point of order or explanation to be inadmissible.

(5)(a) If a participant misconducts himself, behaves in an unseemly manner or obstructs the business of any meeting or challenges any ruling of the chairperson, the chairperson shall direct such person to conduct himself properly and if speaking to discontinue his speech.

(b) In the event of a persistent disregard of the directions of the chairperson, he shall direct such person to retire from the place where the meeting is held for the remainder of the meeting, failing which the chairperson may direct that he be removed.

(6) Any other person who misconducts himself, misbehaves in an unseemly manner or interrupts proceedings at any meeting, shall, if the chairperson so directs, leave the place where the meeting is held, failing which the chairperson may direct that he be removed.

(7) Any interpretation by the chairperson of these Rules of Order

shall, if any participant present so requests, be recorded in the minutes.

Decision-making

10.(1) In carrying out its functions, the Forum shall seek to achieve consensus. In cases where consensus cannot be achieved, differing views may be expressed and recorded.

(2) Should consensus not be achieved regarding designation or removal from office of a chairperson then such matter may be decided by a concurrent majority of two thirds in both the statutory and non-statutory components of members present.

(3) Should consensus not be achieved on an issue in any of the following categories -

- (a) conferring or withdrawing observer status;
- (b) budgets for the spending of whatever funds may be available to the forum;
- (c) contracts;
- (d) matters concerning any staff of the Forum,

then consideration of such matter shall be deferred until the next meeting, at which the matter may be decided by a two thirds majority of members present.

(4) The admission of new members and observers shall be by a two thirds majority of members present.

(5) The delegation of each member shall be entitled to one vote.

(6) Where a vote has to be taken on any matter, such vote shall be by a show of hands unless any member requests a secret ballot.

(7) Where the membership totals fewer than six members, the two-thirds majority rule shall be interpreted as requiring support from such total minus one.

Minutes

11.(1) The secretariat shall keep an attendance register and proper minutes or other appropriate records of the Forum's decisions and transactions in a minute book and other appropriate books. Minutes shall, unless other arrangements are made with any members, be sent to each member as soon as possible after each meeting, and at latest with the agenda for the next meeting.

(2) A copy of minutes certified by the chairperson as a true copy or extract of minutes, confirmed by the Forum, shall constitute prima facie proof of the accuracy thereof.

Joint Technical Committee and working groups

12.(1) A standing committee to be known as the joint technical committee (JTC) may be appointed by the Forum from the statutory and non-statutory side. Each member and observer shall be entitled to nominate representatives to serve thereon.

(2) The JTC shall attempt to reach consensus on all matters, but where this cannot be achieved, any dissenting views shall be recorded.

(3) The JTC shall designate and may remove from office a chairperson by resolution passed by a simple majority of members and observers represented at a meeting, each delegation having one vote.

(4) The JTC may, subject to review by the Forum, co-opt any

person to serve on it for one or more meetings or part thereof.

(5) The JTC or, if there is no JTC, the Forum, may create working groups, task teams and sub-committees.

(6) The JTC shall meet as often as is necessary and shall determine the dates of meetings.

(7) The chairperson of the JTC may, and shall at the request of two members, call a special meeting of the JTC.

(8) Meetings of the JTC and of its working groups, task teams and sub-committees shall not be open to the public or the media.

(9) Notice of a JTC meeting shall be given by the secretariat to members at least 48 hours prior thereto, in the manner referred to in paragraph 3(2).

(10) A majority of all the members and observers represented on the JTC shall constitute a quorum.

(11) The JTC shall regulate its own procedure, which shall as far as practicable follow that of the Forum.

(12) The JTC, and its working groups and task teams through it, shall make recommendations to the forum on all matters considered by them.

SCHEDULE 2

Formula referred to in section 8(2)(c)

The number of seats in a transitional council for local unity shall be determined as follows:

(1) the number of voters in the particular areas of jurisdiction of local government bodies falling or which fell within the area of jurisdiction of the transitional council of local unity expressed as a percentage of the total number of voters in the area of jurisdiction of such transitional council, shall represent half of the total number of seats in the transitional council of local unity; and

(2) the valuation of all private residential improvements on land in the particular areas of jurisdiction of local government bodies falling or which fell within the area of jurisdiction of the transitional council of local unity expressed as a percentage total valuation of such improvements in the area of jurisdiction of such transitional council, shall represent the other half of the total number of seats in the transitional council of local unity: Provided that estimates may be made by the Administrator as to the valuations referred to above.

SCHEDULE 3

Principles referred to in section 9(4)

1. Any -
 - 1.1 natural person who is -
 - 1.1.1 a South African citizen;
 - 1.1.2 at least 18 years of age;
 - 1.1.3 resident within or the registered owner of immovable property within the municipal area of jurisdiction: Provided that any person may only indicate one place of residence for the purposes of exercising his vote; 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 the owner of immovable property within the municipal area of jurisdiction, shall be entitled to be included in the appropriate municipal voters' roll and shall be entitled to vote in an election for members of a local authority: Provided that a person referred to in paragraphs 1.1 and 1.2 shall be entitled to exercise a vote for each ward of the local authority in which he so owns immovable property.
2. Voters' rolls shall be prepared by the local authority and divided according to wards.
3. A voters' roll shall lie for inspection, but the onus to be enrolled as a voter shall rest on the voter concerned.
4. Only a competent court shall be entitled to make alterations to an approved voters' roll which shall be updated at regular prescribed intervals.
5. Identification for voting purposes shall be by production

of an identity document or by such other means of identification as may be prescribed at national level.

6. Any person who is entitled to be included in the appropriate municipal voters' roll as contemplated in paragraph 1.1, shall be entitled to be nominated or elected as a member of the council of the local authority unless -
 - 6.1 he is a member of Parliament;
 - 6.2 he is an unrehabilitated insolvent;
 - 6.3 he is disqualified to be elected by any competent court;
 - 6.4 within a period of 3 years immediately preceding nomination:
 - 6.4.1 he was convicted of an offence of which dishonesty is an element; or
 - 6.4.2 he was convicted of any other offence and sentenced in respect thereof to imprisonment without the option of a fine, unless amnesty was subsequently granted to him;
 - 6.5 at 15h00 on the day immediately preceding nomination day, he is indebted to the local authority concerned in respect of any assessment rates, service charges or any other monies for a period longer than 3 months; or
 - 6.6 he or his spouse is an employee of the local authority concerned or any other local authority: Provided that the Administrator may exempt any such person if the Administrator is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination.
7. Half of the members of a local authority for a non-metropolitan area shall be elected on the basis that each member shall represent a ward of such council and the other

half of the members shall be elected according to a system of proportional representation on closed party lists: Provided that the simple quota and highest remainder system with no threshold shall apply.

8. Half of the members of a local authority for a metropolitan area shall be elected according to the system of proportional representation contemplated in paragraph 7, and the other half of the members shall be nominated by the metropolitan substructures from among their members on a pro rata basis according to the number of regional voters in the areas of jurisdiction of the metropolitan substructures: Provided that each metropolitan substructure shall be entitled to at least one representative.

SCHEDULE 4

Criteria referred to in section 10(2)

1. The chairperson of the Board shall be a person with a background in law.
2. The other members of the Board shall have knowledge of -
 - 2.1 rural, town and regional planning;
 - 2.2 development economics;
 - 2.3 municipal finance;
 - 2.4 municipal services and administration; and
 - 2.5 other disciplines as the need may indicate.
3. The membership of the Board shall be structured in such a manner as to be balanced, representative, non-racial and gender inclusive.

SCHEDULE 5

Criteria referred to in section 10(6)(b)

1. Topographical characteristics.
2. Existing demarcation of areas pertaining to local government affairs and services, including existing areas of local government bodies, regional services councils and joint services boards.
3. Population in relation to residential patterns of association.
4. Existing land usage, town- and transport planning, including industrial, business, commercial and residential usage and planning.
5. Economy, efficiency and financial self-sufficiency with regard to the administration and rendering of services.
6. Sources of income in relation to local government expenditure.
7. Development potential in relation to the availability of sufficient land for a reasonably foreseeable period to meet the spatial needs of the existing and potential residents of the proposed area for their residential, business, recreational and amenity use.
8. Whether the local or metropolitan council to be established will possess the necessary technical, professional and administrative capacity to perform its function and render its services or whether it has or can obtain the capacity to obtain these functions by agreement from any other body or institution.

9. Interdependency and community of interest between residents in respect of residency, work, commuting and recreation.
10. The sharing of income on the basis of contributions directed to areas where the greatest needs therefor exist.
11. Commercial and industrial linkages.

BGH: 22 SEPTEMBER 1993

COMMENTS ON THE THIRTEENTH REPORT OF THE TECHNICAL COMMITTEE: CONSTITUTIONAL ISSUES, OF THE NEGOTIATING COUNCIL DATED 16 SEPTEMBER 1993

1. The contents of the document is not only vague, but also very theoretical.
2. This document promotes the principle of centralisation of local government affairs.
3. The principle of the devolution of power is negated.
4. There are no definite constitutional principles in the document.
5. The nature, status, functions and powers of local government are stated ambiguously and vaguely.
6. The regulation of local government is inconclusive.
7. Unusual terminology is used, for example "physical environment".
8. In clause 140 (5) third tier government is placed above first and second tier government.

IT IS SUGGESTED THAT:

1. Firstly it is suggested that the words "and local government" where it appears in clause 6 of the Technical Committee on Constitutional Issues Combined Reports of 20 August 1993, be deleted and substituted by clause 140 (10) hereunder.
2. Chapter 10 should be scrapped and substituted by the following:

CHAPTER 10
LOCAL GOVERNMENT

ESTABLISHMENT AND STATUS OF LOCAL GOVERNMENT

140. Subject to the other matters contained in this Constitution and Schedule 7 thereto pertaining to local government, the following principles will be adhered to:

- (1) The third tier of government shall consist of autonomous local governments in various forms and sizes for metropolitan, urban and rural areas, and shall provide for different models to be executed as local options as determined by SPR legislation.
- (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) Local government shall have appropriate and adequate legislative powers to make by-laws not inconsistent with laws at national and SPR levels as well as executive powers to function effectively.
- (4) The council of a local government shall ensure that its administration is based on sound principles so as to render cost effective services to the inhabitants within its area of jurisdiction.
- (5) Existing laws applicable to local government shall continue to be in existence until they are amended or repealed by the competent legislature and references in such laws to any government shall be deemed to be references mutatis mutandis to the national or the SPR government.
- (6) 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.

(7) The members of the Council of a local government shall be elected democratically according to SPR legislation.

(8) 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.

(9) No person may become a member of a council of a local government if he is disqualified to become a member of the National Assembly, in terms of clause 24 of the Constitution.

(10) Every -

(a) natural person who is:

- (i) a South African citizen;
- (ii) of or over the age of 18 years;
- (iii) resident within or the owner of immovable property within the area of jurisdiction of a local government;
- (iv) registered on the voters' roll of that local government; and
- (v) not subject to any of the disqualifications set out in the Electoral Act, 1993; and

(b) fictitious 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 if the area of jurisdiction of the local government concerned is divided into wards, a person referred to in paragraphs (a) and (b) shall be entitled to vote for each ward in which he so owns immovable property.

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

- (b) Essential services shall be rendered on a regular basis in accordance with the principle of affordable services: Provided that consumers pay for such services.
 - (c) The principle of uniformity in tariffs for different services shall apply to all consumers in the area of jurisdiction of a local government.
 - (d) Tariffs should be based on the agreed standard of service in the area of jurisdiction of a local government.
- (12) There shall be a justiciable ethical code of conduct for councillors of local governments.
- (13) The members of the council of a local government shall be accountable to SPR's and the enrolled voters within the area of jurisdiction of such local government for their operational and financial administration.
- (14) SPR legislation on local government shall promote a government of local unity to maintain and promote the well-being of the residents of the area of jurisdiction of the local government for a period of five years in the interim phase on the following matters -
- (a) Special majorities in the areas of -
 - (i) financial matters including approval of budgets;
 - (ii) personnel matters and employment policy;
 - (iii) land usage matters.
 - (b) participation of minority political parties/groupings in the decision-making of a local government;
 - (c) criteria for the demarcation of wards; and
 - (d) a multiple committee system.

- (15) The powers and functions of local governments shall be set out in SPR legislation: Provided that the said powers and functions shall not be less than those existing powers and functions of local governments.
- (16) Each SPR legislature shall be responsible for local government, bring about reform at the local level and shall recommend equitable fiscal and financial allocations to local government from revenue collected on SPR and national levels.
- (17) The following criteria shall be applied in the allocation of powers to the local governments:
- (a) The allocation of powers between different levels of government shall be made according to the principles of subsidiarity on a basis which is conducive to financial viability at each level of government, to effective public administration and which promotes local unity, legitimate local autonomy and cultural diversity.
 - (b) The SPR government shall not exercise their powers so as to encroach upon the geographical, functional or institutional integrity of the local governments.
 - (c) SPR governments shall have powers, inter alia -
 - (i) for the purposes of local government planning and development and the delivery of services; and
 - (ii) in respect of aspects of local government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the local governments in its area of jurisdiction.
- (18) A local government shall be entitled to approach the Constitutional Court in any matter relating to the encroachment or threatened encroachment upon its competences under this Constitution or any other law.

- (19) The Local Government Reform Act shall regulate reform at the local government level until after elections at local level have taken place in terms of the said Act, whereafter the function of regulating local government reform shall vest in SPR legislatures and such legislatures may amend, supplement or repeal the said Act: Provided that SPR legislatures shall maintain the principles contained in this Chapter and Schedule 7 of the Constitutional Act when amending, supplementing or repealing the Local Government Reform Act.

CHAPTER 10: INTERIM CONSTITUTION

DRAFT PROPOSALS: NON STATUTORY DELEGATION

SEPTEMBER 30, 1993

1. The third tier of government shall consist of autonomous local governments in various forms and sizes for metropolitan, urban and rural areas.
2. The powers and functions of local governments shall be set out in national statute, and/ or SPR legislation: Provided that the said powers and functions shall not be less than those existing powers and functions of local governments.
3. 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.
4. Local government shall have appropriate and adequate legislative powers to make by-laws 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 so as to render cost effective services to the inhabitants within its area of jurisdiction.
6. Existing laws applicable to local government shall continue to be in existence until

they are amended or repealed by the competent legislature and references in such laws to any government shall be deemed to be references mutatis mutandis 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.
8. The members of the council of a local government shall be elected democratically according to the national Electoral Act (or a Local Government Electoral Act).
9. The members of a council of a local government shall be elected at intervals of not more than four years.
10. No person may become a member of a council of a local government if he is disqualified to become a member of the National Assembly, in terms of clause 42 of the Constitution.
11. Every -
 - a. natural person who is:
 - i. a South African citizen;
 - ii. of or over the age of 18 years;
 - iii. residents within the area of jurisdiction of a local government;

- iv. registered on the voter's roll of that local government; and
- v. not subject to any of the disqualifications set out in the Electoral Act, 1993;

shall be entitled to vote in an election for members of the council of such a local government.

- 12. Each local government shall be competent to levy such property rates, fees, tariffs and charges as may be necessary to enable it to exercise its powers and to perform its duties and functions, and to levy and claim such fees, tariffs and charges.
- 13. There shall be a justiciable ethical code of conduct for councillors of local governments.
- 14. The members of the council of a local government shall be accountable to SPR's and the enrolled voters within the area of jurisdiction of such local government for their operational and financial administration.
- 15. The Finance and Fiscal Commission shall recommend equitable fiscal and financial allocations to local government from revenue collected on SPR and national levels.
- 16. The following criteria shall be applied in the allocation of powers and functions to the local governments:

- i. geographical scope of benefits;
- ii. distributional equity;
- iii. administrative efficiency;
- iv. accountability;
- v. financial viability;
- vi. economies of scale in providing services.

17. The SPR government shall not exercise their powers so as to encroach upon the geographical, functional or institutional integrity of the local governments.

18. SPR governments shall have powers, inter alia -

- i. for the purposes of development and promotion of local government and the delivery of services;
- ii. in respect of aspects of local government dealing with specific socio-economic and cultural needs and the general well being of the inhabitants of the local governments in its area of jurisdiction.

19. A local government shall be entitled to approach the Constitutional Court in any matter relating to the encroachment or threatened encroachment upon its competencies under this Constitution or any other law.