

● **EMBARGOED UNTIL 1800 ON 5 A216**  
**30 OCTOBER 1993**

28 October 1993

[216]

In bilateral discussions between the SA Government and the African National Congress the following framework document on a Government of National Unity 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.

**ALL PAGES EMBARGOED**

## **GOVERNMENT OF NATIONAL UNITY**

1. There shall be a Government of National Unity to endure for five years from the date of the election. (This means that although there may be changes in the membership, the method of appointment and the formula for the composition shall remain the same.)  
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2. The President shall be elected by the National Assembly by majority vote. After his/her election he shall vacate his seat in Parliament.
3. Executive Deputy Presidents.
  - 3.1 Every party with 20 % or more of the seats in the National Assembly shall be entitled to designate an Executive Deputy President.
  - 3.2 Where no or only one party attains more than 20 % of the seats, the party with the largest number of seats will be entitled to designate one and the party with the second largest number of seats, one.
  - 3.3 The Executive Deputy Presidents shall preside at meetings of the Cabinet not attended by the President and shall act as President on a rotational basis in the event of his or her absence or temporary incapacity. They shall also perform other functions assigned to them by the President after consultation with them.
  - 3.4 The Executive Deputy Presidents shall be members of the Cabinet.
  - 3.5 The President shall consult the Executive Deputy Presidents about matters of governmental policy and Cabinet business.

- 3.6 Executive Deputy Presidents may vacate their seats in Parliament.
4. A party with 5 % or more of the seats in the National Assembly shall be entitled to a number of Cabinet posts in proportion to the number of seats held by it in the National Assembly.
  5. The Cabinet shall consist of not more than 27 Cabinet Ministers.
  6. The allocation of portfolios shall be determined by the President after consultation with the Executive Deputy Presidents and the leaders of parties who are entitled and intend to be represented in the Cabinet.
  7. Cabinet Ministers will be appointed by the President to the extent of a party's entitlement on the advice of the leaders of the respective parties. Cabinet Ministers must be members of Parliament.
  8. The Cabinet shall at all times enjoy the confidence of and be accountable to Parliament.
  9. Provisions of clauses 4, 5, 6 and 7 shall apply *mutatis mutandis* to Deputy Ministers.
  10. The President will exercise his/her powers in consultation with the Cabinet, except for those powers which he at present exercises without having to consult.
  11. The Cabinet will seek to take decisions by consensus but where this is not possible, it will decide by an increased majority to be determined. In this regard there may be a differentiation between financial and state security matters and other matters.

28 October 1993

In bilateral discussions between the SA Government and the African National Congress the following draft Section 118 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.

**EMBARGOED UNTIL 18h00 ON SATURDAY 30/10/93**

## SECTION 118

**ALL PAGES EMBARGOED**

- (1) (a) A Provincial legislature shall, subject to the provisions of subparagraphs (c) and (d), have concurrent competence with Parliament to make laws for the Province with regard to all matters which fall within the functional areas specified in Schedule 9.
- (b) The legislative competence referred to in paragraph (a) shall include the competence to make laws with regard to all such other matters as are reasonably necessary for or incidental to the effective exercise of such legislative competence.
- (c) An Act of Parliament which deals with a matter referred to in paragraphs (a) and (b) shall prevail over a Provincial law inconsistent therewith only to the extent that -
- (i) the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation; or
  - (ii) the Act of Parliament deals with a matter that requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic; or
  - (iii) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole; or
  - (iv) it is necessary to set minimum standards across the nation for the rendering of public services; or
  - (v) the provisions of the Act of Parliament is necessary for the determination of national economic policies, the maintenance of economic unity, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility

of goods, services, capital or labour, or the maintenance of national security.

- (d) An Act of Parliament shall prevail over a Provincial law, as provided for in paragraph (c), only if it applies uniformly in all parts of the Republic.
  - (e) An Act of Parliament and a Provincial law shall be construed as being consistent with each other, unless and only to the extent that inconsistency is established expressly or by necessary implication.
- (2) Executive power and responsibility relating to all matters within the legislative competence of a province in terms of subsection (1) and which have been allocated to the provincial administration in terms of section 119, shall rest in the provincial executive.
  - (3) The competences of a provincial legislature and the powers and responsibilities of a provincial executive in terms of this section shall not be changed without the consent of the provincial legislature.

[An appropriate addition to clause 61 is to be made.]

## SCHEDULE 9

Agriculture

Casinos, racing, gambling and wagering

Cultural Affairs

Education at primary and secondary level (the matter of tertiary education stands over)

Health services

Housing

Language policy and language/s as languages of record for use in provincial administrations

Local government subject to the provision of Chapter 10

Nature conservation, excluding national parks and national botanical gardens and marine resources

Police subject to the provisions of the appropriate chapter

Provincial public media

Public transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

28 October 1993

In bilateral discussions between the SA Government and the African National Congress the following draft Section 121 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.

CLAUSE 121

**EMBARGOED UNTIL 18H00 ON SATURDAY 30/10/93**

**~~ALL ARTICLES EMBARGOED~~**

- 121
- (1) An SPR-government shall be competent to levy such taxes, surcharges, user-charges and levies as may be legislated by the National Parliament, which shall take into account recommendations of the Financial and Fiscal Commission established in terms of Chapter 11.
  - (2) The taxes, user-charges and levies by an SPR-government shall not discriminate against non-residents of that SPR who are South African citizens.
  - (3) An SPR government shall be entitled to the following revenue sources in order to assist them to provide services and execute their functions and powers:
    - (a) a reasonable percentage of the national Value Added Tax collected within its boundaries, as legislated by the National Parliament, who shall take into account the recommendations made by the Financial and Fiscal Commission;
    - (b) a reasonable percentage of the Income Tax on individuals collected within its boundaries, as legislated by the National Parliament, who shall take into account the recommendations made by the Financial and Fiscal Commission;
    - (c) an equitable transfer, both conditional and unconditional, of nationally collected revenue, with due consideration of the national interest:
      - (i) once provision has been made for interest payments on the National Debt, as approved by National Parliament;
      - (ii) after the revenues listed in (a) and (b) above have first been deducted from the total revenue collected nationally; and
      - (iii) after account has been taken of the varied fiscal capacities, fiscal performance, needs and economic disparities within and between SPR's, as well as development needs, administrative responsibilities, legitimate interests of the SPR's and other objective criteria, as

identified and recommended by the Financial and Fiscal Commission.

- (4)
  - (a) There shall be established in every SPR a Revenue Fund into which shall be paid all revenues raised by or accruing to a SPR government, and from which appropriations shall be made for the purposes of the SPR government in a manner prescribed by the Constitution and any other law.
  - (b) No money shall be withdrawn from a SPR Revenue Fund, except under appropriation made by a law of the SPR legislature in accordance with the provision of the Constitution.
- (5) An SPR-government shall not be competent to raise loans for current expenditure, except for the purposes of bridging finance within the framework of and subject to conditions laid down in national legislation.
- (6) An SPR government, shall not be entitled to raise taxes detrimentally affecting national policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.
- (7) An SPR-government, via its responsible department only, shall be competent to raise loans for capital expenditure only within the framework of norms, conditions and requirements provided for in an Act of Parliament, passed after consideration of recommendations made by the Financial and Fiscal Commission.
- (8) The national government may not guarantee any loans unless:
  - (a) the guarantee is an explicit requirement demanded by an international financial institution; and
  - (b) the Financial and Fiscal Commission has verified the requirement as defined in Clause 121(8)(a) above and makes such recommendation to the national government.
- (9) An SPR government shall not have the power to guarantee any loans unless the Financial and Fiscal Commission has verified the requirement and made such a recommendation to the SPR government and the terms of such guarantee are subject to an Act of Parliament.
- (10) Revenue allocations made by national government to local authorities shall ordinarily be made via the SPR-government into whose jurisdiction the local authority falls.
- (11) National Parliament, subject to budget appropriation, shall have the right to make financial transfers to any SPR or local authority taking into account provisions of 146(3).

**EMBOGGED UNTIL 18h00 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.

CHAPTER 10

**ALL PAGES EMBOGGED**

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.

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(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 SFR legislatures which may amend or repeal the Local Government Transition Act, 1993: Provided that the national and SFR legislatures shall maintain the principles embodied in this Chapter and this Act as a whole [the Constitution].