

AFRICAN NATIONAL CONGRESS
OFFICE OF THE SECRETARY GENERAL

LOCAL GOVERNMENT¹

1. A framework for local government

In general the Interim Constitution resolves the balance between national, provincial and local government to the disadvantage of local government. It should be noted that Constitutional Principle XXIV requires that a *framework* should be set out in the final constitution for local government and that the comprehensive treatment of local government should be the subject of *parliamentary or provincial* legislation, or both. The ANC takes the position that local government is a matter of both national and provincial interest in view of the history of using local government as a tool of apartheid policy, and because it is the main point of delivery of the National Reconstruction and Development Program.

Framework legislation on local government should be enacted at national level, and not *asymmetrically* through separate legislation in different provinces. Provinces should be responsible for the implementation of local government, and the provincial management of local government. It should have power to make laws not inconsistent with the national framework so as to take into account provincial diversity or to adapt to regional circumstances. The framework should also *protect* local government by specifying its powers of self-administration.²

2. The status of local government

The ANC has chosen for strong and efficient local government, operating under effective conditions of intergovernmental relations based on the notion of cooperative governance.

A strong hierarchical status concept of local government, the concept of levels ranging from higher to lower, should not be the model applied in South Africa. The allocation of local government as a functional area in the present Schedule 6 creates the wrong impression that local government "falls under" provincial government. Local government is not a functional area in that sense, because it is not simply another functional area mentioned in Schedule 6. Local government can not, for example, as a matter of categorical status, be merely equated with a function like health or housing, because these are functions of government which local government also addresses.³

¹ . In this submission intended to include urban as well as rural local government.

² . Because of nation-wide underdevelopment of local government in some areas and their role in the national economy of South Africa and the RDP, the link between local government and the national level could be fleshed out by giving local government representation in the Senate in the form of a delegation of Senators.

³ . As regards the status of local government in intergovernmental relations, consideration should be given to the establishment of national and provincial intergovernmental or cooperative councils for organised local government to foster sound cooperation and coordination. In this regard local government could possibly be represented through a

3. Self-administration and democracy

It is suggested that the term *self-administration*⁴ be used in respect of local government.⁵ Self-administration duties could be divided into those where the local authority can decide *whether and how* to perform the duty, and those where the local authority can only decide *how* to carry out the duty.

The ANC favours a *right to local government*, in the sense of being constitutionally authorised to regulate and manage a substantial share of public affairs under their own responsibility within the framework of an appropriate intergovernmental system.

The ANC insists that local government should be democratically constituted, and function in accordance with democratic principles.⁶ Traditional leaders may and should participate in local government, subject to the principle of democratic and accountable local government. The provinces could determine the precise form that such participation should take.⁷

The ANC strongly favours that local government should endeavour, as far as practicable, to render services in a developmental and environmentally friendly manner. Local government should be structured to allow for the evolutionary role of local government to plan and develop its area. It should be a site of development, and not merely the site of delivery. Local government planning, development and demarcation should be consistent with the constitution.

4. Powers and duties

The final constitution should not exhaustively lists the powers and duties of local government councils. The most basic functions should be described in the constitution and the rest of the detail should be left to the comprehensive parliamentary legislation referred to above.

national coordinating structure on the Financial and Fiscal Commission or its equivalent in the new constitution. The Financial and Fiscal Commission shall advise on an equitable amount that is to be allocated through national and provincial transfers to local government to enable them to carry out their functions.

⁴. Which, while allowing local authorities to act on their own responsibility, leaves open the possibility of interaction with provincial and national government in matters which are, respectively, of provincial or national concern.

⁵. Rather than *autonomy*, which could mean that interference with exercise of local authorities' duties by superior authorities may be resisted: an absolutely free sphere of discretion for local authorities may then exist.

⁶. In this connection the ANC confirms the participatory democracy and mechanisms to give effect thereto are vital to democracy in South Africa, and that civil society and its various organisations have a crucial role in democratizing and transforming South Africa. The final constitution, supplemented where necessary by national legislation, should provide for the principles and appropriate/ effective mechanisms of participatory democracy, as well as for organs of civil society.

⁷. Principle VII states that the principle of democratic local government should not derogate from Principle XII, which provides that the institution, status and role of traditional leaders shall be recognised. It is submitted that the role of traditional leaders is not threatened by democratic local government if they retain an advisory and cultural function in local government within their traditional areas.

Local government authorities should have the following basic rights and duties:

- Choice of organisation and personnel of the local government within the framework of national legislation.
- Financial authority: the right to have its own revenue, determine expenditure and administer financial affairs.
- Planning powers: This could include the right to specify types of buildings and the permissible land use in a municipal area.
- Provision of facilities: This includes the establishment and operation of public institutions for the benefit of the population.
- Mandatory functions: Local authorities should also carry out functions mandated by provincial or national government, provided the necessary financial capacity is or is being made available.
- By-laws: Municipalities should have the right to issue by-laws.
- Administrative decisions: This is the right to make administrative decisions arising out of the enforcement or implementation of national, provincial and local government laws and by-laws.

These need to be set out in the final constitution.

PROPOSALS

1. General principles

- 1.1 Comprehensive provision for local Government, including its powers functions and structures shall be provided for in national legislation. The constitution should protect the necessary and essential features of local government, including the right to local government.
- 1.2 Local government is a specific level of government, and not merely a function of provincial government.
- 1.3 Democratically elected local government structures shall be:
 - 1.3.1 established in all areas within the boundaries of South Africa,
 - 1.3.2 transparent and based on participatory democracy, and
 - 1.3.3 demarcated on the principle of "one city/town, one tax basis,

1.4 Provincial governments will supervise, institute and manage local government in their provinces. They will also have the concurrent power to legislate on local government matters.

2. Structures

2.1 Local government shall make provision for the categories of metro, district, rural and urban structures, based on the objective conditions prevailing at the time.

2.2 Recognised traditional leaders/authorities, where they exist, shall form part of local government structures within their area and level of authority in an *ex officio* advisory capacity.

2.3 Local government shall where feasible promote the establishment of forums whereby community organisations can participate in local governance without compromising the powers and functions of elected local government.

3. Powers and functions

3.1 Local government shall be assigned powers and functions, including the power of self-administration, to provide services for the well-being of persons in its area of jurisdiction.

3.2 Local government shall have the power and function to make by-laws not inconsistent with the Constitution, an Act of Parliament or Provincial law.

3.3 Local government may have duties imposed on it by national or provincial laws.

4. Finance and administration

4.1 Local government shall ensure that its administration is based on sound principles of public administration, good governance and public accountability.

4.2 The competency of local government to raise levies, rates and fees and to establish tariffs as may be required to exercise its functions, including progressive tariffs and rates which shall apply uniformly to its area of jurisdiction, shall be regulated by national legislation.

5. Services

5.1 Local government shall be responsible for access by all persons in its area of jurisdiction to basic services like water, transportation facilities, electricity, primary health care, education, housing and security, where it is financially and physically practicable.

7. Elections

- 7.1 Every natural person shall be entitled to vote in local government elections if he/she is ordinarily resident within that area of jurisdiction.
- 7.2 No person shall be qualified to become or remain a member of a local government as a councillor if he/she is:
 - 7.2.1 a member of the National Assembly or the Senate.,
 - 7.2.2 a member of a provincial legislature,
 - 7.2.3 an employee of that local government council, or is
 - 7.2.3 not qualified to become a member of the National Assembly.
- 7.3 Local government elections shall take place every five years, but not in the year that national elections take place.
- 7.4 The electoral system for local government must be democratic. It may include both proportional representation as well as ward representation, and shall be regulated by national legislation and/or regulations.

8. Code of conduct

- 8.1 All elected local government representatives shall be subject to an enforceable code of conduct which will be detailed in an Act of Parliament.