



ANC

Negotiations Bulletin

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TRANSFORMING LOCAL GOVERNMENT

A STEP BY STEP GUIDE TO THE TRANSITIONAL LEGISLATION

Local government negotiations at the national level are complete!

The Interim Constitution, including Chapters 10 and 11 which deal with local government, has been adopted by the Multiparty Negotiating Forum, and sent to Parliament for ratification.

The Interim Constitution, which will come into effect on April 28, 1994, sets out the constitutional framework for local government.

Local government will therefore be a **concurrent** responsibility of central and provincial governments. This means that Local authorities are granted the right to exist by laws passed by both the elected National Assembly and by Provincial Legislatures.

Chapter 10 sets out the status powers and functions of local government; procedures for administration and finance; local government elections; and transitional arrangements.

Chapter 11 refers specifically to the role of traditional authorities, including local government in traditional areas.

The **Local Government Transition Bill** was adopted by the Multiparty Negotiating Forum on December 1 and has been sent to Parliament for ratification. It is likely to be passed by Parliament in the third week of December. The Transition Bill provides a framework for local government for the next three to five years.

There has also been an **Agreement on Services and Finance** is also complete. It will be signed and made public the day the Local Government Transition Act is passed by Parliament. The Agreement covers the provision of municipal services; finance; the writing off of arrears; the writing off of debts of black local authorities; tariffs; and, payments for services.

There is political agreement between all parties at the Local Government Negotiation Forum (LGNF) that elections for local government should take place before the end of 1994. This means that the pre-interim period, with appointed transitional councils, will run until this time.

While local government negotiations are complete, the real work of implementing the legislation and agreements is about to begin. Local communities and organisations will be centrally involved in this process.

What follows below is a step by step guide to the legislation. Each point will be cross-referenced to the appropriate clauses in Chapter Ten (**Constitution**), the Local Government Transition Bill (**Bill**), and the Agreement on Finances and Services (**Agreement**).

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Summit of Local Government Stakeholders

The Local Government Negotiation Forum (LGNF) is planning to convene a summit of local government stakeholders after the Local Government Transition Bill is passed by Parliament. This is likely to take place in the third week of January, 1994.

The purpose of the summit is for all parties to publicise and promote the contents of the local government transitional legislation. This includes ending the boycott of rent and service charges, writing off of arrears, restoration and upgrading of municipal services, and establishment of transitional councils.

Establishment of a Local Government Committee for each new Province

In terms of the **Bill**, the current Administrator of the Province must make many decisions. These include, for example, termination of office of existing councils, appointment of persons to transitional councils, resolution of deadlocks, dissolution of local government bodies, and the transfer of staff, assets and liabilities.

The Administrator must, however, take decisions **in concurrence** with a six-person local government committee, to be appointed by the Transitional Executive Council (TEC) as soon as possible for each of the nine new Provinces (see Part Two of **Bill**).

This means that the Administrator may not take any unilateral decisions. **It also means that we need to be in a position to nominate up to three names from our structures in each of the new provincial areas to serve on the local government committee.**

Establishment of a Demarcation Board for each new Province

Demarcation Boards will be established for each of the nine new Provinces as soon as possible by Provincial Administrators (acting in concurrence with the local government

committee). The membership of a Board must be balanced, non-racial and gender inclusive (see Schedule 5 of **Bill**). Board members should collectively have the following sorts of skills: planning; development needs of communities; local government finance, services and administration.

We need to urgently draw up lists of potential members from our organisations to serve on the Demarcation Boards.

The criteria for the demarcation of new non-racial local government boundaries is set out in Schedule 6 of the **Bill**. They are: physical features; population distribution; existing and previous boundaries; existing and potential land and town planning schemes; functionality and financial viability; future expansion needs; interdependency in terms of residency, work, commuting and recreation; and the integrated urban economy.

Financial crisis of black local authorities

Certain black local authorities did not pay municipal workers at the end of October and November because of lack of funds. The Government and the Provincial Authorities have tried to wash their hands of this problem, by blaming the boycott of rent and service charges.

The ANC, SANCO and SAMWU have made it clear that the current Government bears full responsibility for normal payment of municipal workers of black local authorities until transitional councils are in place next year.

The LGNF have requested the TEC sub-council on local government to ensure that all financial obligations of local authorities are met until they are merged into transitional councils.

STEP 1: Establishment and recognition of local negotiation forums

The Act provides for new local negotiations forums to be established, and for existing forums to be recognised, if they meet prescribed criteria. All forums, including existing forums, must

apply in writing to the Administrator for recognition.

The criteria for the boundaries of a forum are industrial and commercial linkages, daily commuting patterns, provision of services and pre-1971 municipal boundaries, where applicable (see Schedule 1 of the Bill). This means that forums must include all areas surrounding a city or town, including informal settlements (shack areas).

Important note! Some white local authorities have started to establish local forums in their area alone. These forums will not be recognised, as they do not meet the criteria for the establishment of forums. In terms of the legislation, and in terms of the LGNF Agreement of June 30, 1993, forums (and the transitional councils) **must bring together areas previously divided by apartheid.**

The Administrator of the Province will instruct a town clerk of one of the local authorities within a forum area to convene the first meeting of the forum. If there is a dispute about the area of the forum, the Administrator will make a final decision.

Forums that are established (or that have been established) must be inclusive and representative. However, if any body or organisation does not want to join the forum, the forum should continue.

Forum membership is open to local government bodies, civic associations, ratepayers associations and local structures of political parties. Members must be able to produce their organisation's constitution, a list of office bearers, and details of membership.

Bodies such as Eskom, the Development Bank and a local Chamber of Commerce will have observer status, if they join a forum.

An important task of all forums, even prior to the establishment of transitional councils and the appointment of councillors, will be the normalisation of provision of services. This implies agreements on improvement of service delivery in black townships, the setting of affordable interim tariffs, and the promotion of payments for services received.

The writing off of arrears will be dealt with within 30 days of the Local Government Transition Bill being passed by Parliament.

Important note! The Bill makes provision for certain local authorities to be exempted from having to establish forums and nominate new councils (see Part 3 of the Bill).

The exemption may be granted to a local government body that is **non-racial, and inclusive... and which has a single local government administration**. Some councils established in terms of the Interim Measures Act may try for exemption in terms of this provision. While there are exceptions, 95% of existing councils do not meet the criteria for exemption, and must submit themselves to the negotiation process as defined by the Bill.

STEP 2: Choosing a transitional model for the pre-interim

Metropolitan or non-metropolitan?

Forums must decide whether they cover a metropolitan area or a non-metropolitan area. For example, a metropolitan area has many local governments next to each other; it is densely populated; it has a number of central business districts and industrial areas; and, it forms a functional economic unit.

Probable metropolitan areas are: central Witwatersrand; greater Pretoria; Durban functional region; and, Cape Town peninsula area.

Possible metropolitan areas are: East Rand; Vaal triangle; greater Bloemfontein and Port Elizabeth/ Uitenhage.

Important note! Some medium-size towns and cities (i.e. non-metro areas) want to be classified as metropolitan areas. This is often because the white local authority does not wish to merge with the neighbouring black township, and regards a metropolitan council as an 'overarching structure' that would provide a way out of having to integrate fully. This approach should be avoided.

A metropolitan form of government implies two levels within local government: a metropolitan council, with certain powers and functions, and a number of local councils or metropolitan substructures.

If there is a deadlock as to whether a particular area is a metropolitan area, or whether a certain local area falls in or out of the metropolitan area, the Administrator will refer the matter to a Demarcation Board for an opinion.

If an area is demarcated as a metropolitan area, then the metropolitan forum must decide on the powers and functions of the metropolitan council.

A metropolitan council must have **at least** the following powers and functions: bulk supply of electricity and water; bulk sewerage purification and disposal; metropolitan co-ordination, land usage and transport planning; highways and stormwater drainage; passenger transport; traffic matters; abattoirs; markets; refuse dumps; cemeteries; ambulance and fire brigade services; hospitals; airports; civil protection/ disaster relief; metropolitan libraries, museums, recreation facilities, environment conservation, promotion of tourism, and promotion of economic development and job creation (see Schedule 2 of the **Bill**).

A metropolitan council will have **at least** the following financial powers: the levies from the regional services council; all inter-governmental grants; income from provision of services; and, a levy on the budgets of local councils. This implies that the regional services council/ joint services board for the metro area will be dissolved (see section 8.(3)(h) of the **Bill**).

A metropolitan forum may decide to allocate more powers and functions to a metropolitan council than those listed above. A metropolitan council, once appointed, may, depending on administrative capacity, decide not to take up all its powers immediately.

A metropolitan forum must also negotiate the number of seats for the transitional metropolitan council and for the metropolitan substructures. The starting point for this is the existing number of seats in the local government bodies.

There has been some confusion about the establishment of local forums within metropolitan areas. The following process has been agreed to by the Management Committee of the LGNF:

1. Finalise external boundary of metropolitan area. In the event of a dispute, the matter is referred by the Administrator to the Demarcation Board;
2. Nominate members to Metropolitan Council on 50/50, statutory/ non-statutory basis;
3. Finalise internal boundaries, i.e. the boundaries of the metropolitan substructures (primary local authorities). These must be based on the criteria for demarcation in **Schedule 6 of the Bill**. In the event of a dispute, the matter is referred by the Administrator to the Demarcation Board.
4. Nominate members to metropolitan substructures on 50/50, statutory/ non-statutory basis. This must also be done by the metropolitan forum. The metropolitan forum may do this in consultation with a local forum established for the **newly demarcated substructure areas. Local forums in metropolitan areas cannot therefore be established on the basis of existing apartheid boundaries.**

Pre-interim options for non-metropolitan areas

If a local forum is not in a metropolitan area, i.e. a stand-alone town, there are two models to choose for the pre-interim period.

Option 1 (see section 7.(1)(b) of the **Bill**) provides for the replacement of existing councils by a new council, with all the powers and functions of the existing councils. The new council is appointed on a 50/50 statutory/ non-statutory basis.

Option 2 (see section 7.(1)(c) of the **Bill**) provides for a co-ordinating committee with powers to deliver services, to raise finances, including a minimum of 10% of the rates base of the white local authority area, and to begin to

integrate the separate administrations.

The need for option 2 has arisen in some areas where conservative platteland towns are resisting immediate integration of local government. It provides for a slower approach to the creation of single non-racial councils, and the integration of budgets and administration.

Option 2 does not mean that full integration of local government will not take place. No area in the country will be allowed to maintain the status quo. Model 2 means that the initial emphasis will be on provision of services rather than political integration of councils. But by the time that local government elections are held at the end of 1994, all towns and cities in South Africa will be integrated on the basis of 'one municipality, one tax base'.

In areas where towns are graded eight and below, a forum will be deemed to have reached an agreement on an option if 80% of both the statutory and non-statutory delegations agree.

This is called a 'concurrent majority'. If there is a deadlock, the Administrator may facilitate a process of independent mediation for 30 days. If there is still no agreement, then the second option (the co-ordinating committee) will be applied.

In the case of towns and cities graded nine and above, a forum will be deemed to have reached agreement on an option if two-thirds of both the statutory and non-statutory delegations agree. If there is a deadlock, after a process of mediation for 30 days, the Administrator may apply either option 1 or option 2, depending on local circumstances.

Note: All other decisions of forums (whatever grade of local authority) must be taken on the basis of a two-thirds concurrent majority.

The ANC and SANCO have negotiated the following political agreement with the Conservative Party-aligned Transvaal Municipal Association (TMA) for certain right-wing towns graded nine and above in the Transvaal:

1. All parties will promote the establishment of negotiation forums and a peaceful local government transition in terms of the Transition Bill, especially where there are

conservative white areas;

2. All parties will try to avoid any crises in these areas by helping forums in these areas to reach a decision on option 1 or option 2;
3. Should a deadlock arise in any local forum regarding option 1 or option 2, the leadership of the ANC and SANCO, together with the TMA, will mediate on the ground before the Administrator is asked to make a decision;

It is important to note that option 2 can be upgraded to option 1 at a later stage, if there is agreement within the co-ordinating committee.

Local government in rural areas

The Local Government Transition Bill applies to all existing local authorities in rural areas, including the Self-Governing Territories. The Bill will apply to the TBVC states once they have been reincorporated.

The Bill can also apply within the area of jurisdiction of a traditional authority, if decided by an Administrator.

The Bill recognises Traditional Authorities and their right to exercise their functions in terms of indigenous law, as regulated by legislation. However, the Bill also makes provision for **elected** local government in traditional areas, with responsibility for delivery of services (see clause 17 of **Bill**). Where there are elected local authorities in traditional areas, the traditional leaders may be ex-officio members of the local authority.

Funds for elected rural local authorities in traditional areas must be transferred from an authority previously rendering services in the area. In most cases, this would be the existing homeland government.

The Bill makes further provision for the dis-establishment of Regional Services Councils and Joint Services Boards, and the establishment of services councils, sub-regional councils or district councils (see clause 8.(3)(i) of the **Bill**).

STEP 3: Nomination and appointment of councillors

Within 90 days of the Local Government Transition Act being passed, the Administrator must appoint persons to Transitional Metropolitan Councils and substructures, Transitional Local councils or Co-ordinating Committees, depending on the options chosen.

This means that local forums must make their nominations by **the middle of March 1994**.

The Administrator may allow extensions to the deadline if there is a good motivation from the forum.

For purposes of nominations, a forum must identify the statutory and non-statutory sides. All sitting councillors must be on the statutory side, together with organisations associated with the sitting councillors. All other members (excluding observers) are non-statutory. In the event of a disagreement, the Administrator must make a ruling.

The two sides are each required to submit a list of potential candidates for nomination. A representative committee comprising members from both sides must be appointed to reach agreement on the names for nominees. At least 50% of the nominees must be acceptable to the statutory side of the forum, and 50% to the non-statutory side.

However, persons so nominated can be chosen from amongst the whole community, and do not have to be associated with one or other delegation.

On the statutory side, nominations must not disturb the pre-existing political balance amongst the political parties on the present councils. On the non-statutory side, nominations must be made on an equitable basis (i.e. proportional basis) among the non-statutory members.

Forums must also decide on the size of the transitional councils, using the existing number of seats in a amalgamated area as a starting point.

STEP 4: Tasks of the Transitional Councils and Co-ordinating Committees

The central Government will make provisions to deal with arrears and debts of black local authorities. Transitional Councils will have to immediately begin preparation for single budgets for the 1994/ 95 financial year, which begins in July 1994. Councils will also have to begin to make preparations for amalgamation and reorganisation of administrations during 1994. Rights of existing employees are protected by section 8. (3) (j), which says that there must be consultation between employer and employee bodies before changes to the administrations are made.

Any decisions regarding the budget of a transitional council must be made with a two-thirds majority. Any decision regarding town planning must be made with by an absolute majority of councillors (as opposed to a simple majority, which is used for all other decisions).

The main task will be to continue to restore normality to the provision of services - both in terms of proper delivery, maintenance and upgrading, and in terms of promoting payments for services received.

STEP 5: Preparation for local government elections

The first non-racial local government elections will take place on the same day in all provinces, on a date determined by the new Minister of Local Government. All transitional councils and co-ordinating committees, together with the elected national and provincial governments after April 27, will have to prepare for local government elections. This will involve:

- * Demarcation of boundaries by the Demarcation Boards;
- * Registration of voters on local government voter's rolls;
- * Delimitation of wards according to the formula set out in the Interim constitution;

- * Finalisation of voting procedures according to the Interim Constitution.

Delimitation of wards

The formula for ward delimitation has generated a considerable amount of controversy and needs to be explained in detail.

It emerges as a result of negotiations between the ANC and the Government around the Interim Constitution as a whole, and agreements at the local government level should be seen in terms of agreements about other parts of the Interim Constitution.

The government originally wanted a range of local government power-sharing arrangements for the interim period, including voting on the basis of property and/ or wealth, and the establishment of ward councils. In return for these demands being dropped, the ANC agreed to a formula for ward delimitation which, **for the first election only**, ensures that any former local authority areas incorporated into a new, non-racial local authority, will be guaranteed a minimum of 30% of the councillors.

The formula is designed in particular to allay fears in small towns on the platteland where existing white communities are often heavily outnumbered by adjacent black townships that they will have to amalgamate with.

However, the formula **does not guarantee seats for whites**, as has been reported in the press. Any person may live, and therefore stand for election, in any ward.

The formula works as follows:

- * Forty percent of councillors will be elected on the basis of proportional representation;
- * Sixty percent of councillors will be elected from wards;
- * A Demarcation Board must allocate half the wards to the former white local authority areas (which include the former coloured and Indian group areas), and half to the former black local authority areas;
- * The result of this will mean that no former local government areas, as defined above,

will get less than 30% of councillors on the new council (i.e. 50% of 60% = 30%);

Let us look at this in practice:

- * In Morgenzon, there are 450 potential white voters, and 5250 potential black voters. If no formula was applied, there would be very little chance for the former white local authority area to gain any representation on a ten-member council. With the formula, there will be at least three seats allocated to the former white local authority area, and seven to the former black area.

This means that while there will still be majority rule in Morgenzon after the local government elections, it will be qualified by the fact that an area that sees itself as a minority will get some representation on the council.

- * In Newcastle, for example, there are 20 200 potential white voters, and 144 000 potential black voters. Without the formula, the new 40-seat council would have 5 representatives from the former white area, and 35 from the African township. With the formula, the former white area is guaranteed 14 of the 40 councillors.
- * In the Western Cape, the formula works the other way because of the history of the Coloured labour preference area. For example, without the formula, a new 30-seat council for Paarl would have 23 councillors from the former white and coloured areas, and 7 from the African township. With the formula, the representation from the African township is increased to 12.

Voting qualifications

South African citizens, and persons who have permanent residence as defined by the Aliens Control Act, may vote in a local government election.

Anyone who is a resident of a local authority can vote for that local authority. Companies (juristic persons) are excluded from the vote.

Anyone who contributes to the tax base of a local authority, either through rates, service charges or levies, may vote for that local authority.

No-one may have more than one vote for the same local authority.

This means that a person who lives in Johannesburg, but owns a house or pays service charges or levies in Plettenberg Bay, can vote in Johannesburg and in Plettenberg Bay. A person who lives in a hostel in Welkom, but owns a house or pays service charges or levies in Butterworth in the Transkei, can vote in Welkom and in Butterworth.

A person who lives in Cape Town municipal area, and owns additional properties in the Cape Town municipal area, does not get any additional votes (as is the case in the Cape Province at the moment).

Qualifications for councillors

A candidate must qualify as a voter in a local area where he or she is standing. A candidate may not be a member of the National Assembly or the Senate, or an employee of any local authority. A candidate may not be more than three months in arrears to the local authority at the time of the election.

STEP 6: After the local government elections

For the purposes of the first local government election, the Interim Constitution makes provision for certain decision-making procedures to be followed by elected councils.

Any decision relating to the budget must be taken by a two-thirds majority of the council. Any town planning decision must be taken by an absolute majority of councillors (as opposed to a simple majority, which would apply to all other decisions).

A council must elect a management committee or executive committee on the basis of proportional representation among the parties

represented on the council.

The Management Committee must strive to reach consensus, but can take a decision through a two-thirds majority. If no decision is taken, the Management Committee can refer the decision back to the council as a whole for a decision.

The Interim Constitution makes provision for new local government elections to be held within 3 - 5 years. This means that new local government elections can be called in terms of the final Constitution, by the end of 1997.

Notice

This Bulletin is intended only to inform and stimulate discussion. The views contained herein do not necessarily reflect the official views of the NEC of the ANC.