

# **Report of the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlement on Consideration on African Charter on the Values and Principles of Decentralization, Local Government and Local Development Dated 7 November 2023**

## **1. Background and Overview**

- 1.1 The Select Committee on Co-operative Governance and Traditional Affairs, Water, Sanitation and Human Settlement, having considered the request by the National Council of Provinces (NCOP), to consider and report on African Charter on the values and principles of decentralization, local government, and local development, reports as follows:
- 1.2. On the 6 March 2023, the Chairperson of the National Council of Provinces referred the African Union Charter in terms of section 231 (2) of the Constitution of the Republic of South Africa to the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements for consideration and reporting.
- 1.3. On the 19 of September 2023, the Select Committee on Cooperative Governance and Traditional Affairs (Water, Sanitation and Human Settlements) had a virtual meeting with the Department of Cooperative Governance and Traditional Affairs to consider the substantive matters related to the African Charter on the Values and Principles of Decentralization, Local Government and Local Development.

## **2. Briefing on the African Charter on the Values and Principles of Decentralization, Local Government and Local Development**

- 2.1. The Deputy Director General of the Department briefed the select committee on the object of the African Charter on the values and principles of decentralization, local government, and local development. The presentation focused on the background, articles, and implementation plan of the decentralization charter.

## **3. Background**

- 3.1. African Union Heads of States convened and adopted the Decentralization Charter in June 2014, in Malabo, Equatorial Guinea. Main purpose of the Decentralization Charter is to provide a “decentralization framework” to assist AU Member States in developing their constitutional and legislative prescripts on decentralizing powers and functions from higher spheres/tiers of government to the regional and sub-regional areas within a country.
- 3.2. For the adopted and signed Decentralization Charter to bind the Republic, it requires ratification by Parliament, and subsequent depositing of the instrument with the Commissioner of the AU, once ratified. Honorable President of South Africa issued a President Minute providing full authorization of signing powers to the Minister of Cooperative Governance and Traditional Affairs on behalf of the government of the Republic of South Africa, with the African Union representatives.
- 3.3. The Minister of Cooperative Governance and Traditional Affairs signed the Decentralisation Charter in August 2021 following the obtaining of legal opinions from the Offices of the Chief State Law Advisors of the Department of Justice and Constitutional Development, and the Department of International Relations and Cooperation that indicated the Decentralisation Charter is compliant with the Constitution.
- 3.4. Currently there are 17 (seventeen) countries that have already signed the Decentralization Charter; and 9 (nine) countries have ratified and deposited the Charter at the African Union Headquarters, in Addis Ababa, Ethiopia. As soon as the 15th member state has ratified and deposited such, the Decentralization Charter will come into effect for all the signatory Member States.

## **4. Articles of the Decentralization Charter**

- 4.1. Article 1 to 4 of Chapter 1: provides for the definitions of key concepts, the objectives, scope and core values of the charter: The Charter promotes, protects and acts as a catalyst for

decentralization, local governance and local development in Africa; promotes the core values and principles of decentralization, local governance and local development.

- 4.2. Article 5 dealing with Local Governance states that state parties shall enact domestic laws/regulations, recognising different levels of government with the mandate to exercise their competencies through clearly defined regulatory mechanisms, geographical boundaries of areas falling within the jurisdiction of local governments or local authorities shall be modified in accordance with the provisions of the law.
- 4.3. Article 6 on subsidiarity states that national/central government shall create enabling conditions for decision-making, policy and programme initiation, adoption, and implementation to take place at lower levels of government where local governments or local authorities offer a better guarantee of pertinence and efficacy.
- 4.4. Article 7 on resource mobilization and local economic development states that national/central governments shall adopt legislation, measures and establish relevant mechanisms to give local governments the authority to mobilize and disburse resources at the local level for local economic development. Article 8 on diversity and differentiation states that national/central and Local Governments or Local Authorities may establish consultative mechanisms, informed by local conditions to make proposals, or give opinions concerning guidelines or decisions on local development.
- 4.5. Article 9 on legality states that local governments shall adopt by-laws, develop and implement local programmes, projects or initiatives in a manner consistent with national laws and regulations. Article 10 on inclusion, equity and equality states that local governments or local authorities shall discharge their responsibilities and duties in a manner that it is inclusive, equitable and gives equal treatment to all residents to ensure that citizens and residents have equitable access to quality services.
- 4.6. Article 11 on shared responsibility and complementarity states that local governments or local authorities promote and improve the livelihoods and environment of local communities. Article 12 dealing with participation states that national legislation shall guarantee the rights and outline responsibilities of citizens to participate in public life at the local level. Article 13 on representation states that central governments shall establish innovative measures and appropriate mechanisms to ensure the full participation of all eligible citizens including specific measures for the representation of women and marginalized groups in local government elections within the framework of national legislation.
- 4.7. Article 14 dealing with transparency, accountability, and ethical behavior states that measures for the promotion of transparency and accountability by local governments or local authorities shall be clearly outlined in national legislation. Article 15 on mainstreaming gender, youth, and disability: states that local governments or local authorities shall integrate gender, youth, and disability issues in the overall process of formulating policy, planning development, and providing services. Article 16 on efficiency states that national legislation shall be adopted to empower local governments to determine and manage the organization of local public administration within a common national framework of standards.
- 4.8. Article 17 dealing with solidarity, cooperation, and partnership states that Local governments or local authorities may enter appropriate partnerships with non-African local governments to promote cooperation, especially South—South cooperation. Article 18 on follow-up mechanisms provides a mechanism to create favorable conditions for dissemination. Article 19 dealing with reporting: states that state Parties shall, from the date the Charter comes into force, submit to the Commission, every three years, a Report to the Commission on the legislative or other measures taken with a view to giving effect to the principles and commitments of this Charter.
- 4..9. Article 20 on recognition, award system and commemoration states that the Commission shall promote innovative experiences and institute a system of awards for innovation in decentralization, local governance, and local development. Article: 21-26: Chapter 4: Final Clauses on – safeguard provisions; settlement of disputes; signature, ratification, or accession; entry into force; amendment, and depository. The provisions of Charter shall not be interpreted in a manner that is inconsistent with the relevant principles of international law, including international customary law. Any dispute relating to this Charter shall be solved amicably through direct negotiations between the State Parties concerned.

## **5. Implementation plan of the decentralization charter**

- 5.1. Chapter 3 of the Decentralized Charter guide the Implementation plan: Implementation at individual State Party level: Local government level: requires that local government shall equally be responsible and accountable to their local population for the implementation of the objectives of this Chapter, and adherence to its values/principles.
- 5.2. National government level: State Parties adopt legislative, executive, and administrative measures to align national laws and regulations to the objectives of this Charter and adhere to the values/principles. Implementation at Commission level:
- 5.3. Regional level: amongst others, that in accordance with their constitutive instruments, regional economies shall encourage Member States to ratify, accede, implement, and monitor the Charter. Continental level: to ensure and facilitate the implementation of this Charter, the Commission shall develop guidelines for the implementation of this Charter.

## **6. Observations of the Select Committee**

- 6.1. The Select Committee has noted that on 25 February 2021, the President of the Republic of South Africa, appointed and authorised in terms of instrument of full power, the Minister of the Department of Cooperative Governance and Traditional Affairs with full powers to sign, subject to ratification, the African Union Charter on the Values, Principles of Decentralization, Local Governance, and Local Development on behalf of the Government of the Republic of South Africa.
- 6.2. On 2 March 2023, the former Minister of the Department of Cooperative Governance and Traditional Affairs, Dr N Dlamini-Zuma, respectively, tabled the African Union Charter on the values and principles of decentralization, local governance and local development to the National Council of Provinces and the Speaker of the National Assembly for ratification processes in terms of section 231 (2) of the 1996 Constitution of the Republic of South Africa.
- 6.3. On the 6 March 2023, the Chairperson of the National Council of Provinces referred the African Union Charter in terms of section 231 (2) of the Constitution of the Republic of South Africa to the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements for consideration and reporting.
- 6.4. The Select Committee has noted that the African Union “Charter on the Values and Principles of Decentralization, Local Governance and Local Development” seeks to provide a framework on the decentralization of powers and functions from national governments to other spheres of governments across the continent.
- 6.5. The Select Committee has also noted that Decentralization Charter complies with the South African 1996 Constitution and the legislations related to local government.
- 6.6. The Select Committee has noted that section 231 (2) of the 1996 Constitution of the Republic of South Africa provides that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and National Council of Provinces, unless it is an agreement referred to in subsection (3).
- 6.7. The subsection (3) refers to an international agreement of a technical, administrative, or executive nature, or an agreement which does not require either ratification.
- 6.8. The Minister of the Department of Cooperative Governance and Traditional Affairs has tabled to the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, the African Union Charter on the Values and Principles of Decentralization, Local Governance and Local Development in terms of Section 231 (2) and does not fall into the category of subsection (3), and thus requires Parliament’s ratification.

## **7. Recommendations of the Select Committee**

- 7.1. Having considered the African Union Charter on the Values and Principles of Decentralization, Local Government and Local Development, the Select Committee on Cooperative Governance and Traditional Affairs (Water, Sanitation and Human Settlements) recommends as follows:
  - 7.1.1. The National Council of Provinces notes the African Union “Charter on the Values and Principles of Decentralization, Local Governance and Local Development” seeks to provide a framework on the decentralization of powers and functions from national governments to other spheres of governments across the continent.

7.1.2. The National Council of Provinces approves the ratification of the Decentralization Charter in terms of section 231(2) of the Constitution of the Republic of South Africa, 1996.

**Report to be considered**