

**AFRICAN NATIONAL CONGRESS AND ANOTHER v MEC FOR LOCAL
GOVERNMENT AND HOUSING, KWAZULU-NATAL, AND OTHERS**

CCT 19/97

Explanatory note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

In this case the Constitutional Court had to consider the meaning of a provision in the interim Constitution which entitled traditional leaders of communities residing within the area of an elected local government, to membership of such local government by virtue of their being traditional leaders, as long as certain prescribed identification procedures had been followed.

The African National Congress (ANC) brought the case to the Constitutional Court on appeal from a decision of the Natal High Court. The ANC challenged the validity of the provincial enactment which established seven regional councils for KwaZulu-Natal and provided for membership of traditional leaders on those councils. The ANC argued that the regional councils are not *elected* local government because they are comprised of some nominated members as well as the elected representatives. Secondly, it was argued that the regional councils were not local government contemplated by the interim Constitution but rather were transitional local government structures established in accordance with the provisions of the Local Government Transition Act. They therefore did not comply with the requirements of the section of the interim Constitution which provided for membership of traditional leaders.

In a unanimous judgment written by Justice O'Regan, the Constitutional Court dismissed the ANC's appeal. The Court held that the fact that the local government bodies established by municipal elections permitted a limited number of nominated members did not mean that they were not *elected* local government. Furthermore, the fact that the Local Government Transition Act had governed those elections, did not mean that it was not local government contemplated by the interim Constitution. Justice O'Regan also held that the entitlement of traditional leaders to membership of local government bodies was an acknowledgement of the potential tension between democratic local government, whose structures may cover areas where previously chiefs and headmen exercised authority, and the institution of traditional leadership. The purpose of the provision was to ensure continuity and avoid dislocation during the period of transition from old local government structures, which had been mainly urban and divided along racial lines, to new democratic bodies which covered the entire area of South Africa. The Court thus upheld the provincial enactment which established the regional councils and provided for membership of traditional leaders on them.

24 March 1998