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AFRICAN NATIONAL CONGRESS

DRAFT

DISCUSSION DOCUMENT:

REGIONAL POLICY

Zola, please read over the
attached for any final
comments

Billy


CONSTITUTIONAL COMMITTEE /
DEPARTMENT OF LOCAL AND REGIONAL GOVERNMENT &
HOUSING

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This document provides the basis for a process of consultation that will culminate in a National Consultative Conference on Regional Policy in November, 1992. The formulations in the document arise out of a number of meetings jointly convened by the Constitutional Committee, and the Department of Local and Regional Government and Housing of the ANC.

While this consultation process is primarily intended for ANC structures, and the democratic movement in general, it is important to remember that the policy must work for as many South Africans as possible. The ANC policy approach to regions is that of building and re-uniting - not redividing - a nation.

Simplistic-
sicher total zementiert»

SECTION ONE:

THE "REGIONAL - FEDERAL - CONFEDERAL DEBATE".

The nature and form of the second tier of government in a future Constitution was at the centre of the deadlock which led to the collapse of negotiations at Codesa 2. Since then the public debate has intensified, especially on the part of the National Party and its allies. The newspapers and media constantly deal with this topic, but in a very simplistic manner.

In general, federations arise where existing states with history, legitimacy and clearly agreed borders come together to form a single national state. Notwithstanding the divisions created by the apartheid state, these conditions do not exist in South Africa.

The debate has been called the "regional/federal" debate, often posing the two concepts in competition with each other. Recently, a more conservative alliance has included the "confederal" concept, adding to the confusion of the country at large.

What has not been adequately addressed, thus far, is defining the need and functions which either a regional, federal or confederal form of government is meant to fulfil. Nor have the various proposals adequately dealt with the realities of South Africa as it exists; vested interests and short-term ideological visions have substantially obscured the debate thus far.

Instead, the debate has rather narrowly drawn attention to different conceptions of what future regions may look like. In this discussion paper, the ANC attempts to grapple with the more fundamental and real issue - on the relationship between the decentralisation of political power and the national constitution. Central to this point is the constitutional and democratic principle that warns against the concentration of too much power in too few hands in any country.

The May 1992 ANC Policy Conference, recognising the significance of these issues, called for a further process of investigation and consultation to deal with these matters in a more rigorous manner. This discussion document is a continuation of that process which the ANC is undertaking, in concert with the rest of the democratic movement.

The discussion has tried to identify what roles and functions could be undertaken by regional government against very specific and universal criteria. These include the democratisation of our society, the deracialisation of social relations, the more equitable distribution of resources and the expansion of economic development. It is against these and similar criteria that the ANC will measure its approach on this matter.

SECTION TWO:

WHY DOES SOUTH AFRICA NEED REGIONS?

The ANC, in its role as a liberation movement, has amongst its primary goals the unification of the people and government of South Africa. Apartheid, against which the people of South Africa have struggled for so long, had precisely the opposite goal and intention.

This guiding principle informs the ANC's approach to the question of regions- how can regions be constructed in such a manner that they simultaneously unite the country while celebrating and giving expression to the diversities of our nation in a democratic, developmental and constructive manner?

The unification of the South African nation must also allow for the decentralisation of decision-making as close to the people as possible. This explains the emphasis, as articulated at the Policy Conference, for a system of strong and vibrant non-racial and democratic local and metropolitan government. The ANC policy on regions must be adopt an approach consistent with this vision.

However, the mere decentralisation of decision-making ("closer to the people") does not, in and of itself, necessarily guarantee or protect democracy and accountability. This will only occur through the acceptance of democratic principles and behaviour, including political tolerance and the right to free political activity.

The decentralisation of political power needs to be exercised within a coherent national framework. In this regard, two issues are viewed as vitally important by the ANC:

- * The role of the national Bill of Rights to ~~severally~~ and jointly protect the rights of all South Africans;
- * The need for a national approach to remove the legacy of apartheid through a policy of national development and reconstruction and social reconciliation.

Above all else, the ANC would note that the construction of a regional policy should be based on a long-term view of the future of South Africa and its peoples, and not be dominated by cynical manipulation for short-term political expediency.

Unlike the ANC, the recent proposals of the National Party and its allies envisage the breaking up of the South African State and the construction of seven autonomous regions, with each region making policy which could be in conflict with the national interest. The Conservative Party, on the other hand, sees the creation of separate socially-engineered "nation states" tied together in an undefined confederation.

While there would be areas of policy making where regions would have exclusive control, the ANC sees the key role of regions as providing the political and institutional mechanisms for making

national policy more responsive to the different regional priorities in the country, and providing for the accountable implementation of policies that affect the inhabitants of any given region. In short, regions would provide the essential instrument for ensuring cohesion between the needs of people at a local level and the formulation of responsive and accountable national policies to address these needs.

The structure of decentralisation must also reflect existing political and developmental realities. The history of struggle for resources and against apartheid has been reflected in the myriad of local action and initiatives that have emanated, in part, from South Africa's vibrant and independent civil society. These factors are viewed by the ANC as essential features for promoting and then protecting democracy and accountability at local and, indeed, at regional levels.

In constructing regional policy and regional governments, other important factors have to be given due consideration. These include:

- * Social, physical and developmental criteria - such as history; physical geography; existing production patterns in all sectors of the economy; demography; commuting zones and political struggles. All of these factors both vary and overlap with each other in various permutations;

- * The national integration of the South African economy and the centralisation of private power. Managing this effectively to the advantage of all South Africans requires a capacity to implement a range of policies nationally, as well as devolution of some decisions to sub-national levels of government;

- * The dangers of the excessive bureaucratisation of our society - both in terms of the number of bureaucrats and the power they have been able to wield, with little or no accountability. The ANC is adamant about the need for transparent decision-making processes to ensure accountability;

- * The need to recognise and respond to ethnic diversity - both as a fact and as a potential strength. Unfortunately, the ethnicity has been manipulated by the South African government and its bantustan creations as a negative force;

- * The facilitation of development in the country. While development cannot be reduced to a technical issue artificially separated from "politics", in that it deals with the expansion and allocation of resources, the ANC is opposed to the new model of "separate development" that is contained in the proposals of the National Party and its allies;

- * The needs and aspirations of rural people must also be answered in the construction of regions and regional policy. The debate, thus far, has not adequately addressed these needs, nor those of women and children who have been

most adversely affected by existing policies and structures;

* Finally, the delimitation of boundaries for the creation of regions must also facilitate national, regional and local development strategies. As such, it must be consistent with the provision of services to the nation as a whole. Hard political boundaries, whether between regions and between tiers of government, will only serve to continue to obstruct this goal.

The rest of this discussion document deals with the detail of a policy for the elected regional governments envisaged by the ANC. Each region is asked to critically examine the document and the likely effects of the policy outlines on the lives of existing regions, communities, households and individuals. At the same time, the process must always have the interests of the future nation - as a non-party-political whole - firmly in mind.

SECTION THREE:

POWERS AND FUNCTIONS OF REGIONS

The critical issue in any framework for regional government is the relationship between, on the one hand, regional and central government and, on the other hand, regional and local government. This issue is most sharply raised in the delineation of the powers of the region in regard to the powers of the centre. The proposed legal formulation is set out in the first annexure to this document. The formulation advanced in this proposal establishes that regional government will be empowered to exercise a law-making and executive power in relation to the areas listed in the schedule, provided that regional legislation will have no force where it is repugnant to national laws. Thus, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.

Regional governments shall also have the powers to implement and administer national policy and legislation, when empowered by national legislation to do so. The areas designated as areas of regional government are the following:

- (i) The imposition of taxes in accordance with a national policy framework operating within guidelines overseen by a National Fiscal Commission. (See section 4: Finances and Resources);
- (ii) Education, other than tertiary education
- (iii) Health services including hospitals
- (iv) Welfare
- (v) Housing
- (vi) Transport, including harbours, airports and roads
- (vii) Markets and pounds
- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby.
- (ix) Traffic control
- (x) The environment
- (xi) Industrial and other development within the region
- (xii) Horse racing and gambling
- (xiii) Town and regional planning

- (xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws made in accordance with the provisions of this section.
- (xv) All other matters delegated to it by Act of Parliament.

This simple formulation requires some further discussion to establish a clearer grasp of exactly what powers the ANC is suggesting that regions will have. It should be mentioned at the outset that, although this formulation favours the central authorities at the expense of the regional authority, it is not out of line with the constitutional devolution of powers in Germany and some other federal states. We may set out the powers of the regions as follows:

3.1 Regional Powers

3.1.1 Concurrent and Overriding Jurisdictions

The regions would be entitled to enact laws dealing with any aspect of the areas listed in the schedule, provided that the provisions of such legislation are not repugnant to national legislation. The central state would thus have concurrent jurisdiction in all these areas. It may be that there are a few areas where it is possible to argue exclusive regional jurisdiction but these would be so minor or qualified that there is little purpose in including such a category.

3.1.2 Original Powers

The powers of the regions would be original in the sense that they would be conferred on the regions by the constitution, not by statute or government. They may of course be removed, amended or augmented by means of a procedurally proper amendment to the constitution. The central state would not, however, be empowered to enact ordinary legislation which would effectively remove those powers. In other words, the central government may regulate those areas in which regional governments are competent but may not remove the region's right to deal with those issues. It may not, for example, prohibit the regions from building any houses or providing any health facilities.

3.1.3 Exclusive Jurisdiction

In respect of all matters not expressly listed in the schedule the central state will have exclusive jurisdiction to make laws, and to confer the authority and/or establish the agency by means of which such areas of government are administered. Examples of such areas are Foreign Affairs, Defence, Internal Security, Constitutional Affairs, Administration of Justice. The regions will not be able to make policy in these areas at all.

3.1.4 Delegated Powers

The region will be able to administer and implement national policy where empowered to do so by national legislation which may delegate both legislative and executive functions even in respect of non-scheduled matters.

3.1.5 Residual Powers at the Centre

The regions would not have any residual powers, that is powers to make and implement policy in respect of matters not expressly mentioned in the schedule. The central government would have such powers.

3.1.6 Power to Compel Performance

The central state can implement national policy within a region - even or especially when a region refuses to implement national policy when legislation authorises the regions to do so. In this proposal central government can, by legislation, compel regions to perform certain functions but would, of course, be limited by practical political considerations in attempting to do so. Provision should be made to allow for central government to assume regional government functions where the region cannot, or refuses to, perform. This power should be limited to drastic cases of breakdown of regional government. It is envisaged that neither the regions nor the central state would have the power to dissolve regional governments. *Regional govts. will be responsible to the Constitution and to the regional electorate.*

3.1.7 Multi-level Jurisdiction over Scheduled Matters

It is clear that in relation to scheduled matters, all three levels of government may have as legitimate an interest and could perform some functions more appropriately than any of the other two levels. Thus, in both Health as well as Education, there may be national policy regarding qualifications, access, as well as funding. Regional government may be concerned with the location of facilities and the management of resources. Local authorities are the appropriate bodies to regulate and supervise the provision of services by hospitals and schools. Indeed there may be even a 4th level of function, for example, those performed by parents at the level of the educational institution.

It is possible that problems could arise out of this situation. Central and regional government may have the power to build houses. The central government could regulate not prevent the region from doing so. However, as in the past, these are not insurmountable problems and in the 'old' South Africa there were

3.1.8 Local Government

In regard to local government, the ANC has identified two options. On the one hand, it could be proposed that the law dealing with local government be in the form of a national statute. On the other hand, it may be possible to specify and entrench the powers of local government in the constitution. This would protect some of their powers from the central state and the regions.

Further, and whether the powers and functions of local government are constitutionally entrenched or merely legislated, local authorities could operate either under the ultra vires principle, which specifies the exact parameters of local authority jurisdiction (the current system), or be delegated a general competence to perform its functions.

In respect of the relationship between local and regional government, it should be noted that the national statutory framework would necessarily limit the powers of regional government in regard to establishing local government policies which are repugnant to the national framework.

Regional government would still be able to pass ordinances in unregulated areas of local government. The regional executive counsellor in charge of local government would inter alia be responsible for ensuring that there was no corruption in local governments or for ensuring that elections were properly held. Such issues may be better dealt with by regional governments than by a central government. Local government powers, on the other hand, could be amended or increased through national legislation.

3.2. Functions deemed inappropriate for regional government:

It is necessary to mention some areas which the National Party proposals regard as within the competence of regional government.

3.2.1 Administration of Justice, Bill of Rights

In our view the administration of justice, including the establishment and maintenance of regional and supreme courts, should be an exclusive central government function. While regional government will have the power to establish penalties for the breach of regional ordinances, it will be necessary to limit the power of regional government to, for example, institute the death penalty in respect of its region.

Of course, the Bill of Rights will have national application and will override any regional laws and govern all acts of regional government. No regional government will be able to override these rights.

Nationally integrated system of justice as at present, with regional & local division

3.2.2 Law and Order

While the ANC endorses the principle that policing should take place in close collaboration with local communities who should assist in establishing the policing priorities for their areas, we do not believe in the establishment of regional police forces, save for the possibility of establishing local traffic police. Autonomous regional police forces create the possibility of private armies, linked to regional or ethnic leaders through patronage and capable of victimising regional outsiders. It is possible to conceptualise a system in which a single national police force is regulated by a statute which requires regional and local government supervision. This, however, is very different to disestablishing the SAP and reconstituting seven, ten or sixteen police forces. There are other reasons for the maintenance of a central police force - these include the fact that contemporary police forces require a degree of centralised resources and management - particularly in regard to training, the maintenance of centralised information, the combatting of organised crime, maintenance of internal security and the setting of uniform standards and disciplinary codes.

3.2.3 Other functions listed by the National Party as regional which appear to be exclusively or primarily national include:

Mining,
Commerce
Agriculture and Land

3.3 Fiscal Powers of Regions

It is clear that both regional and local government must have some powers to raise revenue. The National Party's recent proposals appear to give all power over taxation to the regional level. This is viewed by the ANC as unworkable, particularly in a modern economy such as South Africa.

In our view this matter should be dealt with in the constitution in order to prevent (i) all income accruing to the regions from whom the central state would have to request its apportionment, (the scenario envisaged in the National Party proposal) and (ii) disproportionate revenue raising capacity by richer regions, thereby perpetuating regional disparities. Provision is made for this by the proposed creation of a National Fiscal Commission (see section 4: Finance and Resources).

Rather than define the diverse sources from which regional government would be entitled to raise its revenue, (eg, gambling tax and property tax), it may be more appropriate to set out those potential areas of income in respect of which the central state will have the prior or exclusive right to raise revenue. Usually the central state has the sole prerogative on personal income tax, company tax, customs and excise. On the other hand, rates and property taxes are more effectively and appropriately raised by local and regional authorities.

As indicated in this proposal, the central state will have a prior claim on revenue and thus would be able to secure the preponderant proportion of taxes raised and thereby be in a position to equalise the distribution of resources as between regions. The regions would be able to raise additional revenue only after all distributions to the central revenue fund. This would empower the central authority, which will bear the burden of the cost of reconstruction, to set taxes at the levels it deems appropriate and, accordingly, limit the ability of the regions to further increase tax burdens.

However, it should not be the intention to entirely discourage regions from attempting to raise additional revenue to deal with their particular problems. Although it is envisaged that certain types of taxes - such as the current turnover tax and salary levies (the Regional Services Councils levy) - would be income which could accrue to the regional governments, it should not be necessary to specify this in the constitution.

A question which has not been addressed is whether the constitution should specify equalisation formulae, in terms of which income would be redistributed to poorer regions from richer ones ('financial transfers'), or whether this would take place through simple central government allocations in respect of its own programmes and practices. The issue is critical only where the regions are fiscally autonomous - as in Canada. As this proposal allows for central government to have concurrent and overriding fiscal and legislative powers it is not as critical.

|| No!

3.4. Language

The regional council could specify the languages of record for the region, as suggested in the draft Bill of Rights and subject to language rights in the Bill.

3.5. Amendment of Constitution

An issue not separately canvassed here relates to the amendment of the constitution or, more specifically, those provisions dealing with regional structures and functions. Our proposal has been that regional powers be entrenched and would accordingly require a 2/3 majority of parliament to amend them. Such a majority implies considerable support for any amendment. It is likely that some parties will propose an additional requirement that all or 2/3 of affected regional councils also approve of the amendment. This would in our view confer double veto powers on minorities and would lead to frustration and friction. No decision to alter the original proposal should be made until the parliamentary structure has been finalised. This structure may in any event involve adequate forms of regional representation to cater for regional input e.g. regional lists etc.

3.6. Assent

This proposal sets out the procedure for the assent to regional laws or ordinances. It may be argued that the signature of the State President (rather than the Administrator) is required for the valid promulgation of a regional ordinance. However, in view of the possible number of regions and the likely existence of a constitutional court capable of adjudicating upon the procedural and substantive validity of an ordinance, it is proposed that the administrator be empowered to assent to any regional law.

3.7. Politics, Accountability and Stability

It is believed that the formulation of the functions and powers of regional government should be designed to enrich political life through facilitating public participation, transparency and accountability in government at the levels at which it is most appropriate. It should not, however, disempower South Africans by fragmenting their resources and compartmentalising the citizenry's decision-making powers. The ANC is of the view that there is no necessary contradiction between the existence of regions and the project of national building. It may even be suggested that regional government can enhance national stability and identity, provided that regional boundaries do not coincide with ethnic, racial, linguistic or other boundaries, and that the regional framework is not designed to perpetuate or create disparities between citizens.

3.8. STRUCTURE OF REGIONS

3.8.1 Number of Regions

Although no fixed boundaries or numbers of regions are specified in the framework, two options have arisen in the course of debate within the ANC. The first, contained in the original Constitutional Committee's discussion document, favours 10 regions. The second favours more regions, approximately 16. (See Maps in Appendices)

The ten regions are similar to the nine existing development regions, except that a tenth region has been proposed to give effect to a single Border/Kei region. The sixteen regions differ in one fundamental respect, in that all of the Metropolitan areas, no only the PWV, form separate regions.

The question of fixing precise boundaries is not the function of this discussion paper, nor of any single political party. The ANC envisages that this process will be undertaken by a Delimitation Commission after agreement on the basic number and siting of regions has been agreed. Detailed questions, such as the regional location of East Griqualand, would be left to this Commission.

It is the view of the ANC that this entails a process that could and should be utilised to foster understanding, unity, peace and reconstruction rather than conflict. Only a full and thorough

process of consultation can adequately inform the debate and the decisions, thus avoiding expedient decisions in the short term.

It will be assumed then, for the purposes of visualising what the regions will look like in terms of physical size, administrative cost and political coherence, that the regional framework envisages between 10 (ten) and 16 (sixteen) regions. In contrast the N.P. is proposing 7 (seven) regions with greater, and more equivalent, human and economic resources. This, in turn, will manifest in a relatively greater degree of decision-making and fiscal autonomy as compared with the ANC's envisaged framework.

3.8.2 Size of Elected Council

In view of the cost of maintaining between 10 and 16 regional governments, this proposal suggests a maximum of 20 regional councillors. This would mean a total of between 200 and 320 such councillors.

Why so small?

3.8.3 Elections by Proportional Representation

The proposal assumes that the electoral system will be the proportional representation 'list' system. All the reasons for opting for this system at the national level (*viz* inclusivity, exact proportionality between representation and support, the avoidance of conflict over constituency boundaries) would apply at this level. On the other hand, arguments for more direct representation through single member constituencies has been raised only in local government proposals where there are more compelling reasons for personal or direct accountability.

However, a sound case could be made for a mix of representation (direct and indirect) at both the regional and local government levels. Insofar as regional government is concerned, this could have the effect of ensuring that regional policies were responsive to local needs. In the case of local and especially metropolitan government, a mixed system could have the effect of unifying apartheid structures.

Multi-member constitu.

3.8.4 Regional Elections and Regional Constitutions should be set out in the Constitution

In a previous proposal these matters were to be left to a national statute to set out. Some parties at Codesa have argued that they could be left to the regions themselves to formulate or amend as in the U.S.A.

After reconsideration, this proposal asserts that the full framework should be set out in the National Constitution. The regions will thus have uniform provisions and powers. The situation in South Africa is not analogous to federal states created out of pre-existing autonomous states. At the same time, the democratic functioning of the regions requires to be protected by its constitutionalisation and thus would not easily be subject to amendments. The regional councils would retain

powers to finalise the details of how they function and their rules of procedure.

3.8.5 Tenure of Councillors/Period between Elections

It is proposed that regional elections should not take place at the same time as national elections. By proposing a 4-year term (in contradistinction to the 5 year parliamentary term) such elections will generally take place before or after a general election. This will mean that regional issues will not be lost or submerged by national issues. However, the cost of separate elections must be weighed up against this possible benefit.

*five electorate
mid-term changes*

3.8.6 Dissolution

It is proposed that the constitution should provide that the regional councils should not be able to dissolve themselves (so as to frustrate central government) or be dissolved by Parliament (to undermined regional governments). In this proposal the only means by which a regional government will be dissolved is through the expiry of the period of office. It will be necessary, however, to incorporate within the constitution a provision which will enable the functions of regional government to be assumed by the central government where a regional government will not or cannot discharge its constitutional or statutory obligations.

3.8.8 Size of Regional Executive Council

It is proposed that the regional executive council be limited to five members in addition to the administrator. Under the old provincial government system the number of executive members was limited to four. In view of the large number of regions and the general expenses and benefits which will flow to REC members, it may be better to limit the number to five.

3.9 Administrator

It is proposed that the administrator be elected by an absolute majority of the regional council. In an earlier proposal of the constitutional committee, and in line with the previous practice, it had been proposed that the Administrator be appointed by Pretoria without regard to his/her acceptability to the council. This practice could well lead to disharmony between different levels of government. While such a system has been proposed in the interim government/constituent assembly stage, we propose that in a final constitution the electoral principle should apply to regional government.

3.10 Method of Composition of Regional Executive Council

It should be noted that the principle of collegiality (i.e. that parties be represented on the executive council in proportion to their representivity in the council itself) will be argued by the

National Party. This system once operated in regard to provincial councils and was abandoned precisely because it entrenched conflict and disharmony. Subject to a reasonable right of access to information for all members of the council, we believe there is no good reason for a proportionally representative regional executive.

It is possible to argue that the executive council should be elected by the council and hold office at the discretion of the council or, alternatively, appointed by the administrator to hold either office at his/her discretion. In our view, this latter system could provide for a more effective executive. The administrator him/her self should be capable of being removed by the majority of the members of the council on a simple vote of no confidence. In this way the council would have supervisory control over the administrator and his/her executive council.

Could have p.r. -
decisions by majority?

SECTION FOUR:

FINANCE AND RESOURCES

A critical component of the balance that needs to be drawn between the powers of central, regional and local government within the framework of a national, democratic Constitution lies within the vital role of finance and resources. In this section, the discussion document deals with this critical issue, seeking to examine the relationship between political decentralisation and the allocation of fiscal powers and functions between the tiers of government.

4.1 Fiscal Decentralisation

Given the importance of economic considerations and the fact that finance is in many cases the real key to political influence, it is vital that the manner in which the new constitution deals with decentralisation of the fiscal system is coherent, and consistent with the desired structure of political decentralisation. It must be appropriate to modern economic conditions, seeking to enhance democratic accountability while ensuring that the public resources of the country are shared fairly amongst the whole population.

4.1.1 An emphasis on local control

The starting point should be a strong emphasis upon the need to strengthen local control over the use of public resources. This helps to ensure that usage is efficiently and appropriately tailored to local conditions. The link between paying taxes and receiving public services must be recognised as an important element in the strengthening of democratic accountability, and is most direct at the local level.

4.1.2 The constraints on decentralisation

However, there are substantial constraints on the extent to which the fiscal system can be decentralised. While these have always existed, they have grown more compelling in recent decades because of the rapid increase in the mobility of goods, people, services and information, and the consequent intensification of the national integration of the South African economy. Policies introduced in one part of the country quickly have impact on other areas.

Fiscal decentralisation must not compromise the capacity for the authorities to exercise sound management over the economy as a whole. A prerequisite, for example, of implementing effective policies to control inflation and unemployment levels is that the autonomy of decentralised government over taxation, spending and borrowing must not clash with effective overall management.

Fiscal decentralisation should guard against allowing too many

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distortions to be introduced into the economy which prevent resources from flowing to best use. The more taxes differ across different areas, the more the flow of resources across the country will be inefficiently distorted. Allowing regions and local authorities too much power to distort economic conditions in their favour could lead to chaotic results as each authority continually tries to outdo its neighbours. If businesses are to compete effectively the extent to which regional and local authorities should be allowed to compete must be limited.

Linked to this is *the need* to even the responsibility for redistribution across the country as a whole. Micro and macroeconomic distortions could arise if business and the wealthy in some parts of the country are forced to bear a greater responsibility for dealing with the country's poverty and inequality than in other parts; or if the poor in some areas are treated worse than in others. It would also lead to inefficient and undesirable migration of both the rich and the poor.

The need to place at national level key responsibility for effecting and co-ordinating redistribution is particularly important in South Africa given the severe spatial imbalance between the location of needs and resources. The level of inequality in the country compromises the extent to which accountability can be based on a direct relationship between payment of taxes and receipt of public services.

Thus, more important even than the call for 'one city one tax base' is the need for 'one country one tax base'.

Balancing the extent of redistribution across the country limits not only the regional variations which can be permitted in the progressivity of taxation, but also constrains the autonomy which can be given to different regions over how resources are spent. To a large extent it is the nature of the overall package of public goods provided by the authorities which determines the extent of redistribution: for example, spending resources on ensuring good primary education for all has greater redistributive content than subsidising universities.

By the same token, fiscal decentralisation should not compromise the capacity for coherent national policies on urbanisation to be implemented. Allowing regions to compete in making themselves as unattractive as possible to poor incoming migrants in the hope that they will go elsewhere will make coherent urbanisation policies impossible.

4.2 Technical constraints on devolving taxes

The nature of most of the significant taxes makes it impossible to give much power to lower tiers of government over how they are levied. For example, given the national integration of the South African economy, allowing VAT to be levied at different rates in different regions would lead to enormous administrative difficulties. Even where it is levied at the same rate, identifying in which region the many firms which operate

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nationally actually 'add value' would be almost impossible.

For similar reasons company tax can also not be assigned to any particular region or locality; while assigning customs duties to particular regions would be very arbitrary.

Similar difficulties are to be found with income tax; it is often difficult to identify clearly where income is actually earned. Furthermore, where income tax rates are different in different areas, ensuring that people don't register for tax purposes in low tax areas even when they live elsewhere would be a difficult policing task.

The problems of assigning fixed property taxes, such as rates, to a particular area are much less severe, making them much better candidates for devolution to decentralised levels of government. Some excise duties, such as fuel levies may also hold greater potential for decentralisation.

A distinction needs to be drawn between:-

- assigning particular taxes, such as mining taxes, to the region or local area in which they are supposedly generated, allowing each region to set its own rate; and
- assigning ~~particular~~ ^{all or some of} taxes, levied at a uniform rate nationally, to a whole level of government. In this case some formula would be required to ensure that the revenue is shared fairly between the different governments at that level.

In either case, consideration must be given to the way in which changes in economic conditions could interfere unduly in the relationship between different levels of government. For example, over recent years the contribution of mining taxes to the total tax pool in South Africa has declined very significantly, while the contribution of income tax and GST/VAT has risen. Had a particular level of government been dependent mainly on mining taxes, for example, its capacity to perform would have been severely compromised.

4.3 The need for fiscal transfers to effect decentralisation

The above arguments make it clear that, as at present, considerable national control needs to be exercised over the overall fiscal system, and that a large proportion of taxes will inevitably have to be collected at national level.

X However, to accommodate a more substantial and effective decentralisation of political power that exists at present, better mechanisms will need to be found for transferring resources from the national fiscus to lower levels of government than have existed up till now.

These transfers will fall into two main categories. Firstly, where regional and local government is given responsibility for

implementation of national policies, transfers will have conditions attached to ensure that national policies are indeed adhered to in implementation. Thus, within clearly defined nationally determined parameters, decentralised governments would be able to fine-tune the actual pattern of expenditure to suit local needs. The majority of transfers are likely to fall into this category.

Other transfers, however, would have far less stringent conditions attached, and would be aimed at enabling lower tiers of government to implement policies in areas where the constitution gives them powers to act autonomously. These grants would have to take into account the capacity of various lower level governments to raise their own resources so that inequalities amongst regions and localities could be counteracted.

4.4 Institutions for managing fiscal transfers and the decentralisation of taxes.

Given that the way in which responsibility and control over the transfers is exercised affects the relationship between different levels of government, it would be unwise to leave such control entirely to central government. On the other hand, trying to fix in the constitution the detail of how transfers are made would tend to be either too vague or too rigid, or both.

It may therefore be advisable that there be created in terms of the constitution a permanent Fiscal Commission structured on a non party-political basis in which certain powers for managing the structure of fiscal decentralisation would be vested. This Commission would be answerable to national parliament as a whole including the chamber in which the regions are represented at national level. Its powers should extend to aspects of transfers between all levels of government.

Its task would be to ensure that the allocation of taxes and transfers to the various levels of government takes place within guidelines laid down in the constitution. These guidelines must be consistent with the extent of political autonomy decentralised government is to have, and with the Bill of Rights. Such guidelines should ensure that transfers are made in such a way that lower levels of government are able to plan properly; that they are structured so as to enhance efficiency and local accountability and that they are open to clear and effective monitoring. The guidelines must seek to redress inequalities between regions.

The Fiscal Commission should have a say in granting powers of taxation to lower levels of government within this overall framework. This should be done in a way which enhances accountability and which allows lower levels of government some leeway to raise additional revenue to deal with their own specific problems. Finally, the Fiscal Commission could also play an advisory role in certain areas.

4.5 Resources, economic and the structure of decentralisation

An implication of the above structure of fiscal decentralisation is that because resources are to be collected largely on a national basis, and distributed by means of transfers, drawing boundaries to ensure that each region has similar economic strength becomes relatively unimportant. This opens the way for regional boundaries to be drawn on the basis of a wider range of criteria, including how regional representation can represent the regional diversity of the country at national level for the purpose of national policy making.

SECTION FIVE:

THE RELATIONSHIP BETWEEN THE DIFFERENT TIERS OF GOVERNMENT

In the South Africa Constitutional debate there is general consensus among the different political actors that a new democratic constitution for South Africa should provide for three tiers of Government - central, regional and local. There seems to be an agreement that each level of Government should be democratically elected, with certain specified powers and functions protected by the constitution.

In order to ensure that historical inequalities are redressed, citizens are equally treated and protected by the constitution, it is necessary that regional and local government operate within a national framework guided by the same set of democratic principles. *and that*

It is often taken as given that decentralisation will bring government closer to the citizenry and as such act as a buffer against an over centralised bureaucracy. However, and as noted in the introduction, in practice decentralisation does not always yield the expected democratic and accountable results. This is one important consideration in stating, therefore, that the autonomy of regional and local government cannot be seen as absolute. For example, in South Africa governing powers were devolved to homelands which are regionally, and often locally based. This, however, has often brought repression - and not government - closer to the people.

Similarly, for purposes of co-ordination and reasonable uniformity in service provision, caution should be expressed against allocating powers and functions exclusively to a single tier of government. Hence the suggestion for concurrent powers among the three tiers of government. For example, central, regional and local government could play a role in the provision of educational and health services *(all)* in their respective areas of operations.

In order for regional and local governments to carry out their functions effectively and efficiently they need to have an appropriate combination of political and fiscal powers. In addition, while central government has a role to ensure equitable redistribution of resources from poor to rich regions, it is equally important for sub-national governmental to co-ordinate development and strive to redress inequalities in their own areas of jurisdiction.

In dealing with the different tiers of government, a number of issues could be resolved in different ways. These are options that are currently under consideration in the ANC. One such debate revolves around the issue of metropolitan government.

While South Africa currently has a number of metropolitan areas, it has no metropolitan governments. The ANC views the creation of metropolitan governments in certain parts of the country as essential to the cause of unifying, deracialising and

democratising cities in addition to the more efficient and effective provision of affordable services.

Metropolitan governments, in places like Greater Johannesburg, Cape Town or Durban will necessarily be large, populous and relatively powerful. Because of their size, budgets and influence, there is a view that metropolitan areas should be treated as regional governments in their own right. As such, they would be seen to be part of the second (or regional) tier of government, with the same powers and functions allocated to them as other regional governments.

The contrary view sees metropolitan government as a form of local government, and accordingly located in the third tier - below regional government. To further complicate the picture, there are generally two levels (or tiers) of decision-making and responsibility within a metropolitan government: the metropolitan government itself, and the primary local authorities (or boroughs) within the area of its jurisdiction.

In dealing with the issue of regional government, the specifics of metropolitan government and its location will have to be the subject of further examination and debate.

Insofar as the more rural areas are concerned, the ANC envisages the creation of larger geographical forms of local government: district councils. The similarity with metropolitan government lies in the fact that there would be two levels of decision-making, powers and functions within such district councils: that of the council itself, and that of the (lower-level) village or small town. However, the district council is seen as constituting part of the third tier of government within the overall constitutional framework.

Further attention needs to be paid to the possible form and relationship between the third and first tiers of government - between local government, on the one hand, and the central state. While some are of the view that this relationship should be mediated by means of the regional tier of government, others hold the opinion that circumstances will arise wherein a formal relationship outside of regional interference will serve a useful purpose.

Finally, it is worth recording the ANC's view that we envisage a significant role for civil society in ensuring that all tiers of government - and the relationship between such tiers - become and remain transparent, sensitive, accountable and democratic.

In our conception, civil society embraces diverse bodies such as religious organisations, trade unions, civic associations, professional bodies, student organisations cultural groups, organisations of the disabled, sporting bodies and the women's movement. They would be independent of the state and their right to exist would not be dependent on the authorisation of the state.

At the same time they could collaborate with the state in

business

securing the objectives of the constitution, particularly in relation to guaranteeing basic freedoms, securing social advancement, healing the divisions of the past and promoting religious, cultural and linguistic rights. Co-operation with the state, however, will not mean co-option by the state or subordination to it. These bodies must retain their right to criticise state actions, to demand improved performance, and to make proposals for reforms. → at all levels of government.

~~They should also~~

Law-making bodies should be under a duty to keep the public informed in relation to all matters affecting the public interest, and to make reasonable provisions for organisations of civil society and NGOs to be heard in relation to questions affecting the rights and expectations of their members

SECTION SIX:

MANAGING REGIONAL POLICY IN THE TRANSITION

This document contains a variety of issues relating to regional policy for discussion within the ANC, and with the democratic movement in general. Whatever the final form and results of this consultative process, the ANC viewpoint will only be one amongst many that will be submitted for discussion and negotiation to the Constituent Assembly.

The difference between the views of the National Party and its allies, on the one hand, and the ANC and its allies, on the other, cannot be reduced to a simple "federalism or not" equation, but rather on how and which specific powers and functions should be allocated to the three tiers of government. As we stated in the introduction, it is the relationship between the decentralisation of political power and the constitution that is of most importance.

It is the ANC's view, as articulated at the Policy Conference, that the details of the powers, functions, roles and boundaries of the regions carry such Constitutional importance that only a national and democratically elected Constituent Assembly should arrive at any final decision on the matter. The National Party Government, however, is of the view that the powers, functions and even the boundaries of future regional governments should be settled before a constituent assembly is elected.

This raises the important question as to how the matter should be dealt with between now and the election of the Constituent Assembly - the transitional period.

In order not to pre-empt the deliberations of the Constituent Assembly, the ANC proposes that the four existing and established Provinces with the 1910 boundaries be retained in the interim.

The ANC and the democratic movement in general is firmly committed to a procedure in terms of which a majority of the elected representatives of the people make binding decisions. We are committed to this procedure because we regard the principle of equal liberty - the principle that all adult citizens should have an equal right to participate and determine the outcome of political decision-making processes - as fundamental. Institutionally, this fundamental principle requires the election of a representative body with the power to make law.

The principle of equal liberty applies with at least equal force to the process of constitution-making. This is why the ANC is of the firm view that the constitution should be adopted by an elected body with plenary powers to devise a system of constitutional democracy.

The constituent assembly should have the power to choose the form of the future state, including the role, powers, functions and boundaries of regional and local government. This view of the ANC is strengthened if the process which creates the constituent

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assembly offers fair opportunities for all interests to achieve representation and thereby to seek their objectives within a democratically-elected forum.

This process would also help to ensure that the final decisions to be taken on the system of regional government will occur within a wider constitutional framework. There is an inherent danger in isolating regional government as a separate issue, as though it can be resolved with no due reference to the other tiers of government. Constructing a regional policy in isolation could have very severe and adverse consequences for the future constitution of this country. The future political and economic stability of this country and its citizens require that we deal with the matter in an open and transparent manner - and that we get it right.

Reduce temptation towards
ethnic cleansing.

A constit. hangs together.
Regs. affect Senate,
electoral system,
even Presid. chosen -

APPENDIX ONE

FRAMEWORK FOR STRUCTURE AND POWERS OF REGIONS

TO BE SUBMITTED
TO C.A.

1. Regional Boundaries

The shall be 10 (16) regions in South Africa, the names and boundaries of which are set out in schedule-

2. Regional Councils

- 2.1 A regional council shall be elected by ballot for each region.
- 2.2 Each regional council shall consist of 20 members.
- 2.3 Elections shall be ^{by} proportional representation and shall be called and conducted on the basis of a list system in accordance with the provisions set out in schedule - hereto.

3. Tenure of Regional councils

A regional council shall be constituted for a period of 4 years from the date on which it was elected and shall not be subject to dissolution save by effluxion of time.

4. Executive of Regions Councils

- 4.1 The chief executive officer of each region shall be

the regional administrator.

- 4.2 The regional administrator shall be elected by an absolute majority of the regional council at its first meeting. The regional administrator shall hold office for the period for which the regional council has been elected, but shall be liable to be removed from office by a vote of no confidence passed on him or her by the regional council. In that event, a new administrator shall be elected in accordance with the provisions of this article.
- 4.3 Elections for the regional administrator shall be conducted in accordance with the provisions set out in schedule - hereto.
- 4.4 the regional administrator shall establish departments for the proper administration of the affairs of the region.
- 4.5 The regional administrator shall appoint an executive committee consisting of not more than 5 persons who shall hold office at the discretion of the regional administrator, and shall resign if a vote of no confidence is passed on the administrator.
- 4.6 The regional administrator shall allocate

responsibility for the administration of departments to members of the executive committee. A member of the executive committee may be given responsibility for the administration of more than one department.

4.7 The regional administrator shall preside at meetings of the regional executive committee which shall be convened by the regional administrator.

4.8 If a regional executive committee refuses to carry out its responsibilities or to administer the affairs of the region properly, the State President may delegate such functions to a Minister who shall assume such responsibilities for as long as that may be necessary.

5. Sessions of Regional Council

5.1 The administrator of a region shall by proclamation in the regional gazette fix the times for holding sessions of the regional council, and may from time to time prorogue such council: provided that there shall be a session of not less than six weeks at least once in every year, and provided further that a period of more than 1 year shall not intervene between the last sitting of the regional council in one session and its first sitting in the next session.

5.2 The regional administrator shall preside at meetings of the regional council, which shall be conducted in

accordance with rules and procedures laid down by the regional council.

6. Remuneration

The salaries and allowances of the regional administrators, members of the executive committees of regions, and members of the regional council shall be determined from time to time by the national assembly. The salaries and allowances shall be the same in each region and shall not be reduced during the term of office of the regional councils. The salaries and allowances of the regional councils.

7. Powers of Regional Councils

Without derogating in any way from the powers of the National Assembly a regional council shall be entitled to make laws in relation to the following matters:

- (i) The imposition of taxes in accordance with national policy.
- (ii) Education, other than tertiary education
- (iii) Health services including hospitals
- (iv) Welfare
- (v) Housing
- (vi) Transport including harbours, airports and roads
- (vii) Markets and pounds

- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby.
- (ix) Traffic control
- (x) The environment
- (xi) Industrial and other development within the region
- (xii) Horse racing and gambling
- (xiii) Town and regional planning
- (xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws made in accordance with the provisions of this section.
- (xv) All other matters delegated to it by Act of Parliament.

8. Validity of Laws

Any law made by a regional council in terms of its powers under article 7, shall have effect in and for the region as long and as far as it is not repugnant to any Act of Parliament.

9. Assent to Regional Laws

9.1 Any law passed by a regional council shall not have the force of law unless and until it has been assented to by

the administrator and published in the regional gazette.

- 9.2 The administrator shall assent to any proposed law which has been passed by the regional council unless he or she is of the opinion that it may be repugnant to an Act of Parliament or in conflict with any of the provisions of the constitution. In that event the administrator may refer the proposed law to the constitutional court for its opinion, and shall act thereafter in accordance with the terms of such opinion.

10. Language

Regional Councils shall determine which scheduled language or languages may be used within the region for conducting the business of the regional government: provided that any scheduled language may be used for the purpose of addressing written communications to any department of the regional government.

11. Local government

- 11.1 Local government bodies shall carry out the functions assigned to them by Act of Parliament.
- 11.2 A regional council may delegate any of its powers or functions to a local authority, and require the local authority to execute such powers and implement such functions on its behalf within the local authority's area of jurisdiction.
- 11.3 If a local authority fails to carry out functions allocated to it by Act of Parliament, the Minister

responsible for local government may appoint an officer to discharge such functions for as long as it may be necessary to do so.

- 11.4 If a local authority fails to carry out functions delegated to it by a regional council, the administrator of such council may appoint an official to discharge such functions for as long as it may be necessary to do so.

12. Fiscal Transfers

Fiscal transfers shall be made by the central government to regional councils in an equitable manner, taking into account the population size, backlogs and priorities (such as the urban and rural poor, women and children) of each of the regions.

Ref to Central Fiscal Body.