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a United Democratic South Africa

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ANC Regions  
1992

# ANC

# REGIONAL

# POLICY



*Draft Discussion Document*

*A Document of the Constitutional Committee  
and the Department of Local & Regional  
Government & Housing.*



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*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.*

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# SECTION

# 1

## INTRODUCTION

### A Heated Debate

The debate on different levels of government in South Africa, and in particular on the degree to which regions should have autonomy, has become heated. The issues are not only what the powers and boundaries of regional and local government should be, but who decides, how and when.

Usually the debate is presented in terms that are both grossly over-simplified and quite wrong. It is said that the choice before South Africa is between a highly centralised state directing a centrally planned economy, allegedly the ANC position, on the one hand, and a highly de-centralised state with a free economy on the other, said to be the South African government's position on the other. Both positions are misrepresented.

The ANC stands for a united, non-racial and non-sexist, democratic South Africa. This means we want a South Africa that is unified but not over centralised. It must have a constitution which provides for democracy at all levels, popular participation at every level of government, and a distribution of powers and functions at national, regional and local level which will best achieve this objective, and also ensure development and eradication of inequalities created by apartheid. This can only take place within a national policy framework.

We in the ANC want democracy and development at all levels, and look forward to the private sector making an essential contribution to the nation's well-being. The

South African government, on the other hand, is really interested in creating disguised NP-dominated homelands, even if this means wrecking the economy and even if it results in promoting population movements so as to concentrate potential voting support in regions of potential NP hegemony. If this were to happen, the bitterness of the past will re-surface in new forms, and just as Balkanisation is bringing disaster to the Balkans, so would its equivalent in South Africa tear our country apart.

We have no problem with the democratic principle that different parties can hold office at national and regional levels. Any healthy democracy recognises that people in a certain area might prefer the opposition party to the governing party at the national level. What South Africa would not be able to bear would be the creation of mini-states ruled by ethnically based parties and pulling in different directions.

The terms unitary states and federal states have both been misused. Many unitary states have federal features and many federal states have unitary ones; the Federal Republic of Germany thus has a more centralised state system than the United States of America, despite their different names. Furthermore, in reality, in both those countries in all but a few relatively minor matters, legislation adopted by the national legislature will override laws adopted by the local states.

What matters is the relationship between the different levels of government and how they all connect up in the total constitutional picture.

## Our Objectives

The way that government is structured in each country will inevitably depend very much on its history and on what the purposes of government are seen to be. In the case of South Africa, we are involved in the process of knitting together the state again after the nightmarish dismemberments created by apartheid. We are trying to transform an oppressive state built on division and inequality into a democratic one that serves the interests of the whole South African nation.

Our goal is to enable everyone to live freely and with dignity anywhere in the country, and to create stable and efficient institutions so as to give the best possible chances for the development of democracy, peace and prosperity for all.

### The ANC wants to:

- de-racialise our country, so that people can start to think of themselves politically as South Africans holding diverse views, and not as members of this or that racial, ethnic or linguistic group locked into corresponding and definite political compartments;
- progressively integrate, normalise and legitimise the structures of government so that these are no longer seen as instruments of oppression, division and corruption but rather as the means for enabling people to live in tranquillity and get on with and improve their lives;
- discourage political mobilisation on the basis of race, ethnicity or language and especially to prevent state power at any level from being used for purposes of ethnic domination, intolerance and forced removals of populations;

- democratise our land, so that people are as directly involved as possible in shaping their destinies at every level of government;
- minimise the possibilities of abuse of power which could result from the overconcentration of authority in too few hands;
- reduce and eliminate the massive inequalities established by apartheid, by making resources available for the advancement of those oppressed and kept back in the past by racial discrimination and gender oppression;
- progressively do away with the massive imbalances between regions and between urban and rural areas within regions;
- facilitate the development of an integrated, efficient and internationally competitive national economy; and
- enable people to take pride in their culture and language in a spirit of non-racialism, democracy and respect for the language, culture and beliefs of others.

Healing our country, creating the conditions for economic advance, establishing a climate of peace and tolerance and embarking upon orderly and sustainable programmes to improve the lives of the majority, can only be achieved by means of a national effort undertaken with a sense of national responsibility. We can never succeed if we have a multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies.

## Soft Boundaries

Underlying the whole presentation that follows is a concern for three fundamental and inter-related rights: the right to freedom,

the right to democracy and the right to development.

The basic issue is not what powers should be reserved for the regions and what powers set aside for the central government. Rather, it is what the relationship between central, regional and local government should be in respect of the national, regional and local dimensions of the tasks that face the whole country.

Thus, education, health, housing, employment, transport and economic development, all have to be conducted both at national and sub-national levels within a single national policy framework. Governmental structures will be so organised such that regions will participate fully in the formulation of policy. The issue is not how to separate out exclusive competence for one level as against the other, but how to ensure appropriate responsibility and accountability at each level, and the harmonious interaction of all levels.

Following from this is the necessity to have soft boundaries rather than hard boundaries in relation to different levels of government. While we have to be rigid rather than soft on basic constitutional principles such as multi-party democracy, equality and fundamental rights and freedoms, our institutional arrangements should be as flexible as possible so as to enable them to grow and adapt themselves in the light of experience.

Thus, the provision of services should not stop at this or that hard boundary. Nor should responsibility for development be confined to one hard level of government or the other. Civil service, police and development structures should be designed with a view to harmonising and integrating rather than to sealing off and separating their functions.

## **Interrelationship of Checks and Balances**

Finally, the question of timing is important. We are totally against the prescribing of structures and powers of regional and local government in advance of the process of adopting a new constitution. We accept the general principles that there should be national, regional and local levels of government, that each should be democratically elected rather than appointed, and that the constitution should lay down the principles on which they are to be structured. It should go without saying that the general principles of the Bill of Rights enshrining universally recognised fundamental rights and freedoms should apply throughout the country at all levels of government.

Beyond this, we feel that the determination of regional structures and the spelling out of functions for the regions and local authorities, is something that should be done as part and parcel of the elaboration of the constitution as a whole. Apart from the fact that institutions created by structures that lack democratic legitimacy will themselves lack legitimacy, and hence be vulnerable to future attack, constitutions simply cannot be made in a piecemeal fashion.

The whole concept of checks and balances requires that all the checks and all the balances be known and be in place and interacting with each other at the same time. Certain checks and balances by their very nature cannot be created in isolation from other checks and balances. The new constitution will be an integrated package of interrelated rights, duties, mechanisms and procedures, not an assembly of constitutional spare parts.

Thus, the shape and nature of the regions relates to far more than the simple devolution of power from the centre. It affects the electoral system for the country as a whole (whether to have regional as well as national lists), the composition of the central legislature (there are strong arguments for an



upper house based essentially on regional representation), amendments to the constitution (whether or not a certain percentage of regions have to agree to certain amendments), the role and functioning of state fiscal and monetary institutions (especially in relation to revenue collecting and transfer payments), the structure of the army, police force, and prison service, lines of responsibility and accountability in the public administration, and the structure and functioning of the judiciary.

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 government should be settled before a Constituent Assembly is elected. This is clearly undemocratic and unacceptable.

## The Constituent Assembly Decides

We might add that there is growing support for the idea of relatively strong metropolitan government being established in the areas of greater Johannesburg, Cape Town, Durban, Port Elizabeth and possibly elsewhere. It would be unwise indeed to adopt rigid schemes of regional and local government that pre-empted balanced discussion of the desirability or otherwise of establishing such metros and ensuring that they take their proper place in the total constitutional scheme.

It is expected that, within the framework of clearly enunciated general principles of constitutionalism, democracy and non-racism agreed to in advance, there will be a considerable degree of give and take on all these questions at the Constituent Assembly. This was the experience in Namibia, where

the Constitution that emerged after extensive discussion was signed by every single participant at the constitution-making body.

The objective in South Africa will be to draft a constitution that has the assent and support of the overwhelming majority of South Africans with a view to creating a country in which the overwhelming majority feel comfortable and at home.

The question of regional and local government is a difficult one for any country, and particularly for one where apartheid has created so many false boundaries and divisions. The proper time and place for determining the precise structures and powers of government at all levels, is **after** (and not before) elections have been held; to create a legitimate and widely representative constitution-making body.

## Transitional arrangements

In the meantime, all we are called upon to do is to make suitable transitional arrangements, bearing in mind that there are many honest civil servants whose interests have to be dealt with in a fair and practical way. In this respect, we propose that the four provinces are sufficiently familiar and are sufficiently capacious to provide the basis for progressive re-integration of Bantustans and homelands into the mainstream of South African political and administrative life, pending the adoption of a new Constitution. A powerful argument in favour of this approach is that a infrastructure already exist at provisional level to provide the services and facilities reincorporation of the homelands.

Looking to the future, it is imperative that the ANC spearhead within the broad democratic movement the formulation of clear and concrete proposals on regional and local government for submission at the Constituent Assembly. The purpose of this document is to launch discussion within our organisation and amongst all anti-apartheid forces in a calm and scientific fashion.

Let the other groups allow themselves to present the whole question in terms of how best they can cling to power. Our task is to help determine how the new South Africa can be shaped so that our age-old dream of a united, open, prosperous, non-racial, just and democratic society can be realised. After the trauma of apartheid that, and no less, is what our people and the world expect.

# SECTION

# 2

## THE RELATIONSHIP BETWEEN THE DIFFERENT TIERS OF GOVERNMENT

In the South African 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.

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, 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 ANC proposes concurrent powers among the three tiers of government with overriding powers reserved for the central government as is the case in Germany. For example, central, regional and local government could play a role in the provision of educational and health services 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 government 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, de-racialising 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. (See section 6.2)

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 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.

Law-making bodies should be required to keep the public adequately informed on all matters affecting the public interest, and to make reasonable provisions for organisations of civil society to be heard in relation to matters affecting the rights and expectations of their constituencies.

# SECTION

# 3

## 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.

### 3.1 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.

#### 3.1.1 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.

#### 3.1.2 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 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 the 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.

### **3.2 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 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 see its own rate; and - assigning particular taxes, levied at a uniform rate nationally, to a whole level of government. In this case some formulae 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.

### 3.3 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. However, to accommodate a more substantial and effective decentralisation of political power than 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.

### 3.4 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, by means of a Statutory Act of Parliament, a permanent Advisory Fiscal Commission structured on a non party-political basis in which certain powers for advising on the structure and mechanism 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 advise government how best 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.

### **3.5 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 4

## 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 likely 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 3: 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 of the region;
- (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:

## 4.1 Regional Powers

### 4.1.1 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.

### 4.1.2 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.

### 4.1.3 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 and Administration of Justice. The regions will not be able to make policy in these areas at all.

### 4.1.4 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.

### 4.1.5 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.

### 4.1.6 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 them. 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, but regional governments will be responsible to the constitution as well as to the regional electorate.

### 4.1.7 Multi-level Jurisdiction over Scheduled Matters

It is clear that in relation to scheduled matters, all three levels of government may have legitimate interests 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, and 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 but 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 many examples of such overlapping jurisdiction notably in housing, transport and health.

#### 4.1.8 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 entrench local government in the constitution. This would protect some of their powers from the central state and the regions.

One of the issues that needs to be debated is whether the Constitution should spell out, either in general terms or by means of a detailed list, the powers and functions of local government. An alternative would be to empower the National Parliament to adopt a Local Authorities Act which would elaborate such powers and functions, making suitable amendments when and where necessary.

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 councillor 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.

## 4.2. Functions deemed inappropriate for regional government:

The technical document presented at the South African Government Conference on Federalism places the administration of justice, law and order, mining, commerce, land and agriculture within the competence of regions. We disagree. These are clearly matters which fall within the ambit of the central government.

### 4.2.1 Administration of Justice, Bill of Rights

In our view, overall responsibility for the administration of justice, including the establishment and maintenance of regional and supreme courts, should be exclusive with the central government.

We need a nationally integrated system of justice with full re-incorporation of the judicial structures in the TBVC areas. We cannot afford a multiplicity of legal systems with a multitude of Chief Justices giving different decisions in different parts of the country. Instead, we should maintain the present nationally integrated system, but in a deracialised and representative form while making provision for regional and magisterial sub-divisions.

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.

### 4.2.2 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.

### 4.2.3

We must firmly oppose policies which perpetuate or reinforce the present situation, where we have five armies, 11 police forces, over 15 health and education departments and innumerable *ad hoc* committees. We are over-governed. Therefore, we should not confuse governance with accountability and democracy. We wish to avoid situations that arise in places such as Nigeria or the United States, where there is a vast, unnecessary and expensive bureaucracy at regional levels. The cost of such structures, alone, is sufficient to render them undesirable.

## 4.3 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 statutory creation of an Advisory 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, (e.g., 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 in 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.

#### **4.4. 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 nation building. It may even be suggested that regional government can enhance national stability and identity, provided that regional boundaries do not necessarily coincide with ethnic, racial, linguistic or other boundaries, and that the regional framework is not designed to perpetuate or create disparities between citizens.

#### **4.5. STRUCTURE OF REGIONS**

##### **4.5.1 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, not 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 NP. 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.

#### **4.5.2 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

councilors. This would mean a total of between 200 and 320 such councilors.

#### **4.5.3 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.

#### **4.5.4 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 USA.

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 protection 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.

#### **4.5.5 Tenure of Councilors / 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.

#### **4.5.6 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.

#### **4.5.7 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.

### **4.6 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.

#### **4.10 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.

# SECTION

# 5

## MANAGING REGIONAL POLICY IN THE TRANSITION

The important question arises as to how the matter of regional policy 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 are 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 laws.

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.

A broadly based, democratically elected constituent assembly should, subject to a two-thirds majority and within the framework

of agreed general principles of democracy, 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 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.



# SECTION

# 6

## ISSUES FOR DEBATE

As a draft discussion document intended to facilitate debate around the various options in constructing the ANC's regional policy, certain specific issues have been identified in the paper where no single model has been proposed. These issues are identified below, and should be highlighted for more detailed debate in meetings called to discuss this draft paper.

### 6.1. Size, Number and Location of Regions

At the end of this document are two maps of possible regions - one of ten regions, the other having sixteen.

- Are these appropriate regions?
- Are they too big, or too small?
- Why does it matter?
- How will these boundaries affect your own region?
- Would your region change any of the boundaries?
- What should your region be called?

### 6.2 Metropolitan Government

At the moment, South Africa has metropolitan areas, but no metropolitan governments. The ANC is proposing that in places like the Durban Functional Region, the PWV and Greater Cape Town, metropolitan government(s) should be created.

- Should there be more than one metro government in the PWV?
- Should metro governments be part of regional government, or Should they be seen as very big local government?
- Should metro governments have more power than local governments?
- Should there be special legislation for metro governments?

### 6.3 Local Authority Powers

The ANC has always argued for strong local government.

- Should local authority powers be written into the Constitution?
- Should local government be protected from interference, either from regional government or from the central government?
- What powers should local government have?
- Should local authorities be represented in regional governments?

# APPENDIX

# 1

## FRAMEWORK FOR STRUCTURE AND POWERS OF REGIONS

### 1. Regional Boundaries

There 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. Executives of Regional 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. These shall be convened by the regional administrator.

4.8 If a regional executive committee refuses to carry out its responsibilities as defined in the Constitution or manifests total incapacity 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.

## 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.

# APPENDIX

# 2

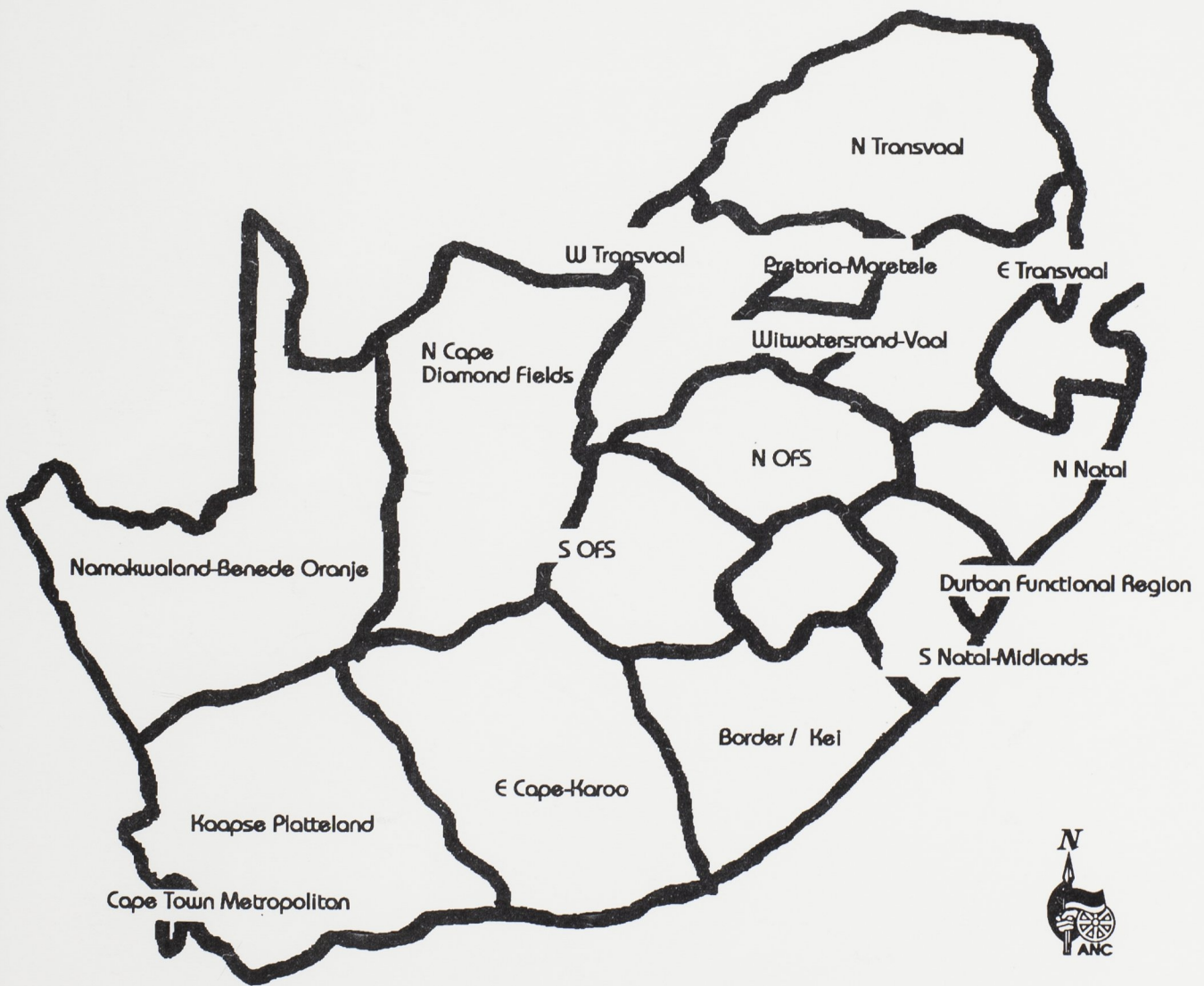
## The 10 Region Proposal



# APPENDIX

# 3

## The 16 Region Proposal







# African National Congress



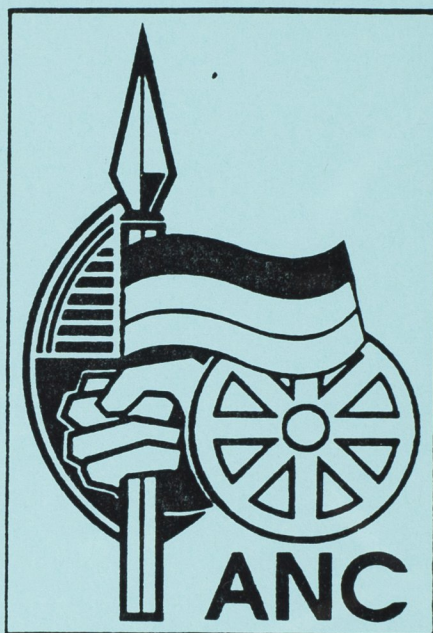
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# AFRICAN NATIONAL CONGRESS

Western Cape Region



REGIONAL POLICY CONFERENCE  
ON  
REGIONAL GOVERNMENT  
AND



LOCAL AND METROPOLITAN NEGOTIATIONS

# B. A democratic constitution for South Africa

## 1. BASIC PRINCIPLES

**S**overeignty vests in the people of South Africa. Their will shall be expressed by their democratically elected representatives in periodic free and fair elections. These elected representatives will adopt a constitution which shall be the highest law of the land guaranteeing their basic rights.

The goal of the ANC, ever since it was formed in 1912, has been to give all the people of our country, the chance to choose their own government. That is why generations of our leaders and members have set their sights on the objective of a new and democratic constitution which would at last remove the colonial status of the African people, abolish all forms of discrimination, and recognise the basic equality of all South Africans.

We are proud of our role in pioneering democracy and constitutionalism in our land, especially through the Freedom Charter. None has fought harder for freedom and democracy than we have. The people will finally have won the right to choose their own government. At the same time they will have the right to remove any government through periodic elections.

Our constitution shall not only guarantee an accountable non-racial, non-sexist and democratic structure of government, but shall also empower all citizens to shape and share in the many aspects of life outside government.

Our constitution shall guarantee the space for civic bodies trade unions and the numerous other organisations which people create to deal with their every day problems and aspirations. These are the institutions of civil society which are crucial if we are to have a deep and thorough democratic order.

Our task now is to rally all South African patriots around the principles for which we have always stood, namely, of equality, mutual respect, dignity and promotion of basic human rights. After so many decades of struggle and sacrifice, we must achieve a constitution that guarantees that oppression, discrimination, inequality and division will never stalk our land again.

We want a country that is unified, open, non-racial, non-sexist, democratic and free. We must abolish all forms of discrimination, domination, privilege or abuse. We must ensure that the basic rights and freedoms of all are respected. We must see to it that the religious, linguistic and cultural variety of our land is fully acknowledged, and that no person shall be subjected to any forms of oppression or abuse. We do not want new forms of tyranny to replace the old.

South Africa has never had good government for all. Government has until now always been used to harass, divide and humiliate the great majority of South Africans, while securing privilege and relatively high standards of service for the minority. We need a constitution that guarantees a high quality of government service for all. The public service must be based on the principles of representivity, competency, impartiality and accountability. For the first time we envisage a public service that is drawn from and serves the interests of the public as a whole.

## 2. POPULAR REPRESENTATION AND PARTICIPATION

**T**he achievement of the vote will signal the achievement of full citizenship and legal equality for all. Elections will be a fundamental element of a democratic political life in our country. From now onwards government shall maximise popular participation and be accountable and responsible to the people.

To promote a nonracial, nonsexist, participatory democracy that will cater for the diversity of our people, appropriate structures, and checks and balances must ensure the active participation of all in political life and prevent the abuse or oppression of anyone.

The ANC opposes the entrenchment of race and ethnic group rights in the constitution and stands for one person one vote on a common voters roll, with each vote being of equal value. All South African citizens above the age of eighteen (18) will be entitled to vote. Such votes will be exercised by all voters within the 1910 boundaries of South Africa.

In keeping with this democratic, inclusive and balanced approach, the ANC proposes the election of representatives by the system of proportional representation provided that proportional representation may be supplemented by the other democratic electoral systems at local level. People will vote for party lists and parties will then get a share of representatives in proportion to their share of the total vote. An appropriate threshold will be fixed, below which a party will not be allocated seats.

In order to ensure that regional and local interests are represented and to enhance the accountability of the national assembly, we propose that there be a single vote which will count towards both the national and regional lists of parties. We believe that such lists should be compiled with sensitivity to gender.

All elections at a central, regional and local level shall be conducted by an independent electoral commission, which shall enjoy freedom from governmental and political control.

### 3. STRUCTURES OF GOVERNMENT

South Africa shall be a unitary state in which there shall be government at local, regional and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government.

The ANC favours a Parliament consisting of the national assembly and senate. The national assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will control the national budget and have primary responsibility for the preparation and adoption of the country's main laws. The senate will be representative of regions and be directly elected and have the power to review, refer and delay legislation. It will also have special responsibility for promoting regional development and for ensuring respect for the principles of the Bill of Rights. It will not have these powers, however, in regard to legislation dealing with the budget.

Parliament shall determine what powers the regions should have, taking into consideration that certain functions are best performed at a regional level, provided the overriding authority of the central parliament is recognised.

Powers of regional and local government should be harmonised with the powers of central government bearing in mind that in case of conflict the constitution and national legislation should prevail. In

essence regional government will have to function broadly within the framework of national policy. Regional government should not be able to contradict national policy as expressed in the laws of the country, but should rather influence the shaping of these policies and play a significant role in the developing mechanism for implementation.

The ANC believes that regional government should have powers to co-ordinate and plan development. But the powers and functions of regional government will need to be balanced with those of the urban and rural local authorities in order to avoid conflict.

#### *Traditional leaders*

The institution of chieftainship has played an important role in the history of our country and chiefs will continue to have an important role to play in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of chiefs shall always be exercised subject to the provisions of the constitution and other laws. Provision will be made for an appropriate structure consisting of traditional leaders to be created by law, in order to advise parliament - on matters relevant to customary law and other matters relating to the powers and functions of chiefs. Changes in the existing powers and functions of chiefs will only be made by parliament after such consultation has taken place.

### 4. THE EXECUTIVE

The ANC proposes that the head of state be a President with both ceremonial and executive powers. The President should be elected by the national assembly. He or she will have a fixed term of office and be available for re-election only once. The President will appoint and supervise the functioning of the cabinet, acting through and in liaison with a Prime Minister who will be directly accountable to the President and responsible to the national assembly.

### 5. A BILL OF RIGHTS

#### *Introduction*

A central place in the constitution will be occupied by a Bill of Rights. This will set out certain basic rights and freedoms as universally understood which no future government will normally be able to take away except by special majority. Basically, it will enshrine principles for which we have fought all our lives. At the heart of the Bill of Rights lies the notion of the fundamental equality of all men and women, irrespective of race, colour or creed.

The Bill of Rights will guarantee that South Africa is

## ANC POLICY GUIDELINES - CONSTITUTION

a multi-party democracy in which people enjoy freedom of association, speech and assembly and the right to change their government. Furthermore, the public have a right to know what is being done in their name – we believe in a strong right to information and a firm guarantee regarding the free circulation of ideas and opinions.

The Bill of Rights shall be binding upon the state and organs of government at all levels and where appropriate, on social institutions and persons.

The Bill of Rights will be enforced by the courts, headed by a separate newly created Constitutional Court, which will have the task of upholding the fundamental rights and freedoms of all citizens against the state or any body or person seeking to deny those rights. The judges will be independent, and will consist of men and women drawn from all sections of the community on the basis of their integrity, skills, life experience and wisdom.

The Bill of Rights shall secure the rights of all persons in all spheres of life, including housing, education employment and access to facilities and such protection shall be ensured without discrimination on the ground of race or gender.

The Bill of Rights must guarantee language and cultural rights.

It must acknowledge the importance of religion in our country. It must respect the diversity of faiths and give guarantees of freedom of religion.

The rights of the child will be protected, as will environmental rights, the rights of disabled persons, and the right not to be discriminated against or subjected to harassment because of sexual orientation. The ANC is against capital punishment and will seek to have it outlawed in the Bill of Rights.

### *Worker's rights*

Workers have fought long and hard for their right to set up independent trade unions, their right to engage in collective bargaining and their right to strike. These rights must be protected in the Bill of Rights, which should be supplemented by a Workers' Charter. This charter should set out all those rights that workers throughout the world have gained for themselves. The state will be a signatory to the International Labour Organisation (ILO) conventions. The Bill of Rights will also prohibit slave labour the exploitation of children and discrimination in the work place.

### *Human rights for women*

Special emphasis will have to be given to the realisation of women's emancipation.

Women are discriminated against and subordinated in every area of public and private life. They have inferior access to education and employment and are shut out from decision-making at all levels of society. We in the ANC acknowledge that we still have a long way to go in remedying this state of affairs.

We support the principle of equal rights for women and men in all spheres, and the creation of special agencies to ensure that equal opportunity operates in practice.

Women should be able to walk in the streets freely without fear of assault and should be able to feel safe and free from violence in their own homes. Concepts of family privacy and the nature of the marriage vow are used to deny women legal protection against abuse in the home. While strongly supporting the inviolability of the home, the Bill of Rights should make it clear that this will not in any way deprive women of their constitutional rights to physical and moral integrity.

Guardianship should be shared between partners. Violence in personal relationships is inconsistent with recognition of the integrity of persons. Therefore rape in marriage should be outlawed.

In providing that women should be allowed to take their rightful place in every area of South African life without impediment or discrimination, the law should take account of the reality of the lives that women lead and the contribution they make to society through maternity, parenting and household work. Much of the work that women perform goes unrecognised and unpaid; the contribution of women to national income must be acknowledged.

The Bill of Rights should include mechanisms to ensure that women as well as men are assured of the ability to exercise their constitutional rights in all fields of life. The Bill of Rights should thus be supplemented by a Charter of Human Rights for Women which spells out in detail the full range of rights to which women are entitled, highlighting the range of rights which they have been blocked from exercising, and the means whereby they will be realised.

### *The right to home and family*

People shall be free to form families on a voluntary and equal basis. Subject to the principles of free choice and equality, appropriate legal recognition shall be given to all matrimonial unions. Single parent families shall have legal recognition and support.

The Bill of Rights should support the provision of homes, employment and utilities such as light and water, so as to repair the damage done by apartheid and the migrant labour system, and in order to give real meaning to the right to home and family life.

**Property rights**

The property rights of the majority have been systematically ignored and violated by apartheid. A new system of just and secure property rights must be created, one which is regarded as legitimate by the whole population.

Property rights impose obligations and their exercise should not be in conflict with the public interest.

The taking of property shall only be permissible according to law and in the public interest, which shall include the achievement of the objectives of the constitution

Any such taking shall be subject to just compensation which shall be determined by establishing an equitable balance between the public interest and the interest of those affected and will not be based solely on the market value of such property.

In the case of a dispute regarding compensation, provision shall be made for recourse to a special independent tribunal, with an appeal to the courts.

Legislation on economic matters shall be guided by the principle of encouraging collaboration between the public, private, co-operative, communal and small-scale family sectors with a view to reducing inequality, promoting growth and providing goods and services for the whole population.

The Bill of Rights shall establish the principles and procedures whereby land rights will be restored to those deprived of them by apartheid statutes. A land claims tribunal, functioning in an equitable manner according to principles of justice laid out in legislation, will, wherever it is feasible to do so, restore such rights. In doing so, it will take into account the role of compensation to be paid by the state to those whose existing titles are affected. Provisions relating to property rights and compensation will have to be applied in such a way that they are not manipulated so as to frustrate a national land reform programme.

**Social, educational, health and welfare rights**

The Bill of Rights will affirm the right of all persons to have access to basic educational, health and welfare services. It will establish principles and mechanisms to ensure that there is an enforceable and expanding minimum floor of entitlements for all, in the areas of education, health and welfare. It will commit the courts to take into account the need to reduce malnutrition, unemployment and homelessness when making any decisions.

Pensions should immediately be equalised in respect of race and gender, and all future governments should

be constitutionally committed to embark upon programmes to ensure that every household has electricity, clean water and access to waste disposal.

Special agencies linked to Parliament and the courts should be set up so as to ensure that national, regional and local authorities apply appropriate shares of their budgets to achieving these rights, taking into account the problems of limited resources and affordability. Removing the inequalities to which the majority of the people have been subjected, both by law and in practice, cannot be left either to paternalism or chance. We cannot have a nation if half the people live in darkness, half in light.

**6. AFFIRMATIVE ACTION**

**T**here is strong support in this country for the idea of affirmative action, and some resistance. While taking on a variety of forms, affirmative action means special measures to enable persons discriminated against on grounds of colour, gender and disability to break into fields from which they have been excluded by past discrimination. The ANC proposes affirmative action with a view to establishing a law-governed, progressive and equitable way of ensuring advancement without on the one hand freezing present privileges or on the other going over to arbitrary compulsion. The issue has to be handled with both firmness and sensitivity.

The constitution will make it clear that seeking to achieve substantive equal rights and opportunities for those discriminated against in the past should not be regarded as a violation of the principles of equality, non-racialism and non-sexism, but rather as their fulfilment. Unless special interventions are made, the patterns of structured advantage and disadvantage created by apartheid and patriarchy replicate themselves from generation to generation.

We do not support giving positions to unqualified people simply on the grounds of race or gender. What we will insist on, however, is that the hundreds of thousands of highly merit-worthy persons who have been unjustifiably kept out of jobs, denied advancement in their careers and excluded from training, be given their due. Those who have been kept back by apartheid education and by sexist assumptions should be given special backing to catch up. The rich life experiences, knowledge of languages, and cultural diversity of those previously discriminated against should be seen as enriching the contribution of individual South Africans.

We look to advancement taking place primarily

through application of the principles of equal protection, good government and an expanding floor of minimum rights. In other words, our constitution will be profoundly non-racial and non-sexist, but it will not prevent taking the realities of race and gender discrimination into account in certain specified areas and in order to meet well-defined goals when trying to achieve real equality.

Special attention will have to be given to intensive training and the opening up of careers and advancement for those held back by past discrimination. Management in both the public and private sectors will have to be de-racialised so that rapidly and progressively it comes to reflect the skills of the entire population. Equity ownership will also have to be extended so that people from all sections of the population have a stake in the economy and the power to influence economic decisions.

Gender relations in the home have created dependency and subordination for most women in our society. The domestic division of labour has resulted in women performing a range of activities which are unacknowledged for their contribution to social production and reproduction, stability and wealth creation. This situation will be redressed through efforts to recognise unpaid work. The need to actively recognise such work is vital since it affects the nature of broader socio-economic policy formulation. In addition there needs to be a commitment to equal pay for work of equal value in various sectors of the economy.

ANC policies favour affirmative action for disadvantaged sectors of our population. This policy will apply with equal vigour to the marginalised youth in South Africa. Special attention should be given to young women, who are affected by both apartheid and patriarchy.

Affirmative action policies will be aimed at the full integration of youth into our society, in a meaningful and progressive way. Special measures are necessary to advance the interests of the most disadvantaged, especially in rural areas and all legislative and administrative bodies shall be obliged to adopt policies which shall implement this approach.

Special mechanisms will be necessary to advance and monitor affirmative actions programmes.

The State shall become a party to the large number of human rights conventions and in particular those dealing with racism, gender discrimination and the rights of children, which apartheid has until now rejected. In this way we shall assert our rightful place in the international community.

## **7. THE PUBLIC SERVICE, DEFENCE AND POLICE**

**T**he whole of the civil service will have to be opened up so as to make it a truly South African civil service, and not the administrative arm of a racial minority. The civil service should be impartial in its functioning, and accountable both to parliament and to the broad community it serves.

There shall be a national, defence and police force and a prison service. These should all be non-racial and non-sexist in character, comprising personnel that are well-trained, disciplined, humane and loyal to the constitution. They should enjoy the full confidence of the population at large.

The ANC proposes that a full-time independent office of the Ombud should be created, with wide powers to investigate complaints against members of the public service and other holders of public office and to investigate allegations of corruption, abuse of their powers, rudeness and maladministration. The Ombud shall have power to provide adequate remedies. He shall be appointed by and answerable to parliament.

## **8. THE RULE OF LAW**

**A**ll South Africans will be free to participate fully either directly or through their representatives in the law making bodies without discrimination based on race, colour creed or religion.

The laws of the country will be there to advance and uphold the rights of everybody on an equal basis, regardless of colour, gender, language, religion or culture. There will be no part of South Africa from which the law and the Constitution will be excluded.

Those who are most vulnerable in our society should be able to invoke the constitution and law to protect themselves-whether in prison, on the farms or as domestic workers.

All South Africans shall have recourse to independent courts of law and other tribunals.

The bench will be transformed in such a way as to consist of men and women drawn from all sections of South African society. This will be done without interfering with its independence and with a view to ensuring that justice is manifestly seen to be done in a non-racial and non-sexist way and that the wisdom, experience and competent judicial skills of all South Africans are represented.

Maximum provision should be made for the participation of lay people in the administration of justice.

## **9. PERSONAL SECURITY AND CRIME**

**T**he first priority in any strategy to combat crime is to understand and address the crime producing conditions that prevail in our society. In place of ideologies and official practices that diminish the value of life or place one life above another the ANC will elevate the importance and dignity of all human beings, and commits itself to deal with the pressing needs of the majority of South Africans.

Secondly, the ANC declares that there will be no respect for the institutions that enforce law and order unless the people respect the law. This they will do if the laws are just and if they participate both in their making and enforcement. A just criminal justice system will enhance respect for the courts and obedience to the law.

Finally, the ANC believes that a prison service for the country must play its part not simply in restraining convicts but in rehabilitating convicted persons.

Apartheid's overcrowded and authoritarian jails are crime factories which dehumanise their inmates, feeding a culture of violence and despair. The ANC asserts that adequate resources must be made available for the humane accommodation, education, training and job placement of convicts. Failure to do so will only lead to expenditure on an ever increasing number of new jails. For this reason the ANC proposes programmes that promote reparation and compensation to the victims and service to the community in place of incarceration. The ANC is against any inhumane and cruel punishment.

## **10. ACCOUNTABILITY DURING THE STATE OF EMERGENCY**

**I**n the context of a Bill of Rights, the constitution will make provision for a state of emergency to be declared when the life of the nation is threatened. Such a power will be subject to strict controls by parliament and for the first time, by the judiciary, in accordance with internationally accepted standards.

The constitution will provide for the recognition and protection as far as possible of fundamental rights during the period of emergency, including access to their legal representatives, doctor, family and the courts of law.

## **11. A FREE AND OPEN SOCIETY**

**T**he constitution must guarantee not only that people are free to speak their minds, but that people can benefit from the free circulation of ideas and information, and be exposed to different philosophies and ways of seeing the world. The right to information must be secured, together with a free press and public media, which is controlled neither by the state nor by political parties, but by an impartial and independent broadcasting authority. There should be a commitment to the constitutional principles of non-racialism and non-sexism.

The constitution is the guardian of our liberties. It should guarantee space to each and every person to live out his or her life in dignity, either alone or in association with others. Freedom of the individual, freedom of civil society and good government according to constitutional principles, go hand in hand. The struggle for freedom and justice never ends. ☆

# **C. A new system of local government**

## **1. BASIC PRINCIPLES**

**T**he ANC believes that there is a need for strong and effective local government to replace the racist, sexist, undemocratic, tribalist and corrupt structures which presently exist. As a result of the large disparities between local areas and regions, a strong central government is required to address the legacy of apartheid and to ensure more balanced forms of local development. Strong local government

will be complemented by regional government whose primary tasks will be to ensure integrated and coordinated local development planning, the provision of appropriate regional services and to provide support to those local authorities which lack resources, particularly in the rural areas.

Within this framework, local government will:

- Play a crucial role in building democracy in a future South Africa. Local government will bring



## ANC POLICY GUIDELINES - LOCAL GOVERNMENT

government closer to the people and actively involve them in decision-making and planning processes which affect them;

Play a key role in development and in the equitable redistribution and re-allocation of local authority services. It will address as a priority the disparities in our cities, towns and villages which have resulted from the policies of apartheid. The promotion of the needs and interests of disadvantaged sections of communities will therefore become a major focus of local government activities.

### 2. RESTRUCTURING LOCAL GOVERNMENT

**D**uring the past decade, communities have waged intense struggles against apartheid local government - struggles over issues affecting their daily lives, such as housing, health, transport, water and electricity provision. There has been widespread rejection of the corrupt, financially unviable and undemocratic racial local government system.

The restructuring of local government is part and parcel of the dismantling of the apartheid system. No meaningful restructuring can take place at the local level unless it is part of a process of national transformation.

### 3. A POLICY FRAMEWORK FOR LOCAL GOVERNMENT

**T**he ANC envisages a new system of local government in South Africa which will operate within the national constitutional framework. At the same time, local government will have the scope to take local initiatives, provided these do not conflict with national policy.

#### *Non-racial, non-sexist and democratic local government*

A future system of local government must not only assert non-racialism and non-sexism, but will need to actively build non-racialism and non-sexism in processes designed to counter decades of discriminatory government. The ANC is committed to ensuring that mechanisms are built into the system to enable women to participate in decision making and administrative structures at all levels of regional and local government.

All racially-based local government structures will be abolished. De-racialising local government must mean more than an equal opportunity to vote. The fragmented nature of South African cities, towns and villages needs to be addressed and each city and town will be unified under a single municipality, with a single non-racial voters' roll and a single tax base.

Villages, commercial farming areas and rural towns will be brought together under rural district councils.

Women must be actively brought into the decision-making process. Programmes must be designed to equip women with skills to enable them to participate. In this regard, special attention will have to be paid to the rural areas where women are disproportionately located.

#### *Democratic and accountable local government*

Representation at the local level will be on the basis of one-person one-vote (based on permanent residence), and votes must have equal value. The ANC rejects attempts to entrench privilege at all levels denying the principle of majority rule, for example, through property-based franchise mechanisms.

Democratic local government means more than just having the right to vote in a local election. It also includes facilitating the creation of a strong, independent civil society, a high degree of accountability, transparency and the right to participate in decision-making processes which affect communities between elections.

Participation and accountability are meaningless if people do not have access to information. The public disclosure of all information pertaining to any policy, decision or activity for which any local authority is responsible should be guaranteed. In particular, meetings of the local government council and of council sub-committees should in principle be open to the public.

The independent office of Ombud will be created to investigate allegations of partisanship in the allocation of resources, maladministration and corruption.

#### *Redressing the legacies of apartheid and redistributing resources*

Apartheid, as a system of segregation, has resulted in towns and cities where the poor live furthest from work, shops and facilities and where masses of poor people are locked into rural slums. This is inequitable, inefficient and expensive.

Central government will have to play a key role in addressing the severe imbalances in resources and service provision which exist between urban and rural areas and between different regions. In particular, national minimum standards for service provision will have to be set.

The ANC believes that local government must play a key role in addressing the imbalances within local areas, inter alia through effective urban and rural planning, the generation of employment opportunities, the provision of facilities, housing opportunities and services in accessible locations, and efficient,

affordable public infrastructure.

The ANC is opposed to privatisation of essential municipal services.

### *Effective and efficient local government*

Apartheid has left a legacy of fragmented local authorities and bureaucracies characterised by corruption, nepotism and inefficiencies. The ANC is committed to an accountable and mandated system of representative local government.

Local government must have access to sufficient resources to carry out its stated functions. Local government should operate so as to ensure that resources are used efficiently.

### *Local government and development*

Local government must be developmental in character.

Local government should actively promote the processes of sustainable and participatory community development. Local government should address unemployment and poverty through local economic development and promotion of informal sector activities. In particular, local government should take steps to protect the interests of the poor through appropriate forms of tenure, housing and access to employment opportunities.

## 4. POLICY ISSUES

### *Boundaries*

**T**he boundaries of local authorities will be re-drawn on a functional basis, incorporating industrial areas and artificially created bantustan and commuter towns. In order to avoid local gerrymandering, boundaries will be re-drawn by a national delimitation commission, after taking into consideration local submissions. The national legislature shall have the final say over the demarcation of local authority boundaries.

### *Powers and functions of local government*

The ANC believes that future powers and functions of local government cannot be determined in isolation from a consideration of the powers and functions of regional and national government. The allocation of functions and powers should be determined by national legislation, as they should change over time.

A useful point of departure for the allocation of functions to the local tier is provided by the existing powers of local government – planning and growth management, land use control, implementation of housing projects, the provision of services (water, electricity, sewerage, refuse removal), health care,

education, roads and public transport, parks, community facilities (including recreation and sport) and environmental protection. Furthermore, it is essential that future local government has a specific responsibility for encouraging local commercial, industrial and agricultural economic development within regional and national frameworks. Circumstances may require rural local governments to have slightly different powers and functions from urban local government.

### *Finance*

The ANC believes that national government has a duty to ensure that conditions are created to meet the basic needs of the population. This will be achieved partly by a fairer, progressive and more efficient system of taxation and government spending.

Local government should be able to raise revenue for the implementation of its policies, assisted by higher levels of government where appropriate. The existing system of local government financing, where the poorest areas are expected to pay for all their own services while the rich areas share that burden with business, must end. All areas which are functionally linked should form a single tax base. The metropolitan level should be the focus of revenue collection in metropolitan areas. National government will have to exercise some control over the nature and extent of local government taxation and borrowing in order to ensure efficiency and balance in the overall fiscal system. Borrowing which compromises the long term autonomy of local authorities or the country as a whole must be avoided.

Service charges should be affordable. They should not be set in such a way that the burden of extending services to areas deprived by apartheid falls mainly on those areas. To combat poverty, subsidisation of essential services for those who cannot afford to pay, will be necessary. It will be the responsibility of local government to ensure the provision and maintenance of all services according to acceptable standards.

Tax resources must be distributed appropriately between each level of government and between different authorities on each level. Because of regional inequalities and differences in the taxes collected there will need to be a transfer of resources from higher to lower levels of government. New institutions will have to be developed to ensure that this happens efficiently and democratically, preventing unwarranted interference in the autonomy of each level of government.

New institutions will be developed to improve efficiency, transparency and accountability in government spending.

## ANC POLICY GUIDELINES – LOCAL GOVERNMENT

### *Local government structures*

#### *"One city, one municipality"*

To overcome the legacy of apartheid, the ANC envisages that each city and town will be unified under a single municipality. Where commuter suburbs are far removed from the city, consideration will be given to a two-tier system of local government. This will ensure that local needs are addressed, without excluding these areas from the benefits of being part of the city.

### *Strong metropolitan government*

The key issues facing our cities – disparities in services provision, rapid urban growth, the housing crisis and inefficient apartheid city structure – cannot be effectively addressed by lower-tier authorities, whose focus is too local.

The ANC believes that the metropolitan tier would be an appropriate tier to address these issues. This tier will control the primary sources of urban finance, and be responsible for allocating funds for development and services. It will co-ordinate the provision of city-wide services and allow democratic control over broader development decisions. It will set the policy framework for that metropolitan area, within which the lower tier(s) would operate.

### *Effective rural local government*

South Africa's rural areas differ in important respects from urban areas. The ANC believes that it is therefore appropriate to create District Councils within rural areas. This will enable rural communities to develop their own responses to the particular development challenges that they face. In partnership with central and regional government, these councils will be responsible for coordinating development and servicing of rural areas.

In order to increase community participation and involvement in District Council decisions and activities, it may be necessary to institute development structures at a village or ward level which would fall under the District Council.

### *Civil society*

The ANC believes that all legislative and executive power at the local level must be constitutionally vested in elected structures. In order to deepen democracy and ensure grassroots participation in the organs of government, the ANC believes that all organs of civil society, such as civic/residents associations, trade unions, traditional leaders, business organizations, cultural organisations, women's organisations, religious groups, and other interest groups, need to be given the scope to influence the process of government.

This can be achieved firstly by creating advisory and consultative mechanisms such as:

- People's assemblies to debate issues of major significance to that town, city or rural area;
- Local government sub-committees with outside representation to consult on specific policy areas;
- Local government commissions to conduct public hearings and to consider submissions from outside interests on proposed local government activities.

Secondly, local government will have the right to negotiate the delegation of certain powers to particular bodies involving organs of civil society.

Besides giving scope to the involvement of civil society, the ANC envisages that local government will play an active role in promoting institutions of civil society, particularly associations representing the interests of disadvantaged sections of society. This could be done by giving support and resources to such organisations.

### *Staffing and training*

Local government bureaucracies have operated as highly hierarchical, centralised structures. This has meant that enormous power and skill has been concentrated in senior bureaucrats. It has also meant that the knowledge and experience of lower level officials has not been duly taken into consideration when managerial and administrative policies are made or implemented. The ANC is committed to the administration of local government on the basis of participatory management and to reorganise the bureaucracy accordingly.

Local government staff will have to be properly trained, if they are to deal effectively with the development and government challenges facing them. This will require a nationally coordinated training effort. Such training will also have to address the question of affirmative action within these bureaucracies. In addition, training should include capacity building in communities to enable them to effectively participate in local structures and policy development processes.

The present system of remuneration of local government officials is affected by the grading of a municipality and this leads to a draining of skilled personnel away from smaller localities. It also allows for the rampant exploitation of lower level staff. The ANC is committed to a more equitable system, in which all employees are paid a living wage and which encourages skilled staff to stay in deprived areas.

Local government structures will adopt progressive employment practices.

## **5. REGIONAL GOVERNMENT**

**T**he ANC believes that the constitution should provide for the creation of central, regional and local government (a three-tier system of

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government). Each tier of government should have powers, functions and duties listed in legislation.

The delimitation of regional and local boundaries, and powers and function of regional and local government, should be decided by an elected constituent assembly

Powers of sub-national government should be harmonised with the powers of central government, bearing in mind that in case of conflict the constitution and national legislation should prevail. In essence regional government would have to function broadly within the framework of national policy. Regional government should not be able to contradict

national policy as expressed in the laws of the country, but should influence the shaping of these policies and play a significant role in developing mechanism for implementation.

The ANC believes that regional government should have powers to co-ordinate and plan development, and to co-ordinate the activities of both national government departments (such as health, education, roads etc) and local authorities (such as urban councils, district councils and metropolitan government) within the region. The powers and functions of regional government will need to be balanced with those of the urban and rural local authorities in order to avoid conflict. ☆

# QUESTIONS ON LOCAL GOVERNMENT NEGOTIATIONS

## REQUEST TO BRANCHES:

Please discuss the questions below **before the special GC**, and fill in your answers in the spaces provided. After each question, an answer or answers are set out which you can support or disagree with.

Put a circle around the YES if you agree, and around the NO if you disagree.

Please write your Branch's proposals down clearly on the form and send the form with your delegate to the special GC.

NAME OF BRANCH: .....

1. What should be the role of regions of the ANC in the NNF?

Possible answers:

- a. Regions should be consulted by Head Office before meetings of the NNF.....  YES  NO
- b. Or, regions should have representatives in the ANC delegation.....  YES  NO
- c. Your suggestion: *We want both. Both*

2. What principles should be included in the proposed new Act which will replace the Interim Measures Act?

Possible answers: (You can include more than one)

- a. Powers for local interim government to control the budgets of existing local authorities, to provide for redistribution.....  YES  NO
- b. If local elections are to be held for interim structures, they should be based on one-person, one-vote, not on the basis of property ownership.....  YES  NO
- c. The establishment of a Provincial Multi-party Monitoring Committee to guide the process of local transition.....  YES  NO
- d. Training programmes in local government to help level the playing field in local negotiations .....  YES  NO

e. Powers to override existing racial and other legislation relating to local government..... YES NO

f. Your suggestions: .....  
.....  
.....

3. When should local negotiations start?

Possible answers:

- a. Now, as soon as possible .... YES NO
- b. Or, not until an NNF is launched .....YES NO
- c. Or, not until a new law is in place ....YES NO
- d. Your suggestion: .....  
.....

4. What should be our bottom-lines for involvement in local negotiations?

Possible answers: (you can include more than one)

- a. Evictions and demolitions must be stopped ..... YES NO
- b. Local municipalities must make funds available for capacity building, so that the playing field in local negotiation forums can be levelled. These funds would pay for negotiations training, a secretariat, media, research and so on..... YES NO
- c. Stop the sale of state land and end unilateral restructuring.... YES NO
- d. Free political activity.... YES NO
- e. Your suggestions: .....  
.....

5. What is our aim in participating in a local negotiating forum?

Possible answers: (you can include more than one)

- a. To put in place an interim local government, which can start the process of sharing the money received by municipalities from the business and industrial areas, with the poorer areas of town. ....YES NO
- b. To start the process of creating one city - one municipality..... YES NO
- c. To start discussing how to create a democratic local government system in the long term.....YES NO
- d. Your suggestions: .....  
.....  
.....

6. What issues should a local negotiating forum on local government address?

Possible answers: (you can include more than one)

- a. Boundaries of the interim local government ..... YES NO
- b. Interim structures ..... YES NO
- c. Services provision, including agency agreements ..... YES NO
- d. Financial arrangements ..... YES NO
- e. Evictions, arrears and demolitions ... YES NO
- f. Capacity building, levelling the playing field ... YES NO
- g. Service charges boycotts and rent boycotts ..... YES NO
- h. Retrenchments of municipal workers ..... YES NO
- i. Your suggestions: .....  
.....  
.....

7. Who should initiate a local forum?

Possible answers:

a. ANC..... YES NO

b. Civics .....YES NO

Your suggestion .....  
.....  
.....

8. Who should convene a local forum?

Possible answers:

a. A neutral body acceptable to all parties ...YES NO

b. Your suggestion. ....  
.....

9. Who should participate in a local negotiating forum?

Possible answers:

a. All local government bodies, civics, political organisations and parties ..... YES NO

b. ONLY Political parties and political organisations  
YES NO

c. Any organisation which has an interest in local affairs, including business and unions... YES NO

d. Your suggestion .....  
.....  
.....



10. How do we prevent being outnumbered at the negotiating table?

Possible answers:

a. Have a two sided ('establishment' and 'extraparliamentary')..... YES NO

b. fix the number of votes for each delegation or block..... YES NO

c. Your suggestion .....  
.....  
.....

11. How should branches and communities be involved in the local negotiations process?

Your suggestions: .....  
.....  
.....  
.....  
.....

12. How can we tie the process of local negotiations to organising for elections?

Your suggestions: .....  
.....  
.....  
.....

