

and functions of regional government will need to be balanced with those of the urban and rural local authorities in order to avoid conflict.

B3.6 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.

B4. THE EXECUTIVE

B4.1 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 President and responsible to the National Assembly.

B5. A BILL OF RIGHTS

B5.1 Introduction

B5.1.1 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.

B5.1.2 The Bill of Rights will guarantee that South Africa is 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.

B5.1.3 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.

B5.1.4 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.

B5.1.5 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.

B5.1.6 The Bill of Rights must guarantee language and cultural rights.

B5.1.7 It must acknowledge the importance of religion in our country. It must respect the diversity of faiths and give guarantees of freedom of religion.

B5.1.7 The rights of the child; the duties of all citizens; environmental rights; the rights of disabled persons; and the right not to be discriminated against or subjected to harassment because of sexual orientation.

B5.1.8 The ANC is against capital punishment and will seek to have it outlawed in the Bill of Rights.

B5.2 Worker's rights

B5.2.1 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.

B5.3 Human rights for women

B5.3.1 Special emphasis will have to be given to the realisation of women's emancipation.

B5.3.2 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.

B5.3.3 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.

B5.3.4 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.

B5.3.5 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.

B5.3.6 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.

B5.3.7 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.

B5.4 The Right to home and family

B5.4.1 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.

B5.4.2 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.

B5.5 Property Rights

B5.5.1 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.

B5.5.2 Property rights impose obligations and their exercise should not be in conflict with the public interest.

5.5.3. 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

5.5.4. 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.

5.5.5 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.

5.5.6. 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.

B5.5.7 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.

B5.6 Social, educational, health and welfare rights

B5.6.1 . 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.

B5.6.2 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.

B5.6.3 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.

B6. AFFIRMATIVE ACTION

B6.1 There 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.

B6.2 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.

B6.3 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.

B6.4 We look to advancement taking place primarily through application of the principles of equal protection, good government and an expanding floor of minimum rights, that is, 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.

B6.5 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.

B6.6 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.

B6.7 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.

B6.8 Affirmative action policies will be aimed at the full integration of youth into our society, in a meaningful and progressive way.

B6.9 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.

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

6.11 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.

B7. THE PUBLIC SERVICE, DEFENCE AND POLICE

B7.1 The 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.

B7.2 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.

B7.3 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.

B8. THE RULE OF LAW

B8.1 All 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.

B8.2 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.

B8.3 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.

B8.4 All South Africans shall have recourse to independent courts of law and other tribunals.

B8.5 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 on a bench, which shall be transformed in such a way as to consist of men and women drawn from all sections of South African society.

B8.6 Maximum provision should be made for the participation of laypeople in the administration of justice.

B9. PERSONAL SECURITY AND CRIME

B9.1 The 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. 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.

B9.2 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.

B9.3 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 human 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.

B10 ACCOUNTABILITY DURING THE STATE OF EMERGENCY

B10.1 In 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.

B10.2 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.

B11. A FREE AND OPEN SOCIETY

B11.1

The 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.

B11.2

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

C1. BASIC PRINCIPLES

C1.1 The 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.

C1.2 Within this framework, local government will:

C1.2.1 Play a crucial role in building democracy in a future South Africa. Local government will bring government closer to the people and actively involve them in decision-making and planning processes which affect them;

C1.2.2 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