

# ANC NATIONAL POLICY CONFERENCE REPORT

GALLAGHER ESTATE, 27-30 JUNE 2007



## 05 / LEGISLATURES AND GOVERNANCE

### ELECTORAL SYSTEM

#### NOTING

- 1 The commissions discussed the different options outlined in the discussion document on Legislatures and Governance for a National Democratic Society, i.e. retain the present system, introduce a pure constituency system or introduce a mixed proportional / constituency system.

#### RECOMMENDATIONS

##### The commissions recommended that:

- 2 The current system should be maintained and be strengthened, further to enhance the links between the people and their public representatives.
- 3 Further research into a mixed electoral system should be conducted for possible consideration in future.
- 4 The formula used to calculate the allocation of seats in local government elections should be reviewed to ensure that it does not disadvantage parties that get more ward votes.

### FLOOR CROSSING

#### NOTING

##### The commissions noted:

- 5 The organizational problems and tensions caused by floor-crossing and stressed the need for proper political management of these processes - in particular the need to ensure that those who cross the floor join and become rooted in ANC branches.
- 6 The commissions also noted the following arguments in favour and opposed to floor-crossing:

##### 6.1 *In favour of floor-crossing:*

(1) There might be political developments in society or certain parties that might make members of such a party want to leave; (2) floor-crossing is a potentially useful tactical tool to take or maintain control with a view to speeding up transformation; (3) we should be cautious of doing away with floor-crossing at a time when the political situation is still fluid; (4) the ANC is not

compelled to accept anyone wanting to cross the floor, this needs to be done in consultation with the relevant organizational structures;

##### 6.2 *Against floor-crossing:*

(1) People will come into the ANC without being familiar with its policies and principles; (2) some people will cross the floor for opportunistic reasons that have nothing to do with principle and everything to do with individual interest; (3) it should be the ongoing task of branches to win over society to ANC positions. We should not try to do so through floor-crossing; (4) we need to ensure that those crossing the floor do so with a constituency and not just for individual opportunistic reasons; (5) floor-crossing is used by some as a short cut to ANC leadership structures, this must be prevented; (6) we need to balance short-term tactical considerations with long-term considerations relating to the integrity of our political system.

#### RECOMMENDATIONS:

- 7 The commissions arrived at different recommendations regarding floor-crossing:
  - 7.1 One commission agreed that floor-crossing should be retained as an interim measure pending further evaluation. However, the NEC must develop guidelines for the political management of floor-crossing at both organizational and public level, including guidelines for the acceptance of members, amongst others, to ensure that floor-crossing does not become a substitute for mass-work.
  - 7.2 The other commission agreed that floor crossing must be done away with and that the ANC should not to accept anyone crossing into it during the September 2007 window period for floor crossing. This commission felt that there must be an opportunity for political party coalitions without legislating for it.
- 8 The status quo, i.e. retention of the existing floor-crossing dispensation, will remain in force pending further discussion by National Conference.

## POST-TENURE/EMPLOYMENT RULES FOR PUBLIC OFFICIALS

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### NOTING:

#### The commission noted that:

- 9 A system of post-tenure / employment rules for public officials, public representatives as well as public servants, is needed.
- 10 People who work in Government have made a choice that they are in Government to serve the people and not themselves.
- 11 The issue should be linked to revolutionary ethics and must be fused into our cadre development programme.

### RECOMMENDATIONS:

- 12 Consideration should be given to restraint of trade/business for some period with compensation;
- 13 The details of such a system need to be elaborated and, in doing so, we need to study a range of international experiences and best practices.
- 14 Measures should be put in place to prepare deployed cadres for the eventuality of redeployment.
- 15 Mechanisms currently in existence must be strengthened to ensure that there is more transparency and accountability to curb the possibilities of public office misuse/abuse for personal gain.
- 16 Consideration should be given for the establishment of an integrity commission which will serve as a platform for comrades to also ask for assistance in whatever individual or collective interests they may want to pursue.

## FUTURE OF PROVINCES

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### NOTING:

- 17 The commissions held elaborate and animated discussions on the functioning of provinces within the context of our overall system of intergovernmental relations. The commissions were convinced of the need for a comprehensive review of this system, taking into account the distribution of powers and functions between different spheres of government as well as within the two-tier system of local government with a view to assessing whether this contributes to the attainment of our developmental goals.

#### The commissions further noted that:

- 18 The Department of Provincial and Local Government is embarking on a White Paper process aimed at conducting a comprehensive review of provinces informed by research conducted by different government departments, especially those dealing with concurrent national and provincial competencies.
- 19 The process will be initiated in July 2007 with the

release of a list of questions for discussion. A Green Paper will be released in October 2007. A Draft White Paper will be released middle of 2008. White Paper to be finalized by the end of 2008. The outcome of this process might impact on the Constitution and the structure of government as we go into the next elections. The importance of ANC structures being involved in this process was emphasized.

### RECOMMENDATION

#### The commissions recommended that:

- 20 The review process being undertaken by the Department of Provincial and Local Government must be supported. ANC structures must play a proactive and leading role in this process.
- 21 The process, including the convening of a special summit, of formulating a comprehensive ANC position must be embarked upon expeditiously.

## LOCAL GOVERNMENT: POLICY AREAS

### REQUIRING REVIEW

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### NOTING:

- 22 The commission noted that there were a number of matters related to local government and intergovernmental relations that require policy review.

### RECOMMENDATIONS:

#### The commissions recommend that the following areas require policy review:

- 23 The powers and functions of the Demarcation Board vis-à-vis those of the relevant MEC;
- 24 Powers, functions and resource allocation to Ward Committees;
- 25 The location of appropriate capacity to appropriate spheres of government. Lack of progress in policy implementation might be an indication of the need for policy review.
- 26 The structural alignment of the state with our developmental objectives.
- 27 The alignment of traditional leadership with democracy and the constitutional framework.
- 28 The functioning of the Financial and Fiscal Commission.
- 29 The two-tier system of local government, especially with regard to distribution of functions and capacity between local and district municipalities.
- 30 The system of determining remuneration of public representatives at national, provincial and local spheres.
- 31 Allocations of powers and functions with regard to matters such as electricity, water and roads.

- 32 The management of monuments and other heritage sites.
- 33 Equitable deployment of ANC cadreship. Local government deployment only takes place after national and provincial.

## TRANSFORMATION OF THE JUDICIARY

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### NOTING:

#### The commission noted that:

- 34 Many of the proposals contained in the policy document were in fact resolved upon at the National Conferences held in Mafikeng and Stellenbosch Conference and also the 2005 National General Council.
- 35 Implementation of these decisions is long overdue.
- 36 There have been processes undertaken by both by the executive as well as the legislature to consult all relevant role players, including the judiciary.

### RECOMMENDATIONS:

#### The commissions recommend that:

- 37 A single, integrated, accessible and affordable court system must be established.
- 38 The Constitutional Court should be the highest (apex) court for all matters, constitutional and non-constitutional with the Supreme Court of Appeal as an intermediate court of appeal with the proviso that this does not lead to undue delays in the hearing of appeals. Decisions of the SCA should be final if the Constitutional Court does not grant leave to appeal in a matter. Full bench appeals at the level of the High Court should be abolished.
- 39 Skills resulting from specialization must be retained as we move towards an integrated, streamlined court system, therefore specialist skills must be retained but located within the single court system. The Labour Court should be integrated into each division of the High Court. The creation of further specialized courts outside the single court system must be discouraged.
- 40 Each province should have a high court. The commission also stressed the importance of expediting the re-demarcation of courts to enhance access to justice, especially in rural areas. The demarcation of courts must be done in consultation with other components of in the criminal justice system. The commission expressed the strong view that the renaming of outdated jurisdictions such as Transvaal Provincial Division was overdue.
- 41 Magisterial Districts must be re-demarcated by taking into account the boundaries of the other levels of government especially municipal boundaries. Also the distribution of courts in accordance with population demographics, especially the previously disadvantaged

and marginalized communities.

- 42 A new layer of Regional Civil Courts should be established by extending their jurisdiction to civil law matters including the old "black" Divorce Courts into the new Regional Civil Magistrates Courts.
- 43 Community courts, small claims courts must be promoted and expanded.
- 44 There must be an alignment of traditional courts with the new constitutional dispensation.
- 45 There needs to be an integrated system of governance in our courts with the Chief Justice at the head of the judiciary. The commission reaffirmed the need for everyone to respect for the rule of law and the independence of the judiciary, especially in so far as the adjudicative function of the courts is concerned.
- 46 The system of separation of powers must be respected by all spheres. The judiciary must adjudicate without fear, favour or prejudice, but should also respect the areas of responsibility of the other arms of the state.
- 47 The administration of courts, including resource allocation, financial management and policy matters are the responsibility of the Minister responsible for the administration of justice.
- 48 Whilst justice is an exclusive national competency, there is a need to look at the matter carefully in the context of co-operative governance.
- 49 There must be a single rule-making mechanism for all courts, which is inclusive of all role players, to process rules through the Rules Board, which is a specialist advisory body consisting mainly of legal practitioners, with the rules being approved by the Minister and Parliament and in the process of adopting rules to allow for public participation.
- 50 The Department of Justice and Constitutional Development must ensure implementation in so far as ensuring that every person enjoys the right to use an official language of his or her choice and interpretation services are provided, as far as is possible, in criminal proceedings. In the case of an appeal / review the record must be typed in English. Any written court process (ex. Summons and writs of execution) should be printed in English and, if it is the wish of a litigant, in one other official language, as prescribed.
- 51 These decisions to be implemented by the end of the present term of government.

## DEFENDING THE DEMOCRATIC STATE

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### RECOMMENDATIONS

#### The commissions recommend that:

- 52 The responsibility of the members and structures of our movement and the broad democratic movement to defend the democratic state and its institutions; respect for the institutions of the democratic state by members

and supporters of our movement; respect for the institutions of the democratic state and public property owned by the people as a whole, during the exercise of the entrenched democratic right to engage in public demonstrations; be reaffirmed and that further discussion on these matters take place in preparation for National Conference.

## USE OF FORCE DURING DEMONSTRATIONS AND PROTESTS

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### RECOMMENDATIONS

**The commissions recommend that:**

- 53 Our unequivocal condemnation of the use of force during public demonstrations and mass protests resulting in such unacceptable actions as violent assaults against the people, intimidation in various forms, looting and destruction of property; be reaffirmed and that further discussion on these matters take place in preparation for National Conference.

## POPULAR PARTICIPATION

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### RECOMMENDATIONS:

**The commissions recommend that:**

- 54 The need to deepen popular participation in governance through such interventions as the Ward Committee system and the Izimbizo process; the constituency work of our public representatives at national, provincial and local levels, and its relevance to the process of democratisation; the place of civic street committees and similar structures, as well as non-governmental and community based organisations in the process of deepening our democracy; be reaffirmed and that further discussion on these matters take place in preparation for National Conference.

## MEDIA FREEDOM AND RESPONSIBILITY

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### RECOMMENDATIONS:

- 55 The commissions noted that this matter would be discussed in greater detail by the commission dealing with Media and the Battle of Ideas.

**The commissions recommend that:**

- 56 The ANC's commitment to media freedom is well known, entrenched and respected. However, the commission also expressed concern that in some cases the media conducts itself to the detriment of the Constitutional rights of others. The media needs to contribute to building new society and be accountable for its actions. The ANC needs to make creative use of a range of mechanisms to communicate with the widest spectrum of South Africans.

## ESTABLISHMENT OF A WOMENS' MINISTRY

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### NOTING

**The commissions noted that:**

- 57 Fighting poverty is a key objective of the ANC and that poverty affects women disproportionately;
- 58 There is a need for proper co-ordination of issues affecting women most directly;
- 59 The experience of countries such as Chile and Tunisia demonstrate the need for a Women's Ministry.

### RECOMMENDATIONS

**The commissions recommend that:**

- 60 Serious consideration be given to the establishment of a Women's Ministry

## YOUTH DEVELOPMENT

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- 61 The commissions recommended that consideration be given to the creation of a National Youth Development Agency to ensure seamless integration, sustainability and responsiveness to the demands and aspirations for South Africa's youth.

## VOTING AGE

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- 62 The proposal that the voting age be lowered from 18 to 16 needs further discussion in preparation for and at National Conference.