

SUBMISSION TO THEME COMMITTEE ONE BLOCK TWO

SOVEREIGNTY OF THE STATE AND EQUALITY

Introduction

The ANC takes seriously the strong desire for unity, justice and peace for which we have fought relentlessly over decades. We therefore emphasise the need for transforming all the major areas of political life so that the people can truly govern.

We believe strongly that the constitution must assert unequivocally the creation of a non-racial, non-sexist democracy which systematically eradicates the devastation of apartheid and reduces the social inequalities that exist. For it is only through active participation at all levels of government that our people can begin to share a common national vision. Such a national vision should be underpinned by the principles of respect of human dignity and universally accepted rights of all people, inside and outside our borders.

We further believe that a situation must be created for the government to be as close to the people as possible, while ensuring considerations of national unity and reconciliation, national reconstruction and development and national uniformity. We believe that when we address the matter of devolving powers to local levels of government, we must guard against balkanisation and fragmentation of the country.

A Single, United and Undivided Sovereign State

- 2.1 The Constitution of South Africa shall provide for the establishment of a single, united and undivided sovereign state whose national territory shall comprise the areas defined in Schedule I of the Interim Constitution.
- 2.2 There shall be elected government at local, provincial and national levels whose powers and functions shall be spelt out in the constitution. Such powers and functions shall be subject to national uniformity, national reconstruction and development and the values enshrined in the Chapter on Fundamental Rights. The principles of non-racialism, non-sexism and democratic accountability shall apply at all levels of government.

2.3 The National Legislature

2.3.1 The National Legislature shall consist of a National Assembly and Senate.

2.3.2 The National Legislature will have primary responsibility for the preparation and adoption of the country's main laws. The Constitution shall empower National Parliament to ensure that the laws passed in the Provincial Legislatures are not inconsistent with the provisions of the Constitution and the Bill of Rights.

2.3.3 The Senate will represent the provinces and will have a special responsibility for promoting provincial development and ensuring respect for the Bill of Right. It will have the power to review, refer and delay legislation except legislation dealing with the National Budget.

2.3.4 The legislative process shall include the system of parliamentary committees that will be formed and structured to enable the active participation of elected representatives during law making and to ensure accountability of the Executive to an informed Parliament as well as a role for minority parties and the public.

2.3.5 Amendments to the constitution shall be effected by a two thirds majority of both houses sitting together.

2.3.6 Both the President and the Executive shall be accountable to parliament.

2.4 Provincial Government

2.4.1 The Constitution shall provide for the establishment of Provincial Legislatures and Executives in respect of the provinces as provided for or amended under the Interim Constitution.

- 2.4.2 The primary aim of provincial government is to bring government closer to the people and to facilitate national reconstruction and development as well as to ensure the delivery of services to the people.
- 2.4.3 The Provincial Legislatures will have such powers and functions as determined in the Constitution.
- 2.4.4 It must be stressed here that political mobilisation on the basis of race, ethnicity or language should be discouraged and that state power at any level should not be used for the purposes of ethnic domination and intolerance.
- 2.4.5 The Constitution shall ensure that a mechanism **is** set up to address the disparities in the development of the provinces through fair distribution and reallocation of the countries resources.

2.5 Local Government

- 2.5.1 The Constitution shall provide for the establishment of Local Government through which the people will participate in the planning of policy and decision making.
- 2.5.2 Comprehensive provision for local government, including its powers, functions and structures shall provide that the implementation and supervision of legislation and financing of local governance be delegated to provinces.
- 2.5.3 Traditional leadership has an important role in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of chiefs shall be exercised subject to the provisions of the constitution and other laws.
- 2.5.4 Provisions will be made for an appropriate structure consisting of traditional leaders to be created by law, to advise parliament on matters relevant to custom and matters relating to the powers and functions of chiefs.

3 Equality

The ANC strongly supports 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.

The right to equality and protection by law of all persons shall be guaranteed in the constitution in the chapter on fundamental human rights. The Bill of Human Rights will be binding upon all legislative and executive organs of state at all levels of government.

The Bill of Rights shall be made applicable both vertically and horizontally while ensuring that a balance is maintained between equality and freedom. The concept of freedom shall be understood to be based on the protection of the dignity of the person rather than protection of economic privilege. At the same time, a balance must be maintained between the democratic government and the protection of individual liberty.

No person, man or woman, shall be unfairly discriminated against directly or indirectly, on any grounds, such as race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language. This shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedom. 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.

The Constitution shall ensure that mechanisms are created for enforcing and promoting these rights and ensuring that all obstacles to substantive equality are removed.