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ADVANCING THE ATTRIBUTES OF A DEVELOPMENTAL STATE

TOWARDS 100 YEARS OF SELFLESS STRUGGLE

Legislature & Governance NEC Subcommittee

PROVINCIAL & LOCAL GOVERNMENT REVIEW DISCUSSION PAPER

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LEGISLATURE & GOVERNANCE NEC SUBCOMMITTEE

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presented to the

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1. INTRODUCTION

The Freedom Charter asserts that "*The People Shall Govern*". This revolutionary and correct position has consistently guided the approach and values of the National Democratic Revolution. The African National Congress is committed to consistently improve the role played by all organs of the state, in all spheres of government to achieve our broader objectives of a better life for all.

The ANC has been at the forefront of championing the transformation of the State. This transformation agenda has always been informed by the strategy and tactics, in particular the task of building a developmental state. It is therefore imperative that, the future political trajectory of developmental government must be consistent with the attributes of the developmental state.

The 52nd National Conference of the ANC, held in December 2007, provided an important platform for our movement to confirm a mandate for matters relating to transformation of the state in particular legislature and governance. The Conference (in Strategy &Tactics) defined and articulated its understanding and vision of the key attributes of the South African developmental state. The four key attributes are outlines as the, strategic orientation, capacity to lead in the definition of a common national agenda, the state's organizational capacity and its technical capacity.

Sixteen years into democracy, the paradigm of a developmental state is gaining momentum in South Africa. There is, however, a need to revisit original governance structures that were established by the ANC, in order to assess whether the path being followed will ultimately reach the objectives set in 1994.

The ANC will be holding centenary celebrations in 2012. Further, in 2014 South Africa will be celebrating twenty years of democratic governance. These two important milestones in the history of democratic struggle gives the ANC a good opportunity to review the gains that have been made and strengthen our resolve to make South Africa a united, democratic, non-racial, non-sexist and prosperous society. These milestones requires the ANC to take stock and undertake the assessment of the provincial and local government structures, in order for us to move forward into the developmental dimension of governance.

2. PURPOSE

The review of provincial and local government structures has been initiated as a result of observations of service delivery inefficiencies in levels of government, whether in the form of gaps, duplications or non-achievement of service delivery targets. The instruction to review the provincial and local government spheres of government emanated out of the Polokwane congress in 2007. This is naturally a highly emotive and contentious subject as there are substantial vested interests and perspectives that need to be taken cognisance of. The aim is for this process to be fully inclusive not only from a consultative point of view but also from a technical perspective, in order to ensure that the ultimate strategy takes us forward into a sustainable, efficient, democratic future.

The purpose of this paper is therefore fourfold, namely:

a) **To give effect to the <u>Polokwane Resolution: 2007</u>**, as stated below, noting that:

Government has launched and completed the first phase of the provincial and local government policy review and that the public in all sectors has taken the process seriously, with more than one hundred and thirty submissions received. These submissions provided practical insights and lessons about thirteen years of provincial and local governance and contain proposals to make the system more efficient, equitable and accountable, and able to provide a better quality of service and governance to South Africa.

Inputs from political parties, provincial governments and national departments were not as numerous as expected, which means that the policy review process is denuded of the benefit of unlocking the practical experiences and insights of important stakeholders. That the provincial and local government policy review will be completed in early 2009, with a draft policy and review released in mid-2008.

RESOLVES
That the incoming NEC must ensure that an ANC Summit is held to formulate an input into process to develop a White Paper on Provincial Government and to review the Local Government White Paper.

b) **To initiate an inclusive process and thorough debate within the organisation on changes required to provincial and local government, in order to give effect to the principles of the developmental state.**

c) **To determine a process to be followed that will undertake the required review and determine a blueprint for the macro reorganisation of the State.**

d) **To embark on an open and objective debate that thoroughly covers all issues and alternatives and, at the same time, alleviates fears and concerns.**

3. PROBLEM STATEMENT

The Constitution requires all spheres of government to provide effective, efficient, transparent, accountable and coherent government to secure the well-being of the people and the progressive realization of their constitutional rights. One of the most pervasive challenges facing our country as a developmental state is the need for government to redress poverty, underdevelopment, marginalization of people and communities

and other legacies of apartheid and discrimination. This challenge is best addressed through a concerted effort by government in all spheres to work together and to integrate as far as possible their actions in the provision of services, the alleviation of poverty and the development of the people and the country.

South Africa is constituted of national, provincial and local spheres of government which are distinctive, interdependent and interrelated. All spheres of government must provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realization of their constitutional rights. One of the most pervasive challenges facing our country as a developmental state is the need for government to redress poverty, underdevelopment, marginalization of people and communities and other legacies of apartheid and discrimination.

This challenge is best addressed through a concerted effort by government in all spheres to work together and to integrate as far as possible their actions in the provision of services, the alleviation of poverty and the development of our people and our country. Co-operation and the integration of actions in government depend on a stable and effective system of governance for regulating the conduct of relations and the settlement of disputes between the national government, provincial governments and local governments.

The ANC has always stood for basic democratic principles that include:

- To strive for the achievement of the right of all South Africans, as a whole, to political and economic self-determination in a united South Africa;

- To overcome the legacy of inequality and injustice created by colonialism and apartheid, in a swift, progressive and principled way;

- To develop a sustainable economy and state infrastructure that will progressively improve the quality of life of all South Africans; and,

- To encourage the flourishing of the feeling that South Africa belongs to all who live in it, to promote a common loyalty to and pride in the country and to create a universal sense of freedom and security within its borders.

There are a number of issues / problems statements that this paper aims to address in the review of provincial and local government, namely:

a) Provinces and local governments are not functioning in accordance with their original founding objectives, which is resulting in inefficiencies in service delivery (gaps, duplications and/or non-delivery). These government structures therefore need to be restructured to facilitate sustainable, developmental governance and public sector management.
b) Service delivery inefficiencies that have been identified at both provincial and local government levels. These inefficiencies can take on the form of gaps, duplications, lack of capacity, waste of fiscal resources and general non-delivery. The analysis of these inefficiencies will be broken down per level of government, per category detailed below and a comparative analysis with international best practice will be done.

- Political configuration
- Structural, which further relates to roles, responsibilities and mandates
- Functional issues
- Legal mandate versus developmental powers
- Administrative structure
- Implementation systems

c)   The current structure of government was determined as a result of compromise in the negotiations. As a result, there is still no finality on this matter in the ANC. The matter of provincial government structures as they are in operation today, in terms of both their political and administrative relevance, therefore needs to be revisited.

In conclusion, the original principles that were developed and approved by the ANC, relating to governance and the establishment of the South African governmental structures, are not being brought into question and will not be reviewed in any way, as they remain sound and both nationally and internationally relevant. What will be brought into question is the way in which they have been interpreted and then implemented as well as whether there are any factors that have impacted on the governance process over the past 16 years, whether at national, provincial or local level. It is acknowledged that there has been substantial progress made in service delivery. There have, however, been inefficiencies and problems that have come to the fore that need to be addressed as the ANC moves towards fully realising a unified, non-sexist, non-racial, developmental state.

4. HISTORICAL TRAJECTORY

4.1   HISTORICAL OVERVIEW

The negotiations to establish a united non-racial, non-sexist democratic and prosperous South Africa started immediately after the unbanning of the ANC, SACP and other banned organizations in 1990. The ANC position at the negotiations was to create a unitary constitutional state and other parties such as National Party, Progressive Federal Party and Inkatha Freedom Party, Progressive Federal Party and Inkatha Freedom Party wanted SA to be federation like Germany, and the United States. The negotiations nearly broke down because of those positions.

The compromise from the talks was the creation of unitary state with some federal features. As a result provinces were established with limited powers of service delivery such basic education, health, social development etc, whilst fiscal powers remained with the national spheres. The negotiations were concluded with the adoption of the Interim Constitution, which also enshrined the doctrine of separation of powers between the legislature, executive and judiciary and that government will be organized into three tiers, namely National, Provincial and Local.

The Interim Constitution further bestowed the power of writing the final constitution to the National Assembly, effectively making the National Assembly to become a Constituent Assembly, one of the demands of the ANC before 1990.

The negotiations took place at time of the rolling mass action of rent boycotts, consumer boycotts and workers stay-away from factories and shops, thus rendering governance especially local government unworkable. Parallel to the CODESA negotiations, talks between the Civic Associations and the apartheid municipalities started with the aim of resolving conflict at local level. These conflicts were impacting negatively on national negotiations. The talks were formalised at a national Level after the establishment of the National Local Government Negotiations Forum (NL&GNF), which finalised the Local Government Transition Act. This act outlined the pre-interim phase, interim phase and final phase of transition of municipalities from the minority rule to democratic rule.

During the pre-interim phase the Constitution was adopted in 1996 which proclaimed South Africa as one, sovereign and democratic state and emphasized that government will be constituted distinctive, interdependent and interrelated of National, Provincial and Local spheres (rather than tiers). The doctrine of separations of powers may also carry in the final constitution. This doctrine of separation of Powers carried in National and Provincial spheres but not local spheres.

This may have been so in the sense that at that time there were more 800 municipalities with majority very small less than 10 councillors. The other important milestone during the pre-interim phase was to draft and adopt the White Paper on Local Government. The White Paper advocated for the need to transform Municipalities to "support improved service delivery". It also called for the demarcation proceeds municipalities to ensure that it results in financial viability.

4.2 ACHIEVEMENTS OF THE ANC

As the ANC we committed ourselves to providing a better life for all, as such the transformation of apartheid local government was a central pillar to achieve our objective. The local government transformation process was a complex one, and it involved the basic and most critical services that affect our people on daily basis. The ANC has made significant strides towards the local government transformation and ensuring that, the majority of our people have access to basic services.

A critical milestone in the transformation process was the introduction of the White Paper on Developmental Local Government in 1998. This policy document defined developmental local government as "*local government (that) is committed to working with citizens and groups within a community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives*". The White Paper was embedded in the principle of the Freedom Charter of 1955 that asserted that "The People Shall Govern".

Over the past ten years the ANC has succeeded in directing huge process of transformation that has certainly put municipalities on an irreversible path towards achieving our objectives of ensuring, United and integrated non-racial communities, building critical infrastructure for communities and deepening democracy. 283 Fully democratic municipalities have been established across the entire landscape of the country. All municipal elections to date have been free and fair and have general integrity across all sectors of the population.

The ANC government ensured massive strides have been made by municipalities in extending service delivery to our people. This is clearly indicated in the Community Survey of 2007, which showed national levels of access to basic services to be as follows – 92% for water; 69% for sanitation; 81% for electricity; and 64% for refuse removal.

Despite the significant progress made, there remain some constraints to accelerate service delivery. The cornerstone of the ANC-led government programmes is redistribution and poverty eradication in all municipalities. Meeting the basic needs of the millions of South Africans living in poverty is our fundamental objective. The local government sphere is critical in our efforts to achieve our goals of a better life for all.

4.3 TOWARDS A DEVELOPMENTAL STATE

In 2007, for the first time in its history the ANC (in Strategy & Tactics) defined and articulated its understanding and vision of the key imperatives of the South African developmental state. Four key attributes are defined:

1. Its **strategic orientation**: an approach premised on people-centered and people-driven change, and sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion.

2. Its **capacity to lead** in the definition of a common national agenda and in mobilizing all of society to take part in its implementation. Therefore, such a state should have effective systems of interaction with all social partners, and exercise leadership informed by its popular mandate.

3. The **state's organizational capacity**: ensuring that its structures and systems facilitate realization of a set agenda. Thus, issues of macro-organization of the state will continue to receive attention. These include permutations among policy and implementation organs within each sphere, allocation of responsibilities across the spheres, effective inter-governmental relations and stability of the management system.

4. Its **technical capacity**: the ability to translate broad objectives into programmes and projects and to ensure their implementation. This depends among others on the proper training, orientation and leadership of the public service, and on acquiring and retaining skilled personnel.

Based on the lessons of the last 16 years and the electoral mandate of the ANC, five strategic priorities have been identified for the term 2009–2014:

1. Building the <u>Development State in Provincial and Local Government</u> that is efficient, effective and responsive.

2. Strengthen <u>Accountability and Clean Government.</u>

3. <u>Accelerating Service Delivery</u> and supporting the vulnerable.

4. <u>Improving the Developmental Capability</u> of government, especially in relation to ensuring equality and that the needs of each sector of society is taken cognisance of.

5. <u>Fostering Development Partnerships</u>, social cohesion and community mobilization.

The developmental state has a central role to play in leading and sustaining urban and rural development. This includes leading the process of land reform, promoting sustainable change in social and economic relations and supporting the goals of growth and development in the rural economy. The mobilization of communities is central to all of these objectives.

The focus in South Africa since the 2009 National and Provincial Elections has been on all segments of society whether in the public or private domains, to build a strong Developmental State. The overall aim of this research is to reveal the successes and failures of different approaches taken by local government, whether through legal requirements, functional responsibilities or administrative systems employed. This project will then assess whether the structures, mechanisms and processes in place are appropriate for this new developmental phase in South Africa. Recommendations on the way forward as well as a developmental manual for municipalities will then be developed, along with other supporting material.

There is a need to build the strategic, organizational and technical capacities of government with a view to a democratic developmental state, through:

• A strengthened role for the central organs of state, including through the creation of an institutional centre for government-wide economic planning with the necessary resources and authority to prepare and implement long and medium term economic and development planning.

• The integration, harmonization and alignment of planning and implementation across all three spheres of government, and with the development finance institutions and state-owned enterprises, including through the development of coherent inter-sectoral plans at national level and the alignment of local implementation in terms of the IDPs of metro, district and local municipalities.

- Building the technical capacity of the state to engage with, understand and lead the development of dynamic and globally integrated economic sectors.

- Building the human capacity of the state by establishing uniform and high entrance requirements and standards of employment in the public service, emphasizing professionalism, discipline and a commitment to serve and ensuring adequate numbers of personnel to ensure delivery, particularly in the case of front line staff in areas such as education, health and policing.

- The developmental state should maintain its strategic role in shaping the key sectors of the economy, including the mineral and energy complex and the national transport and logistics system. Whilst the forms of state interventions would differ, the over-riding objective would be to intervene strategically in these sectors to drive the growth, development and transformation of the structure of our economy.

- A developmental state must ensure that our national resource endowments, including land, water, minerals and marine resources are exploited to effectively maximize the growth, development and employment potential embedded in such national assets, and not purely profit maximization.

- Recognize that climate change is a new threat on a global scale and poses an enormous burden upon South Africans and Africans as a whole because we are the most vulnerable to the effects of climate change. The risks to the poor are the greatest. Set a target for the reduction of greenhouse gas emissions as part of our responsibility to protect the environment and promote sustainable development, and to participate in sharing the burden with the global community under a common framework of action. Set a target for the reduction of greenhouse gas emissions as part of our responsibility to protect the environment and promote sustainable development, and to participate in sharing the burden with the global community under a common framework of action.

5. REFLECTION ON 16 YEARS OF GOVERNANCE

5.1   Provincial Government

The future of provinces has been on the ANC's agenda ever since their establishment in 1994, a matter that became more pertinent with the establishment of the new system of local government at the end of 2000. In December 2001 the review of the distribution of powers and functions between provincial and local governments was promised by the national government. It was argued that while a clear developmental mandate was given to local government, there was uncertainty about the functions of provinces. Eventually in January 2007, the national cabinet mandated the Department of Provincial and Local Government to develop a White Paper on provincial government.

At the ANC Policy Conference in June 2007 a document was circulated that sought, among other matters, to crystallize the issues around provinces. Three options were presented. The first retained the constitutional status quo: provinces retain their legislative and executive roles, but their functions are denuded by shifting certain functions to metropolitan municipalities and districts. The focus of attention of provinces would then move towards development planning and coordination, as well as supporting and monitoring municipal performances. The second option was to abolish provinces and have only national government and local government. The third option was the reduction of the number of provinces, accompanied with a new role description. This would require "a principled and conceptually clear understanding of what the role of the new provincial system would be and how it would differ from the current system."

The National Conference made no decision on the provinces but merely noted the government's initiative on developing a White Paper, noting that of the 130 odd submissions received, inputs from political parties, provincial governments and national departments were not as numerous as expected, which means that the policy review process is denuded from the benefit of unlocking the practical experiences and insights from important stakeholders. The Conference deferred any decision on the matter and resolved to hold a summit with the government.

A policy review of provinces and local government followed and reported to cabinet in 2009. At the L&G Workshop held in Boksburg during September 2009, the Commission dealing with Provincial and Local Government concluded that provinces "should be given the benefit of the doubt and should be retained". The view was also expressed that the number of provinces could be kept the same or that they could be reduced. The workshop recommended that the proposals by the commissions be endorsed for further discussion and that an intensive consultative process must be undertaken leading up to the General Council in 2010.

In the run up to the ANC's National General Council (NGC) in September 2010 a discussion document reaffirmed that "the unitary state remains the ANC's philosophical orientation and point of departure". Although the NGC would not make a final decision, it must "provide a policy framework and set of criteria for the possible reconfiguration of Provinces, be it the reduction in the number of Provinces or their being phased out". The NGC resolved that a Local Government Summit be held be for the end of 2010 to deal the provincial and local government policy issues to map the way forward.

Sixteen (16) years into democracy the ANC must ask critical questions about the value add of the provincial system in its own right. The overall assessment of the role of provincial government since 1994 is that many provinces have displayed the ability and potential to perform a valuable and innovative role in discharging their powers and functions and mediating a positive relationship between national and local government. At the same time provincial governments have displayed markedly uneven capabilities which have impacted negatively on national and local priorities. The most recent comprehensive review undertaken by government on provincial government concluded that:

- The current system is a product of negotiated transition and post-94 transformation.

- The creation of provinces contributed to transition, but that their role is uncertain presently.

- Provincial expenditure has achieved redistribution but the outcomes, performance and capacity remains uneven across provinces.

- There is no strong case to abolish provincial government (costs of legislatures are negligible and regional oversight is needed).

- Policy should be to clarify, refine and regularize role and functions of provincial government and to build capacity & effectiveness of provincial institutions.

If actual service delivery is the primary measure then some provinces have added limited value. The Northern Cape for example, which is the largest province is also losing economically productive capacity to other centres of economic development, has limited capacity relative to the size of its area, and contributes marginally to the overall national economy.

Of the three spheres of government, provincial government is the only sphere whose actual need and existence is still contested sixteen years after democracy. The provincial system has also raised challenges for the ANC on matters of deployment, where in some provinces leadership of the provincial party and provincial government are different. An assessment is provided of key areas related to the performance of provinces against their constitutional mandate.

5.1.1 Legislative Role of Provinces

Important observations arising from the *legislative role of provinces* since 1996 include the following:

- Passing legislation has not been the major preoccupation of provincial legislatures, with comparatively little legislation enacted in concurrent and exclusive areas of competence. Legislative output appears to have peaked in the period 2001-2004, but much of this legislation involved routine appropriations legislation or legislation required by a National Act (as in the case of the Traditional Leadership function).

- The main contribution of provincial legislatures to law-making has been through participation in the formulation of national legislation in Parliament, through the NCOP. The NCOP has also since 2005 embarked on annual sittings in provinces in the form of a campaign to take the NCOP to the people.

- Provincial governments are mainly receivers of national policy, rather than policy-makers.

- The NCOP provides an institutional platform for provincial executive government to participate in the law-making process, but the NCOP has raised the lack of participation of provincial executives as a concern.

5.1.2 Fiscal Autonomy of Provinces

Regarding *province's revenue-generation ability*, Constitutionally provinces have limited powers. The last 16 years have shown that provinces currently receive more than 40% of nationally raised revenues, more than 50% in previous years when the social grants function was with provinces (since removed to a national agency).

The Constitutional design of provinces is that of fiscal dependency on the national fiscus. This is an important consideration that must be borne in mind by the ANC when considering the future of the provincial government dispensation.

Other key observations include:

- Provinces receive the largest portion of their capital and operating revenue from the national fiscus, in the form of grants or the equitable share. National transfers to provinces have consistently contributed to more than 95% of total provincial revenue. Own revenue generation is a minimal contribution to provincial budgets at 3.6 % of total revenue for provinces. According to the National Treasury provincial own revenue has been stable in recent years, even declining marginally to 3.3% in 2008/09.

- Provincial dependence on national transfers was set to grow at a rate of 12,2 percent over the MTEF (source Provincial Budgets and Expenditure Review October 2006).

- More than 80% of provincial transfers is through the provincial equitable share, with approx 15% as conditional grants.

- Dependence on central transfers in other words is growing, and with provincial own revenue stable, the fiscal picture tends to reinforce the policy-receiver role of provinces.

- Provinces receive funding from national government to implement national policy in key sectors such as tertiary education, but because they are governments they are empowered to re-allocate between spending programs.

5.1.3 Role of Provinces in the Delivery of Social Services

Provinces have a key role to play in the delivery of social services which is also reflected in the structure of provincial budgets and departments. The effective and efficient provision of these social services is critical to the electoral mandate of the 4th ANC government administration.

The largest provincial departments and budgets are in the functional areas: education, health and social welfare. In 2006 these social services (education, health and social welfare) made up 74,3 % of total provincial expenditure. Prior to the establishment of the South African Social Security Agency in April 2006, provincial social expenditure had reached 81,8% in 2005/06.

Some of the key observations from practice regarding *province's role in the delivery of social services* shows the following:

- Almost three quarters of provincial spending goes to the three main social services. Provincial capacity mirrors national departments and is largely in service to implementing national priorities in the three social services, with 87,9% of total provincial compensation of employees expenditure in 2005/06 going to education (59,3% of total provincial compensation), and health (27,3% of provincial compensation of employees).

- Provinces primary service delivery role is to implement national policies for education, health and social welfare.

- National Treasury's preliminary provincial outcomes for 2006/07 (un-audited) indicated continued expenditure growth in provinces, and growing impact on economic expenditure. At the same time National Treasury indicated worrying trends such as over expenditure on health and variance between amounts allocated and actually budgeted and spent, and an increase in Auditor-General Disclaimers from 9 departments in 2004/05 to 12 in 2005/06. A benchmarking exercise for health and education conducted through the

intergovernmental system resulted in an additional allocation to provinces of R6 billion, of which R2 billion was re-allocated by provinces.

- Provincial functions are currently experiencing significant reforms: accreditation of municipalities to perform housing functions (no municipality has been accredited since 1997), re-assignment of social grants to national agency, reassignment of extensive provincial roads to the National Roads Agency (8450 km), regional development initiatives envisaging re-allocation of powers and functions (Western Cape and Gauteng City region initiatives).

What practice shows is that the performance of provincial social delivery is far from stable. The coincidence of the various institutional factors above and reliance on provinces to deliver national policy has been an institutional risk in the system and to the overall policy imperatives of the ANC government.

One view is that provincial service delivery is less effective than it needs to be and whilst the developmental roles of national government and local government within the developmental state are well defined and generally agreed, the developmental role of provinces is unclear, if not contested. Many provincial functions, it is often argued, could be better performed at national or local level. This would release massive public resources for reallocation to local government.

5.1.4 Province's Role in Cooperative Governance and Supporting Local Government Transformation

Some countries with similar models of cooperative government have begun to question whether it is still optimal for achieving responsiveness, public participation and efficiency. The fact is that the more layers of government there are, coupled with an unclear division of functional responsibilities, the greater the complexity that must be coordinated, is likely to have a retarding effect on service delivery. The ANC must ask whether the current model of cooperative governance is best suited to meet our objectives of building the South African developmental state.

Provinces have a unique role in our system of cooperative governance. This role over the last few years has highlighted the following:

- Alignment between national sector priorities and provincial departmental budgets and plans in concurrent areas of competence is transacted through MinMEC structures and the budgetary processes linked to the Division of Revenue.

- National Treasury has in recent years reported substantial variance between budgets allocated to a function and actual provincial budgets and expenditures, as outlined above. This variance points to provinces re-allocating budgets from agreed priorities to fund other priorities, in the past to fund rapid take-up of social grants.

- All provinces have instruments approximating provincial growth and development strategies. Most are informal instruments, and the IDP Engagement process showed that a rigorous alignment between PGDS and municipal IDP is an on-going challenge.

- Improvements in IGR are evident since the introduction of the IGR Act, with all provincial forums operational.

- Capacity of Premier's Offices and Departments Local Government is variable.

- The DPSA's Public Management Watch which measures indicators such as turnover rate, vacancy and replacement rates identified 18 provincial departments that were experiencing challenges (6 in the Eastern Cape, 5 in KwaZulu Natal, 4 in Northern Cape and 3 in North West; this includes 4 housing and local government departments, 4 public works, roads and transport departments, 3 arts, culture and sport departments, 3 education departments and 3 economic development departments).

- In a study undertaken by SAMDI it was reported that 8 out of 10 civil servants are in provinces: but only half of SMS (7000) have been in the job for longer than 2 years. Only 43% of junior and middle management have been effectively trained.

5.2 Challenges in Provincial Government related to Performance

The actual role and contribution of provinces in our system of cooperative governance has been chequered at best and very limited in some instances. On the issue of provincial support for and monitoring of local government, practice shows that with few exceptions provinces have not been in a position to support adequately municipalities. It must be noted however, that in the last two years there has been a slow but steady improvement by provinces to build their own capability. A study undertaken by the DPL&G (now Department of Cooperative Governance) on the capacity of Provincial Departments of Local Government found that:

- Provinces are generally not fulfilling their support and oversight mandate adequately although some are engaged in their own improvement process
- There is a poor separation of political and administrative aspects of the mandate
- These Departments are drastically under-resourced in relation to their mandate
- The current structure and pattern of staffing of these departments is unsuitable to their mandate
- In general the Departmental personnel do not possess the required skills and knowledge to fulfill their mandate
- The interaction of these Departments of Local Government with the national sphere of government through its sectoral departments is badly managed and frequently leads to conflict and confusion. The role of the Office of the Premier is not always a constructive one and frequently undermines the Department of Local Government
- Oversight and support for planning of all kinds, including IDP and LED, and detailed land use planning are at best patchy and under-resourced

5.3 Achievements in Local Government

Massive strides have been made transforming local government since 1994 and more recently since 2000. The ANC-led government has primarily driven this change and shaped the building a developmental local government system. The achievements in local government have been of a policy and legislative nature, but more importantly have been reflected in material advancements in the lives of our people. Some key achievements are highlighted below.

- **The Constitutional and legislative framework of local government in South Africa is recognised internationally as progressive** in providing for local governance, democracy and development.

- **283 fully democratic municipalities have been established across the entire landscape of the country.** All municipal elections to date have been free and fair and

have gained substantive integrity across all sectors of the population. Our system of local government has been complemented by a local public participation system of ward committees. In March 2009 a total of 37 900 ward committees were established. A key challenge however has been the functionality of these committees.

- **Massive strides have also been made by municipalities in extending service delivery to our people.** This is the most important measure of assessing our contribution of creating a better life for all. By the end of the First Decade of Freedom in 2004 the ANC government achieved the following:

  - Approximately 1,9 million housing subsidies were provided and 1,6 million houses built for the poor of the country

  - More than 70% of households were electrified

  - 9 million additional people were provided with access to clean water

  - 63% of households had access to sanitation

  A few years later, the Community Survey of 2007 showed even greater progress with increased national access to basic services: 89% for piped water; 68% for full and intermediate sanitation; 80% for electricity for lighting; and 62% for refuse removal. Good progress has also been made in extending access to free basic services to poor households: by 2009, 75% of poor households had access to free basic water and 58% of poor households had access to free basic electricity.

- **Increased and dedicated support from national government to local government has been a consistent feature of the ANC government.** Our inter-governmental fiscal system has progressively set aside increased resources to municipalities from the national fiscus; this trend is also likely to continue. The transfer of national funds to local government has grown dramatically from R11.5 billion in 2003/04 (4.1 per cent of the vertical division of revenue) to R 37.1 billion in 2007/08 (or 7.6 per cent of the vertical division), and is projected to grow to R47.6 billion by 2009/10 (7.7 per cent of the vertical division). In 2009/10 the Local Government Equitable Share was R23bn – this is projected to grow to R37bn in 2012/13.

- Finally there have been a number of national support interventions aimed at local government since 2000, these included Project Consolidate (2004), the Local Government Strategic Agenda (2006) and most recently the Local Government Turn Around Strategy (2009-2014). These programmes have cumulatively built on each other and have been aimed at taking our successes to a higher level and dealing with persistent challenges in new ways.

5.4   Challenges in Local Government related to Performance

The most recent State of Local Government Report of 2009 highlighted a number of critical challenges facing our municipalities. These challenges include notable legislative weaknesses, some problems with the current Constitutional model of local government, inter- and intra-political tensions affecting municipalities, municipal capacity and skills deficiencies and fundamental imbalances with the current local government funding model. Some of the most critical problems and challenges affecting local government are discussed below:

5.4.1 Political Challenges Affecting our Municipalities

In the 2006 local government elections the ANC received a strong mandate to drive the transformation and service delivery agenda of municipalities in pursuit of a national democratic society. We stated in the 2006 electoral mandate to citizens that the ANC has "*A Plan To Make Local Government Work For You*". However a number of political factors which are internal to the ANC and the Alliance continue to negatively affect the performance of municipalities:

a) ***Deployment Processes within the ANC:*** This has affected the performance of municipalities in three ways: Firstly, the most mature and seasoned cadres of the movement have been deployed to national and provincial government. Secondly, good and experienced cadres, including women cadres were ignored through misuse / abuse of the new policy of 50/50. Finally, continuity in municipal political leadership across election mandate periods has been inadequate (Nationally 67% councillors were new in 2006; while in the North West 96% were new).

b) ***Councillor Accountability and Implementation of the Code of Conduct:*** Formal mechanisms exist in the ANC and in municipalities to manage the Code of Conduct of Councillors as outlined in the 2006 Manifesto, but it is NOT implemented. Very few are sanctioned for non-compliance and therefore the code becomes useless or "non-existent" through disuse.

c) ***Political – Administrative Interface:*** This is characterized by tensions and a blatant transgression of recognized roles and responsibilities. There are instances where administrative municipal officials are also office bearers in the organization (e.g. at a BEC and REC level) resulting in tensions in the day to day execution of duties when interfacing with Councillors in the municipality. This is undermining council institutional integrity which leads to lack of professionalism.

d) ***Intra-Party and Intra-Alliance Dynamics:*** Tensions and factionalism in the ANC and alliance & opposition parties play themselves out, thus affecting the smooth running of municipalities.

e) ***"Service Delivery Related" Protests:*** Local community protests have become a worrying trend. A multiplicity of factors have informed these protests, some of which directly relate to the ruling party and the Alliance (such as contests for the 2011 municipal elections) & service delivery issues pertaining not only to local government but also to other spheres of government. Trends show that the number of local protest have increased from 10 in 2004 to 105 in 2009 (2009 has seen a particular high spike). By June 2010, 83 protests have already been recorded across the country. These protests generally speak to breakdown in local democracy in municipalities. Some White communities have established 280 Ratepayer's associations – they are paying municipal rates and taxes into Trust accounts.

5.4.2 Accelerating Access to Basic Services at Local Level

Despite the gains made in broadening access to basic services to our people the backlogs remain unacceptably high. Currently the overall national level of access to a *basic level of service* for all four core municipal services (water, sanitation, electricity and roads) stands at 54%. The 4 provinces with lowest levels of access to basic services are:

- Mpumalanga   40%

- North West   38%

- Eastern Cape   33%

- Limpopo   15%

Due to a range of both external and internal factors the rate of basic service delivery has not proceeded at the desired accelerated pace. The impact of internal migration, immigration, urbanisation, new household formations and other demographic shifts have seen an escalating demand for new services particularly in peri-urban areas where many informal settlements are located. The trend of many community members of maintaining both rural and urban residences also places strain on service delivery, as effectively this doubles the demand in such instances.

Speeding up the provision of basic services requires an improved coordinated and intergovernmental response and innovative solutions such as a Special Purpose Vehicle for municipal infrastructure and rationalising the current grant system to enable a better impact on communities. Communities must be mobilised by the ANC and ward committees to play a greater role in the identification, monitoring and oversight of local community service delivery projects.

5.4.3 Two Tier System of Local Government

The vision for two-tier local government as characterized in the 1998 White Paper on Local Government was to create a district tier of local government that would ensure a more equitable distribution of services and resources across local municipalities. The ANC has always held the view that the system of local government must play a direct role in matters of redistribution and addressing the legacies of exclusion, skewed development and inequitable access to services. However, **various policy shifts and trends have undermined the original model of the two tier system of local government which has rendered it largely non-functional**.

Since 1998, three policy shifts occurred that have had a direct bearing on the way the two-tier system is constituted and functions. The first shift was in 2000, when the Municipal Structures Act was amended to make districts the tier responsible for key municipal services: water, sanitation, electricity, and health services. The second major policy shift came in 2005 with the Intergovernmental Relations Framework Act of 2005 which required the creation of district intergovernmental forums to promote intergovernmental relations between the district and its local municipalities.

The third policy shift fundamentally altered the revenue structure of district municipalities. In 2006 government abolished the RSC levy and replaced this tax with a temporary grant to maintain existing revenue streams until its replacement was settled. The levy had been a significant source of income for districts, accounting for 34 per cent of total income. It was used to fund district infrastructure functions and other projects linked to the developmental mandate. The consequence was that the redistributive role of districts became redundant, with most districts now dependant on national grants for their existence. Almost half of districts are entirely funded by national government, thus the re-distributive role of districts is no longer valid.

In addition to the policy shifts above, since 2003, the consistent taking over of func-

tions by local municipalities of district functions have been evident. The Municipal Demarcation Board Capacity Assessment Report for 2006/07 showed that only two districts performed more than nine functions and overall, that 74% of districts performed less than 50% of their assigned functions. Local-district tensions are exacerbated by this reality, fuelling conflicts over functional areas, such as the Water Service Authority assignment.

Finally, where there are different political parties governing at a district and local level, this has undermined stable municipal governance and negatively affected service delivery to communities, since competing political priorities have played themselves out. All of the above factors have led to a **various problems with the functionality of the two tier system of municipalities that is often characterized as a conflict and non-functiona**l.

5.4.4 Separation of Powers Between The Legislative and Executive Domain of Local Government

The Constitution of the Republic of South Africa (1996) provides for a clear separation of powers and functions between the legislative and executive arms of government within the national and provincial spheres of government. However, this distinction is not clear in the case of local government. This lack of separation of executive and legislative powers within local government has affected lines of accountability in local government and within the ANC between deployed cadres performing different roles.

In local government the executive and legislative authorities are vested with the Municipal Council. At a national and provincial level the role of the Speaker, Chief Whip and Chairpersons of Committees together with the mandates of committees are clearly defined. At local level where both the executive and legislative authorities vest with the municipal council, the lines of accountability are blurred and the roles of officers of the council particularly that of the Speaker and the Chief Whip are not clear.   This lack of separation of powers at local level contributes to the following:

a) The Mayoral Committee does not enjoy executive status as opposed to the Cabinet and Provincial Executive Councils which enjoy executive status enshrined in the constitution.

b) The Mayoral Committee members do not have executive powers unlike their counterparts at national and provincial level.

c) The Municipal Council has only one accounting officer as opposed to national and provincial spheres which have several accounting officers responsible for different departments.

d) The municipal employees are not regarded as public servants. That is, they are not governed by the Public Service Act. They are governed by the Municipal Systems Act.

e) There is no Local Treasury organised in the same way as in national and provincial spheres. This makes it difficult for councillors to exercise proper fiscal oversight over the use of municipal resources.

f) Councillors are generally regarded as part time whilst their counterparts at national and provincial level are regarded as full time politicians. As a result,

Councillors' remuneration and general conditions of service are different to their counterparts.

g) The accountability of the Mayors and Mayoral Committees to the Municipal Council is blurred.

There is a strong view based on practice that the two tier model of local government must be reformed and District Municipalities should be disestablished.

5.4.5 Advancing People-Centred Government

The basic political pillar of the post-1994 democratic state is that of a people-centred and people-driven government. The definition of developmental local government is informed by the principle of "working with citizens and communities". This means that Local democracy must be adequately funded and resourced. This is a political imperative that is rooted in the Freedom Charter and in our vision of a developmental state.

The ward committee system is aimed at giving expression to people-centred government and deepening community and public participation at a local level. Presently, there are 3895 wards demarcated across municipalities in the country. This likely to increase to over 4200 wards after the 2011 local government elections. All provinces except the Western Cape have adopted the ward committee model.

The main problems with the current ward committee system includes its voluntary nature in law, their poor functionality and accountability to communities, the limited allocation of resources for their establishment and operations, poor coordination of ward committees with other local structures (e.g. Community Safety Forums, School Governing Boards etc), and conflicting roles with Community Development Workers in some instances.

There is a need to undertake a fundamental review of the current ward committee model to address the challenges highlighted above. Critical areas of legislative and functional reform include making the establishment of ward committees legally mandatory and providing for a more developmental role that is adequately resourced.

Finally, ward committees have the opportunity to become the single and most elementary point of community and cooperative governance. The ANC and the Alliance must play a stronger role in supporting and building functional Ward Committees as key instruments of local democracy and community participation.

5.4.6 Viability and Sustainability of Municipalities

The Constitutional vision of developmental local government is that it must be viable and sustainable across the country. The spatial and economic legacy of apartheid has made this a difficult task.

Since 2000 a number of indicators have suggested that many municipalities are neither viable nor sustainable. This undermines the historical mandate of the ANC to speed up and broaden service delivery to the majority of our people. Indicators of a non-viable municipality include grant dependence, the inability to collect revenue due a municipality and consequently the inability to roll-out an effective service delivery programme with the necessary capable expertise.

The non-viability of municipalities has a direct impact on the political mandate of Councils, councillors and ANC-led Alliance and government.

Our municipalities must be given the mandate and means to create and collect

revenue from a viable economic base and where this is not optimal, national government must have the obligation of adequately resourcing and funding those municipalities that do not have a sustainable economic base.

There is compelling evidence that shows that municipalities are becoming increasingly dependent on grants to fund their operations. Average levels of grant dependence rose from 25 % in 2007/08 to 31.9 % in 2009/10, with the largest growth for districts (of almost 13 per cent). Presently 57 municipalities receive more than 75% of their revenue from national transfers. This mainly affects smaller rural municipalities that have minimal economic activity.

Another factor affecting the viability and sustainability of municipalities has been the non-payment of monies owed to municipalities. By March 2010 the monies owed to municipalities by consumers was R56,8bn. A total of 75% (R30bn) of this was owed to metropolitan municipalities. One of the causes for this is the inability of the poor to meet their basic commitments to municipalities. Businesses and government departments are, however, also responsible for monies owed to municipalities. The question here is in relation to the management of the systems that are in place.

There are at least two options that must be considered to create viable and sustainable municipalities. Firstly to fundamentally re-engineer the inter-governmental fiscal system to ensure that weaker and more poorly resourced municipalities received a greater share of funds to meet their Constitutional and developmental mandates. Secondly, serious consideration must be given to re-demarcate, and/or the disestablishment of municipalities that are clearly not viable or sustainable.

5.4.7   Problems with the Inter-Governmental Fiscal System

The viability and sustainability of local government cannot be divorced from the current inter-governmental fiscal system. The ANC must take a bold policy decision on reforming the inter-governmental fiscal system that will support a viable and sustainable local government system going forward. Current weaknesses of the intergovernmental fiscal system, as it relates to municipalities, include the following:

a) The vertical split of resources across the spheres of government is inequitable because the local sphere of government gets a very small share of the total nationally collected revenue compared to the provincial and national spheres of government. For 2010/11 the percentage shares of nationally raised revenues between the 3 spheres of government are 48.5%, 43.6% and 7.9% for national, provincial and local government respectively.

b) The local governmental equitable share formula does not explicitly take account of topography and distance, especially in sparsely populated areas like the Northern Cape and in provinces that are predominately rural. In those areas it costs more to provide basic services and people have to travel long distances from one place to another to access government services.

c) The issue of local government being saddled with unfunded mandates has also emerged over time. Municipalities perform certain functions such as library services and in the absence of funds being allocated to compensate the municipalities for performing such functions. In the case primary health care (clinics) services which are a provincial function, metros render these services. The two functions mentioned here are not self funding and municipalities use their own revenue to fund these functions.

These issues point to the need to review the intergovernmental fiscal system and particularly how it affects and disadvantages local government as the delivery arm of government.

6. PRINCIPLES UNDERPINNING THE REVIEW PROCESS

The overall aim of the ANC was to have a strong national government that would govern policy and determine the legislative direction of the country. Following on from that premise would be to have regions and local entities that would implement the national direction in a cooperative, interactive and facilitatory manner. As stated in Chapter 3 of the Constitution, government in South Africa is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated.

6.1   Guiding Principles for Implementation

- **CREDIBLE PROCESS**
  What is required is a credible process that would lead to a policy position (and eventual legislative reform, if needed) that would serve the democratic and developmental needs of the country. It is suggested that the process should have the following guiding principles to render it credible.

- **INCLUSIVE PROCESS**
  The state architecture (provinces, metros, district and local municipalities) has been the product of negotiations establishing the democratic South African state. State structures have been established and tremendous resources and time have been devoted to them. People's lives, hopes and aspirations are tied to the institutions. Vested interests have been formed. The issues to be addressed are broader than the interests of one political party. Indeed in political formations there would be different views. The process of addressing the issues raised by the system of decentralisation should be an inclusive process that takes into account the entire spectrum of political, social and economic views. The inclusivity of the process would be reflected in the persons or institution that drive the process as well as the way in which the persons or institution go about reaching conclusions. The latter would include an extensive consultation process with affected institutions and the broader public.

- **TRANSPARENT PROCESS**
  The transparency of the process would contribute much to the credibility of the outcome. Given the diametrically opposed views between political parties and within parties themselves, the outcome of the process is bound to please some and not others. By conducting a public process, citizens can see how the consultation process was conducted, what evidence was obtained and used, and what reasoning is advanced for conclusions.

- **OBJECTIVE AND EVIDENCE-BASED PROCESS**
  The issues at stake are highly controversial. They reflect difference in political outlook and philosophy, vested interests of those benefiting from the current system, and citizens' emotional attachment to and perceived benefits in the system. Any recommendation on the current system – whether to retain, abolish or reform it – should seek to overcome these constraints by being based on the best knowledge and experience gained over the past decade and a half. Befitting our constitutional democracy policy choices should be made on the basis to the guiding principles outlined below, supported by strong evidence and cogent reasoning.

- **EXPEDITIOUS PROCESS**
  It goes without saying that uncertainty about the future of any institution, be it the provinces or districts, cannot be conducive to service delivery. The process, while it must be inclusive and any outcome evidence based, must execute the task within the available time frames. Any changes to provinces must be effected before the next general election scheduled for July 2014. Given the long legislative lead time, the policy process should be completed by June 2012.

6.2   Institutional Mechanisms for Review

The credibility of the outcome will depend much on the credibility of the process and who delivers the outcome. There are two options with regard the conduct of the inquiry.

- The first is to allow government to conduct the process. As was the case with the Provincial and Local Government Policy Review, a government department could internally drive the process. The objection may be that such a process may not have public credibility as it is driven by politicians and bureaucrats which may not reflect an open and transparent process.

- The second option is to locate the inquiry outside government, where a representative body of eminent persons conducts the inquiry. The Presidential Review Commission of 1996 is an example of such an approach.

7. POLICY REVIEW PARAMETERS

The architecture of the government structure in South Africa has an impact on everyone. The ANC, as the ruling party needs to lead this review process and the determination of a blueprint for governance, to achieve democratic, developmental structures that can achieve the determined mandate and facilitate sustainable service delivery.

The review and blueprint process proposed will be initiated on approval of this paper. It will start off with a review of the existing situation to determine the problem statement and the issues that need to be addressed in the provincial and local government structural review. The overall aim is to address all aspects of provincial and local government, including but not limited to the policy issues detailed below:

a)   The Constitutional mandate of both provinces and local government structures. This would include the analysis and evaluation of the separation of powers and functions as they pertains to the Legislative and Executive domains. There is a need to effect a Constitutional amendment and enact the relevant consequential amendments in primary legislation in relation to the separation of powers and functions as they pertain to the legislative and executive domains.

b)   The division of powers and functions between the three spheres of government. this includes the legisprative parameters and related governance issues. It also includes the analysis and review of the relationship between the political and administrative structures of government. This would also include evaluating the interpretation of the legislative mandate.

c) Review of the <u>need, viability and functionality of the provincial</u> sphere of government in South Africa. The parameters that need review would include service delivery, capacity and capability issues, as well as their role in planning and development.

d) Options for <u>Reforming the Two Tier System of Local Government</u> need to be explored fully. The parameters that need review would include service delivery, capacity and capability issues, as well as their role in planning and development.

e) <u>Review the Local Government Equitable Share</u> and its formula as well as review and rationalise local government grants. This essentially relates to an entire review of the inter-governmental fiscal system. This includes the assessment and review of fiscal sustainability and management.

f) <u>Advancing People-Centred Government through a Refined Ward Committee System</u>. There is a need to amend the local government legislation to make ward committees mandatory and more clearly specify the resourcing obligations, developmental responsibilities and revised institutional arrangements, thereby advancing a people-centred government.

g) Review the way in which the <u>Demarcation Board</u> operates and the parameters used in provincial and municipal demarcation. This includes the assessment and redesign of the principles and processes of provincial and municipal demarcation. Following on from the demarcation issue, there is a need to <u>re-demarcate</u> municipalities and provinces, should that be the scenario opted for, and ensure dedicated equitable funding for vulnerable municipalities.

h) The possibility of <u>a single public service in South Africa</u> is a further policy that needs to be explored and reported on. Each tier of administration has its own systems of governance and a different set of employee benefits. Structurally government does not present itself as a single face, but a myriad of national, provincial and municipal entities each with separate identity and each operating in its own silo. The challenge of coordination between the different spheres of government tends to hinder service delivery integration, thus creating a need for single point of service centres.

i) <u>Consultation and participation</u> within provincial and local government is a key policy dimension that needs to be evaluated in terms of its success/failure, the functionality and accountability of participatory structures at each level of government.

8. THE PROPOSED PROCESS OUTLINED

The review that is to be undertaken will lead into an action planning process towards the development of the detailed blueprint plan, to address the issues highlighted in the review, ensuring that there are detailed mechanisms and implementation plans for each aspect detailed above. The estimated time for completion of this entire process, so as to coincide with the political milestones, is to ensure completion, which includes extensive consultation, within 18 months.
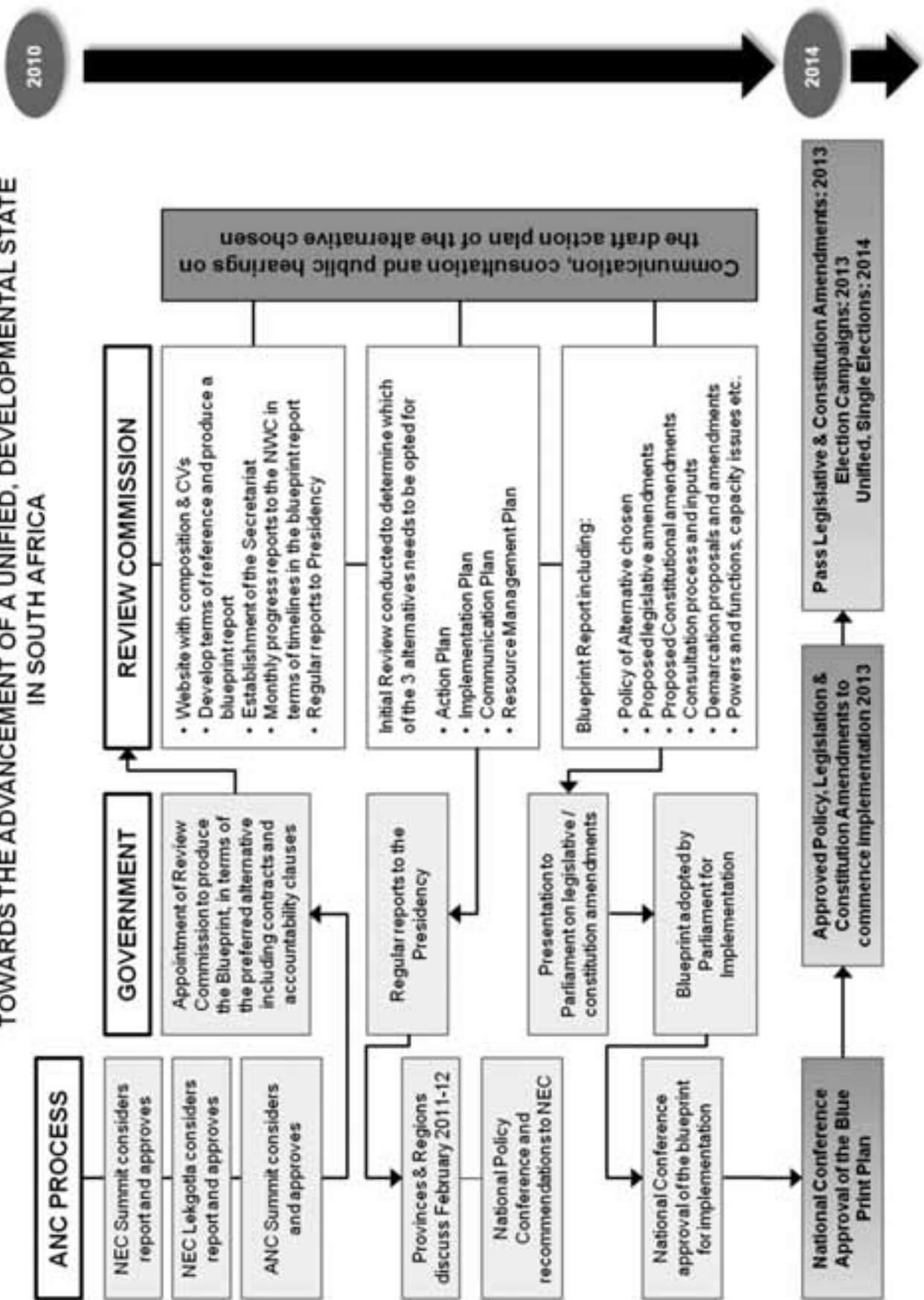
The first step in the process of rolling out this proposed review of provincial and local government, is to ensure that the guiding principles are followed and complied. The structure of the review mechanism is to be confirmed at the Summit and expedited, once the decision has been made and ratified, so as to

ensure that the stipulated timeframes are complied with. The next section of this chapter deals with the actual process that will be followed. There is further a diagrammatic representation of the process, which correlates with the timeframes that have been stipulated in the coming chapter.

There are a number of steps that will be followed by the Implementation Team, once approval has been given in terms of resolutions taken at the Local Government Summit that is to take place from 2 to 4 December 2010, and approved by the NEC. The steps are as follows:

a) An analysis and review will be undertaken of both provincial and local government structures to determine whether inefficiencies have only resulted due to deviations and anomalies in the implementations process or whether they are actually due to structural problems. Such anomalies could be due to vagueness in the legislation, different interpretations in the legislation or various externalities. It is estimated that this analysis would take 3-4 months.

b) Should the outcome of the analysis detailed in a) be that inefficiencies have resulted due to anomalies then the Implementation Team will follow a course of developing a detailed action plan to rectify the anomalies, which could be in the form of minor legislative amendments, clarification of the powers and functions or other functional / administrative changes.

c) Should the outcome of the analysis detailed in a) be that inefficiencies have resulted due to structural problems either in the provincial government or/and local government then the Implementation Team will follow a course of developing a detailed action plan on structural redesign, amendment and reassignment of powers and functions to the newly proposed government structures. This would be a more intricate process.

d) Should the outcome of the analysis detailed in a) be that inefficiencies have resulted due to a combination of both anomalies and structural problems then there would be a need for a double-barrelled approach to the proposed action plan. This would essentially mean that the action plan would contain researched solutions for both scenarios b) and c).

e) The consultation process would commence once the draft reports emanating from b), c) or d) has been completed.

f) It is further critical that the Review Commission develop a detailed communication plan along with the action plan so as to ensure that the transformation process is successful and sustainable. There is also a need to ensure that this includes a training and capacitation strategy.

PROVINCIAL AND LOCAL GOVERNMENT REVIEW TOWARDS THE ADVANCEMENT OF A UNIFIED, DEVELOPMENTAL STATE IN SOUTH AFRICA

2010 → 2014

Communication, consultation and public hearings on the draft action plan of the alternative chosen

REVIEW COMMISSION

- Website with composition & CVs
- Develop terms of reference and produce a blueprint report
- Establishment of the Secretariat
- Monthly progress reports to the NWC in terms of timelines in the blueprint report
- Regular reports to Presidency

Initial Review conducted to determine which of the 3 alternatives needs to be opted for

- Action Plan
- Implementation Plan
- Communication Plan
- Resource Management Plan

Blueprint Report including:

- Policy of Alternative chosen
- Proposed legislative amendments
- Proposed Constitutional amendments
- Consultation process and inputs
- Demarcation proposals and amendments
- Powers and functions, capacity issues etc.

GOVERNMENT

Appointment of Review Commission to produce the Blueprint, in terms of the preferred alternative including contracts and accountability clauses

Regular reports to the Presidency

Presentation to Parliament on legislative / constitution amendments

Blueprint adopted by Parliament for Implementation

ANC PROCESS

NEC Summit considers report and approves

NEC Lekgotla considers report and approves

ANC Summit considers and approves

Provinces & Regions discuss February 2011-12

National Policy Conference and recommendations to NEC

National Conference approval of the blueprint for implementation

National Conference Approval of the Blue Print Plan

Approved Policy, Legislation & Constitution Amendments to commence implementation 2013

Pass Legislative & Constitution Amendments: 2013
Election Campaigns: 2013
Unified, Single Elections: 2014

9. EMERGING OPTIONS

9.1 Provincial Government Emerging Options

There are two main concerns about the effectiveness and functionality of the provincial system of government. These issues also speak to more fundamental questions about the future of provincial government, but from the point of view of whether it is a functional system:

The effectiveness of provincial legislatures

- The extent to which they are engaged in law-making

- The degree to which the legislatures have built strong links with the public

- The extent to which the legislatures exercise oversight over the executive.

The inherent weakness of the overall structure of provincial accountability, which is influenced by such factors as:

- The degree to which provinces are financially dependent on the national fiscus

- The outcomes of provincial audits

The Review Commission will explore a number of emerging options. It is, however, considered that the ANC must consider and debate *at the least* the following four broad options regarding the future of our system of provincial government:

a) The first emerging option is to retain the system as it is. Provincial government would retain its legislative and executive roles. This has the advantage of continuity and stability. The provincial system has generated sixteen years of experience to build on and relative institutional stability.

b) The second emerging option is to remove the regional sphere of government altogether, leaving a two-sphere system of government consisting of national and local government. This model has the potential advantage of releasing significant resources and capacity for local government. This must be balanced against disadvantages such as departments would still have to be spatially decentralized to regional level, new forms of coordination with local government would be required. The question of timing, sequencing and managing change are critical considerations.

c) The third emerging option is a hybrid – a three sphere system but with fewer provinces. It would mean more than simply redrawing provincial boundaries. Even if redrawing provincial boundaries was done this would still require a principled and politically clear understanding of what the role of the new provincial system would be and how it would differ from the current system. Bringing the area of the country under fewer provincial boundaries would still leave the question of the developmental role of provinces unanswered.

d) The fourth emerging option is to radically move away from a geographically-based system but rather look at functional attributes of provincial government. This would involve a substantially downscaled administration. The focus of such a regional system would then be on the establishment of developmental regulations for all aspects of public sector administration and service delivery. This would then also change/remove some of the functions from local

government that are causing delays and blockages in service delivery. With this option the structure of local government as we know it would also then need to change.

It needs to be reiterated that the Review Commission needs to explore these as well as other options and interrogate them in terms of the most suitable fit for South Africa as well as achieving the objectives of the ANC. The overarching principle must be to determine a system of government that is best structured, positioned and capacitated to realise our vision of building a developmental state.

9.2 Local Government Emerging Options

In the January 2010 Lekgotla, the NEC noted *"that the root causes of many problems in our system of local government are influenced by systemic, legislative, political and accountability factors. In addition there are challenges of capacity and skills, poor intergovernmental relations and deficiencies in the intergovernmental fiscal system for municipalities."*

This same ANC NEC (January 2010) Lekgotla adopted a Local Government 10 point plan which should guide every member and all structures of the ANC in addressing local government challenges to ensure that local government is effective and efficient in the delivery of services. The 10 point plan was adopted to *"reinforce and support the implementation of the Local Government Turn Around Strategy."* The plan includes and focuses on the following:

a) Improve the quantity and quality of municipal basic services to the people in the areas of access to water, sanitation, electricity, waste management, roads and disaster management.

b) Enhance the municipal contribution to job creation and sustainable livelihoods through Local Economic Development (LED).

c) Ensure the development and adoption of reliable and credible Integrated Development Plans (IDPs).

d) Deepen democracy through a refined Ward Committee model.

e) Build and strengthen the administrative, institutional and financial capabilities of municipalities.

f) Improve the system of Inter-governmental relations which will directly contribute to the building and supporting local government in a coordinated way.

g) Uproot fraud, corruption, nepotism and all forms of maladministration affecting local government in both the political and the administrative domain.

h) The adoption and implementation of the single cycle of election for national, provincial and local government will greatly improve our system of governance and service delivery

i) Develop and strengthen the relationship between the party and the municipalities.

j) The unity and coherence of the ANC and the Alliance is a precondition for the success of the local government turn around programme and must be defended and consolidated.

Based on the above assessment a number of options for reforming local government must be considered and debated. The Review Commission needs to explore these as well as other options and interrogate them in terms of the most suitable fit for South Africa as well as achieving the objectives of the ANC. The overarching principle must be to determine a system of government that is best structured, positioned and capacitated to realise our vision of building a developmental state.

a) The first emerging option is to abolish two-tier system of local government. This would entail district service functions assigned to locals or provinces and the re-demarcation of local municipal boundaries.

b) The second emerging option is to reform the districts. This would entail the following:

- Combining provincial and district levels of government into a single tier of government, or
- Retaining districts as political government only in some areas of the country, but reconstitute their membership (either by shifting the proportion of directly elected and proportional councilors or a full complement from local councils); or
- Retaining districts as shared administrative and service centers for local municipalities.

c) The third emerging option is once again a radical alternative in that it would be coupled with emerging option 4 related to provincial government. This would mean that the districts would be removed and there would be a reclassification of local government in terms of functional criteria (for example metropolitan, urban, rural). All local authorities would, however, be assigned the same functions but the implementation processes would be simplified as the regional entities would establish developmental regulations up front for all public sector processes. This alternative focuses on the speed and efficiency of service delivery as well as begins to address a standardised quality.

d) The fourth emerging option is related to the City Region. The analysis suggests that the Gauteng city region and coastal city regions of Cape Town, eThekwini and Nelson Mandela Bay [1] are home to more than 38% of South Africans on less than 2% of the land area, they are the engines of the South African economy and fiscus, generating 65% of all economic activity (2004) and in many respects the generators of growth, jobs and livelihood opportunities and the gateways to Africa and a continued continental and international presence for South Africa (ports, export/imports, etc.).

The city-region areas are also under severe pressures brought about by continued urbanisation and population growth, increased poverty, higher dependency ratios and increased demands on services and resources. Together with this, city regions also face the enormous challenges of managing their impact on the environment and climate change, and their extreme vulnerability in terms of eco-systems, dependency on natural resources and risks for disasters.

They are the places that will in many ways (directly and indirectly) determine the quality of life of the majority of South (and probably Southern) Africa's citizens and place serious demands on governance systems and institutions in future. The analysis supports claims that the last decade bears testimony to major advances in service delivery. However, it also becomes clear that backlogs and pressures for service delivery are increasing in the cities, city-region areas and those towns that fulfill typical regional services roles.

In terms of governance arrangements, the city regions in this category can all be regarded as cities with relative highly developed governance capacity and playing significant functions as administrative centres. However, a major concern is obviously how governance capacity, investment and arrangements respond to the challenges of service delivery, efficient infrastructure maintenance and investment and the integrated and sustainable functioning of these areas. The significance in the contribution to the economy of the country, housing significant percentage of the population and major impact on natural resources calls for integrated and unique seamless governance approaches and coordination across municipal and provincial, as well as sectoral boundaries in these areas.

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1   A National Overview of Spatial Trends and Settlement Characteristics October 2008, Prepared for the South African Cities Network, The Presidency and Department of Local and Provincial Government by the CSIR, Built Environment

- **Intergovernmental Relations**
  When considering the area of intergovernmental relations from an institutional development and governance perspective, some of the flaws and ironies within the current model need to be considered. While the Cities are established legislatively and functionally as an independent organisation, within a contained structure and boundary, they cannot achieve their objectives, or be fully effective, if the interfaces with other bodies are not soundly managed and optimised. Integration across municipal boundaries – and across other spheres of government – is key to success and to the effective management of the urban built environment. This can be seen in areas such as housing and informal settlements management, transport, health and public safety.

  Key questions arise:
  - Should the Cities continue to address intergovernmental relations through the current mechanisms, such as forums, Service Level Agreements and Memoranda of Under-standing?

  - Should there be a reorganisation of powers and functions, with greater delegation and as a result, the establishment of an organisation with more teeth?

  - Should spatial integration be driven through a different set of delegations? or

  - From a more radical perspective, should there be a consideration of the reality that these cities are hubs of Global City Regions and should be merged together with other bodies, all aligned under one Mayor?

- **A New Dispensation for City Regions**
  The one-size-fits-all approach has not benefited the City. If it is to remain attractive and competitive, the country will need to recognise it's city regions edge over other regions of the world and equip them to play to their strengths. If the issues regarding boundaries and powers and functions are recognised and there is commitment to resolve them, then the next obvious step will be to review whether or not the current confines of the Municipal Structures Act, the Municipal Systems Act, the Municipal Finance Management Act, the Constitution and the electoral systems fit with the global and competitiveness position these City Regions contend with.

  The City Regions need to be governed as compact organs of a developmental state that include regional economic, social development, safety and security, health and infrastructure development instruments. An interrogation of what functions would need to be migrated from national, provincial and state owned entities to the City Regions would need to be made. The results would need to be packaged into a Charter that would distinguish the City Regions from others in the country and empower them to deal decisively with the urbanisation and competitiveness challenges they face.

  Should the City Regions be established under own Charters? This would require a Constitutional change, shifting the City Regions' institutional arrangements from falling within the local government legislation – to an arrangement where all aspects of the executive and legislative functioning of the City would be provided through a tailored Charter, such as that provided by the New York Charter and the Addis Ababa Charter.

A Developmental City Region State

- **Strategic Orientation**

  The intention to establish a City Region State should be deliberate and intended towards fostering sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion. It will be best placed to meet the urbanization dreams of all and particularly the poor

- **Capacity to Lead**

  The current candidate cities for City Regions status have demonstrated the capacity to develop effective systems of interaction with all social partners, and exercise leadership informed by their popular mandate. The City Region State will assist in assuming a lead position in the definition of a common national agenda and in mobilizing all of society to take part in its implementation in their geographic areas.

- **Organizational Capacity**

  The current cities have made great advances in managing relatively large and complex organizations. The limitations imposed by fragmented institutional and organizational designs between the three spheres of government and parastatals within city boundaries will be obviated by the establishment of the City Region State. The regional state will ensuring that its structures and systems facilitate realization of a set agenda across a wider region. This attribute of a developmental state will be realized through the reorganization of otherwise fragmented permutations among policy and implementation organs within each sphere, allocation of responsibilities across the spheres, effective inter-governmental relations and stability of the management system. These should include key arrears currently located in provincial governments such as housing, safety and security, health, social development and education.

- **Technical Capacity**

  Regional State should build on the current the ability in the provinces and the Metros to translate broad objectives into programmes and projects and to ensure their implementation. An improved capacity will be required to ensure effective orientation and leadership of the public service, and mechanisms for acquiring and retaining skilled personnel."

10. ESTIMATED TIMELINES

ANC Process	Executive Process	Parliament Process
The ANC, based on key decisions of the constitutional structures. will drive the process as detailed below. The political management of the process will remain with L&G and regular reports to NWC and NEC	The executive process led by the Minister will drive the process as listed below. The executive process will be guided by the President and cabinet	The necessary parliament process to effect legislative process will unfold, under the relevant houses of parliament and the relevant committees. The parliamentary process will be guided by the mandate of the party and the necessary parliament structures. The leadership of parliament will also guide process
NWC & NEC	**January/Feb 2011**	**February 2012**
• November NEC considers document and approves • January NEC Lekgotla considers document and approves • Regular Progress reports to NWC	Appointment of Review Mechanism to produce a Blue Print Report	The relevant portfolio committees will prepare the time-table for processing the relevant legislation and possible public hearings
Review Summit	**March 2011 to March 2012**	**July to February 2012**
• ANC Summit 2–4 December consider and discuss matter • Summit makes recommendations to NEC	• Review Consultation, researches and finalization of Blue Print Report • Regular reports to Presidency	Engage with the relevant department to ensure regular feedback on the blue print development
Provinces and Regions	**April 2012**	**March 2013**
• Discussion paper circulated to Provinces for considerations • Provinces & regions to discuss in February 2011 to June 2012	The presentation of legislative and constitutional amendments or white paper based on the blue print report	The presentation of legislative and constitutional amendments or white paper based on the blue print report
National Policy Conference 2012	**2012**	**April to September 2013**
Policy Conference to consider discussion and recommendations of the NEC and provincial inputs	Blue Print Report adopted as policy and legislation and constitutional amendments	Conduct public hearings and submission on the legislation and constitutional amendments
NEC 2012	**2013**	**October 2013**
• Preparations for National Conference • Consultation with other political parties	Policy, Legislation and constitutional Implementation	Pass the legislative and constitutional amendments
National Conference 2012	**2014**	**2013**
National Conference to approve the Blue Print	Policy, legislation, and constitutional implementation	Election Campaigns
ELECTIONS 2014	**ELECTIONS 2014**	**ELECTIONS 2014**
National, Provincial and Local Elections	National, Provincial and Local Elections	

11. THE WAY FORWARD

The Summit needs to consider the six items detailed below and resolve on them:

11.1   Discussion, suggestion and approval of the process that will lead to the development and implementation of the blueprint, as articulated in the body of this report.

11.2   Discussion, suggestion and approval of the guiding principles for implementation, as articulated in the body of this report.

11.3   Discussion, suggestion and approval of the review mechanism to be used, as Section 6.2 of this report.

11.4   Discussion, suggestion and approval of the policy parameters that are to be reviewed and recommendations made on, as articulated in the body of this report.

11.5   Discuss and provide guidance on the roles and responsibilities of the ANC, Government and Legislatures in relation to the rollout of this process.

11.6   Discuss and provide parameters and the terms for broader consultation process.

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