



# ANC Whip

The bi-weekly newsletter of the ANC Caucus

14 Sep 07

## Role of Parliaments towards Citizenry

The African National Congress (ANC) has consistently articulated a clear vision for democratic governance institutions and their role as legitimate platforms for representing the aspirations of the people. The ANC has thus advocated for a “democratic state and institutions based on the will of the people”<sup>1</sup> as the only way “to secure the birthrights of all citizens without any regard to race, sex or belief.”<sup>2</sup> ANC’s perspective of national security, human and individual security is coined in a collective security for the people without an overemphasis on individuality. This is due to the nature and character of the struggle for the liberation, which was and continues to be significantly based on holistic liberation of the people. The security apparatus are therefore an integral part of such a thoroughgoing liberation character. Whereas the apartheid government’s security outlook was mainly meant to be the security of the state and its ruling elite as well as the white minority group, the security architecture being elaborated by the ANC is fundamentally driven by the notion of security of the people. To further illustrate this point the ANC policy on the police service states that: “the police must be accountable to the people whom they serve.”<sup>3</sup> It has and continues to be the view of the ANC that all security apparatuses should be “rooted in and accountable to the communities in whose name they serve.”<sup>4</sup>

The National Assembly last week discussed role of parliaments in striking balance between national security, human security and individual freedoms, and in averting the threat to democracy. We publish the ANC’s approach to the debate...

The oversight role of parliament should as such, be driven by the aspirations of the people with regard to national security, human security and individual freedoms. This is derived from the Freedom Charter’s clarion call that, “the rights of the people shall be the same, regardless of race, colour or sex.”<sup>5</sup> Within the ANC policy paradigm human security and individual freedoms as presented in this discussion topic (role of parliament in striking a balance between national security, human security and individual freedoms and in averting the threat to democracy) borders on issues of human rights. The role of parliament as an oversight body over the executive and its role in providing checks and balances is an important role in fostering democratic and accountable governance. In this regard the ANC has always advocated for “a strong and effective Parliament capable of dealing with the great tasks of reconstruction, of overcoming the legacy of apartheid and of nation building.”<sup>6</sup> This kind of perspective is the one that guides the ANC’s engagement with the role of parliaments in

general. In occasions that related to engagement with international institutions like the Inter – Parliamentary Union (IPU) on this subject, a combination of the ANC’s foreign policy perspective as well as its political position on the role of parliament becomes the prevailing line of engagement. For instance, at the level of IPU (which is mainly a dialogue platform), the ANC’s position on parliaments being important for both the oversight function over the executive and as a democratic platform for the expression of the interests of the people remains the main point of departure. At the heart of this perspective (ANC) is the importance of participatory democracy and mutual accountability, thus ensuring the ownership of democratic institutions by the people in averting the threat to democracy. Accordingly, the struggle for apartheid free South Africa, within the ANC perspective, has always been about fundamental human rights. And as such, human rights have been canonized as the cornerstone of the ANC’s foreign policy perspective. In addition, the foreign policy perspective of consolidating the

African Agenda; ensuring peace and stability in Africa and in the world; creating partnerships for development; the South-South relations; the North-South relations; good governance and creating a global situation where human rights are respected, guides the ANC's approach to platforms such as the IPU.

This however is not without the fact that, "there is a need for strong and effective national government to handle national tasks, such as defence and ensuring the basic security of the country and the people."<sup>7</sup>

This further provides a mutually reinforcing approach of accountability and transparency of the executive towards the people, while parliament also ensures the executive's accountability through a transparent and democratic platform.

The notion of a balance between the role of parliament and its oversight towards the executive only emerges where there is not a clearly articulated vision between the legislative arm of the state and the executive arm of the state. Accordingly, instances of sensationalism in public debate and unfounded accusations are potentially dangerous, and could amount to a security risk, with regards to issues of national security and defence.

The kind of a balance that could be raised can only arise under such circumstances, particularly when it comes to the security sector and intelligence.

This is where parliaments should exercise their oversight role to a level of broader strategic approach of ensuring, first and foremost, the security of people and respect of civil liberties.

There is however, an absolute affirmation that, "parliamentary oversight of the security and intelligence services is a necessary and acceptable

**"Government must be the government of the people, by the people, for the people. It must be chosen by the people in free, fair and regular elections"**

phenomenon in democratic societies."<sup>8</sup> Parliamentary oversight in these areas (national security and defence), however need to be afforded the level of discreteness required yet maintaining a good balance of upholding the constitutional prescriptions, without posing a threat to democracy.

The kind of openness and accountability that the ANC has always fostered in constructing a democratic ethos, in all spheres of government is derived from the notion that, "government must be the government of the people, by the people, for the people.

It must be chosen by the people in free, fair and regular elections."<sup>9</sup> This amplifies the point that the security architecture of South Africa and the role that parliament is constitutionally mandated to play are consistent with the ANC's approach of the security of the people.

Consistent with this view the ANC believes that, "the organs of government shall be accountable to Parliament.

It is not their function to serve the interests of any party or sectional grouping. Impartiality presupposes a balanced composition of the bodies concerned and sensitivity to the needs and aspirations of all sections of the community."<sup>10</sup>

ANC further articulated its perspective on the role of parliament in relation to both the constitution and the national security, and stated in its principles for a democratic South Africa that, "the Constitution will make

provision for a state of emergency to be declared when the life of the nation is threatened.

Such a power will be subject to strict controls by Parliament and the judiciary.

The Constitution will provide for the recognition and protection as far as possible of fundamental rights during the period of emergency."<sup>11</sup> And this approach would as such be translated into all the platforms engaged on these issues like the IPU in this regard.

#### Footnotes

<sup>1</sup> *The Freedom Charter, Adopted at the Congress of the people, 1955.*

<sup>2</sup> *The Freedom Charter, Adopted at the Congress of the people, 1955.*

<sup>3</sup> *African National Congress, Department of Information and Publicity, Discussion Document on policing.*

<sup>4</sup> *African National Congress, Department of Information and Publicity, Discussion Document on policing.*

<sup>5</sup> *The Freedom Charter, Adopted at the Congress of the people, 1955.*

<sup>6</sup> *African National Congress, Constitutional Principles for a Democratic South Africa.*

<sup>7</sup> *African National Congress, Constitutional Principles for a Democratic South Africa.*

<sup>8</sup> *Making intelligence accountable: Legal Standards and Best practice.*

<sup>9</sup> *African National Congress, Constitutional Principles for a Democratic South Africa.*

<sup>10</sup> *African National Congress, Constitutional Principles for a Democratic South Africa.*

<sup>11</sup> *African National Congress, Constitutional Principles for a Democratic South Africa.*

# Co-operative Banks Bill (2007)

**C**o-operative banks are member-based, deposit-taking financial services institutions that offer basic banking services such as deposit-taking, savings and the issuing of loans to their members.

The purpose of the Co-operative Banks Bill is to create a development instrument and a regulatory environment for deposit-taking financial services co-operatives such as village banks and savings and credit co-operatives.

The history of the co-operative movement reflects part of the struggle by Black South Africans in the main under the system of apartheid financial regulation and planning, to establish savings outside the formal banking sector. Black South Africans have been involved in unrecognized co-operatives in both urban and rural areas since the early 1900's. Co-operatives included rotating savings and credit schemes of various forms, including Letsema, burial societies, stokvels and mogodisano.

ANC policy towards the emergence of social capital addressed the need for re-orientation and mobilisation of the finance industry in order to support the emerging co-operatives.

Without access to finance and credit no significant growth of co-operatives could occur.

This required that the ANC government strengthen financial co-operatives such as co-operative banks and co-operative insurance. The importance of building financial co-operative institutions implies that money generated by co-operative enterprises is kept within the community to be used for the benefit of the whole community as well as individual co-operative members.

The Co-operative Banks Bill seeks to promote access to basic, affordable financial services to all South Africans, particularly, those

excluded by formal financial institutions.

The Bill seeks further to ensure the sound and safe management of money by financial services co-operatives thereby promoting the development and growth of such co-operatives.

## Objects of the Bill

The objects of the Co-operatives Banks Bill are to:

- promote and advance the social and economic welfare of all South Africans by enhancing access to banking services under sustainable market conditions;
- promote the development of sustainable and responsible co-operative banks; and
- establish an appropriate regulatory framework and regulatory institutions for co-operative banks that protect members of co-operative banks, by providing for: -

- the registration of deposit-taking financial services co-operatives as cooperative banks
- the establishment of co-operative bank supervisors to ensure appropriate and effective regulation and supervision of co-operative banks so as to protect members and the public interest and
- the establishment of a Development Agency for Co-operative Banks ("the Agency") to develop and enhance the sustainability of co-operative banks.

The Bill aims to register co-operatives which have more than 200 members and which held more than one million Rand. Co-operatives that do not meet these requirements would remain deposit-taking institutions under the Co-operatives Act

## Contents of the Bill

The Bill provides for the following:

- Registration, constitution, functions and management of co-operative banks;

■ Prudential requirements for co-operative banks and provides for large exposure;

■ Deposit insurance and voluntary schemes;

■ Amalgamation, division, conversion, transfer, judicial management and winding-up of co-operative banks;

■ Representative bodies and support organizations for co-operative banks;

■ Appointment of supervisors

■ Establishment of a Co-operative Bank Development Agency and an appeal board, and

■ General provisions which include offences and penalties and matters relating to fair administrative action, the certification of documents, regulations, powers of the Minister of Finance and civil liability of directors

## Political considerations

The Bill draws significantly on ANC policy in the transformation of the financial sector and reflects the introduction of a critical and new phase in this transformation process. The large majority of South Africans still find themselves outside the formal banking sector despite the many steps introduced by the ANC government, e.g. Mzansi accounts and certain established banks recognizing traditional savings mechanisms such as stokvels. The Co-operatives Banks Bill addresses this exclusion in that it seeks to create a development strategy and a regulatory environment for deposit-taking financial services cooperatives. This will ensure the sound and safe management of depositor money by financial services co-operatives and promote the development and growth of such co-operatives. This will in turn promote access to financial services for people in rural communities who have no access to formal banking services, and help to stimulate and grow social capital.

# Repeal of Black Administration Act and Amendment of Certain Laws Amendment Bill

In 2005 Parliament passed into law the Repeal of the Black Administration Act and Amendment of Certain Laws Act, with a view to remove from the statute book all remaining apartheid legislation which undermines constitutional democracy. In particular, the 2005 Repeal Act was passed to repeal the Black Administration Act of 1927. However, a sunset clause was incorporated into the Repeal Act so as to allow the provisions of the Black Administration Act which dealt with the judicial functions of traditional leaders to remain in force until new legislation was passed. The Act prescribed that new legislation dealing with the judicial

functions of traditional leaders, had to be finalized before or on the 30<sup>th</sup> of September 2007. Whilst the process of developing and introducing new legislation was underway, it was realized that such a process could not be finalized before 30 September 2007. This was due in the main to various constitutional issues and conflicting provincial legislations on traditional leaders. The Bill, [B34-2007], thus amends the 2005 Repeal Act so as to extend the sunset clause from 30 September 2007 to 30 June 2008 to afford the affected Departments time to finalize all the processes of putting together new legislation, which would deal with functions of traditional leaders.

The Portfolio Committee finalized consideration and deliberations on the Bill referred it to the National Assembly for debate. Some opposition parties expressed a view to the effect that the extension of the sunset clause to 30 June 2008 would not provide sufficient time for the departments to finalize their work. However, the Department of Justice and Constitutional Development insisted that such time would be sufficient since the processes of developing substitute legislation, was already at an advanced stage.



# Transport Agencies General Laws Amendment Bill

There are several public entities under the control of the Department of Transport, which were established by separate Acts of Parliament. Each of these Acts provide for the appointment of a Board for each of these entities. The procedures within these respective Acts are not streamlined and can cause delays in appointing members of the Boards timeously.

The Bill amends the enabling Acts of the following public entities under the control of the Department of Transport:

- The Cross-Border Road Transport Agency
- The South African Maritime Authority

- The South African National Roads Agency Limited
- The Transport Appeal Tribunal
- The South African Civil Aviation Authority
- The Road Traffic Management Corporation
- Railway Safety Regulator

The amendments are aimed at:

- providing for the appointment of members to the various boards by the Minister
- streamlining the processes and procedures with reference to the appointment of members to the various boards
- providing for the appointment of CEOs by the Minister, on the

recommendation of the relevant Boards

- providing for the filling of vacancies on the Boards
- providing for the conclusion of performance agreements between the Minister and the Entities where such agreements do not exist.

The Bill aims to eliminate delays in appointing board members to these entities and thus improving service delivery. The study group regards the Bill as very straightforward but necessary.

ANC Whip is produced by the Media & Communications and Research Units in the Office of the Chief Whip. Tel: 021 403 2551