

**A FUTURE IN DISPUTE:
Political perspectives on South Africa's
provincial system**

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A Future in Dispute: Political Perspectives on South Africa's Provincial
System

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A Future in Dispute: Political Perspectives on South Africa's Provincial System

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1. INTRODUCTION

The system of provincial government in South Africa is once again a subject of controversy, as has been the case for the past decade. However, much of the controversy now focuses not only on whether or not the system is relevant for South Africa, but also on whether or not the country should reduce the number of its provinces. That suggests that there is a strong sentiment for the system to be retained, while in recent years debates were predominantly about as a stark choice between retaining the system and abolishing it.

In previous debates, particularly in the early years of the system's inception, the debates and controversies were fuelled more by the political ideologies and abstract ideals of the key protagonists during the country's founding multiparty constitutional negotiations prior to 1994, than by experience and the practical imperatives of governance. This time around it would be naive not to expect that the 13 years of practical experience in government and the accumulated dose of pragmatism would prevail; a significant number of politicians at provincial level have developed a significant stake, not only in the retention of the system, but also in finding solutions to the problems that have been identified.

While the disputes about the nature and future of South Africa's system of provincial government are a constant feature of public debates, these disputes often assumed a more intensive publicity and potency at certain times in the country's political life. Such times include the periods before national elections, or during major system/structural reform initiatives, such as the reform of local

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government that was carried out between 1999 and 2000.¹ The current round of debates follows in the wake of a policy review process undertaken by the government through the Department of Provincial and Local Government (DPLG),² as well as recent widespread media reports³ that some opposition parties suspect the ruling African National Congress (ANC) of seeking to abolish the provinces or re-draw the boundaries; in provinces such as Western Cape, this could enhance the ruling party's chances of an electoral victory in the upcoming 2009 general elections. The highly publicised interventions by two national cabinet ministers, Ministers of Finance and Minister of Defence, Trevor Manuel and Mosioua Lekota, in 2007 about reviewing the powers and number of the provinces stoked the debates even further.

This study examines this renewed debate mainly, but not exclusively, from the perspectives of the major political parties in the country. It seeks to understand what views and ideas these parties hold in the wake of the renewed vigour in South Africa's perennial debate about its provincial system of government and the problems that affect its functioning. Perceptions and current thinking within political leaderships, particularly in the ruling party, are critical given the important role that they will have to play should the future of the system of government in South Africa need to be decided formally. In addition, the policy review process currently undertaken by the DPLG has added an important element, in that on the face of it, it seems to

¹. See a series of articles hosted by *Sowetan*, with a number of provincial premiers contributing articles on the provincial system of government in South Africa after the local government reforms/restructuring between 1999 and 2000. Also see Caroline Kihato & Thabo Rapoo (2001). A future for the provinces? CPS Policy Brief #23 (Provincial Government Series)

². RSA (2007). Policy process on the system of provincial & local government (background: policy questions, process and participation).

³. See *Sunday Times*, 15 June 2008: Possible changes to provincial government set for Cabinet debate and SABC News, 5 August 2008: Fewer provinces on the cards for SA.

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suggest a serious intention to introduce changes to the current system of government.

2. METHODOLOGY/RESEARCH APPROACH

This study therefore aimed to examine and gain in-depth insights into the views and current thinking of the major political parties in the current debates about the country's provincial system of government. Many of these parties have expressed dissatisfaction about the provinces, specifically in terms of their functioning and capacity as administrative agencies responsible for delivering basic social services to citizens.

The interviews were conducted over a three-month period (from June to August 2008). In selecting respondents, the research team approached the most senior leaders of these parties – in many cases party presidents, deputies, party chairs, spokespersons and other high-level leaders were approached – with requests for interviews. The assumption here is that senior party leaders would be best placed to speak authoritatively on behalf of their political organisations and members on official party positions on the issues concerned. A total of seven major political parties, particularly those with representation in the National Assembly, were selected for interviews.⁴ These were the ANC, Democratic Alliance (DA), Inkatha Freedom Party (IFP), United Democratic Movement (UDM), Independent Democrats (ID), Freedom Front Plus (FF+) and the Pan Africanist Congress (PAC).

When identifying the respondents, the research team had decided on at least three individuals from each party to maintain numerical balance. However, this was extremely difficult to achieve, because much depended on the availability of the respondents identified, and their willingness or otherwise to be interviewed. In the

⁴ Due to limited funds and time constraints, not all the parties represented in the national parliament were included.

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majority of cases the research team was able to interview only two respondents from each party, with the exception of the DA, UDM and IFP with three each. Emphasis was placed on senior party leaders at Head Office, ie leaders in the different leadership structures of the parties. Also included were members of the National Assembly and members of Provincial Legislatures. In those cases where the research team was unable to secure appointments for interviews with senior national party leaders in these structures, attempts were made to approach senior individuals in other capacities who were considered to have sufficient knowledge and authority to articulate their party's relevant policies and thinking. The senior national leaderships of six opposition parties were interviewed. The research team was unable to interview anyone from the national leadership structures of the ruling party after repeated and unsuccessful attempts to secure appointments.

All the participants were asked the same broad sets of questions in free-flowing and open-ended interviews. The three broad categories of questions addressed the following themes:

- the attitudes (ie political support or lack thereof) towards the current provincial system
- problems with the current provincial system
- solutions to the problems
- an appropriate formal process/approach for reviewing the provincial system.

In addition to the interviews of political leaders, an interview was conducted with one senior official from the DPLG.⁵ In total therefore, 18 respondents were interviewed.

In analysing and reporting on the findings of this study, the research team has endeavoured to reflect the broad perspectives, views and opinions expressed by the respondents on behalf of their parties as honestly and accurately as possible. In many instances,

⁵ Derek Powell, Deputy Director-General for Governance, Policy & Research.

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direct quotes are used. However, where the research team felt that statements and views were made in a personal capacity, and thus confidentially, the report will not directly attribute statements to specific individuals. Apart from the confidentiality aspect, this approach will also focus attention away from the individuals and onto the issues.

The rest of the report will provide the findings, analyse them, and draw conclusions.

3. RESEARCH FINDINGS

Key individuals were asked to articulate the official positions of their political parties relating to the four categories of questions. It was hoped that this research work would generate insights into present official positions and orientations relating to the current system of provincial government, particularly its political and administrative importance and its effectiveness and efficiency.

This section reports on the findings of these in-depth interviews and explores some of the key aspects of current thought and perspectives from seven of the major political parties in the country according to the individuals interviewed.

3.1. Assessing political commitment to the provinces

One of the key issues is the level of political commitment to the principle of provincial government in South Africa. The assumption here is that the extent to which the provincial system of government in South Africa, as is the case in other countries, enjoys political support among the major political party leadership is a key indicator of the willingness of the political elite to retain and strengthen these entities as a feature of the country's system of government. In other

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words, such political commitment and support will indicate that the political leadership of this country broadly sees value in the continued existence of the system rather than its abolition. That would suggest that any changes or reforms likely to be introduced to the system are likely to be of an incremental nature. On the other hand, the lack of support and commitment among most of the major political parties could spell the end of it or a lack of willingness to defend its existence. Politically, that would clear the way for their eventual abolition through appropriate legal processes and constitutional amendments.

In the following subsections, the respondents were asked to state their views on how important they regarded the current system of provincial government for the country in general, but also for their political parties in particular. Based on the response obtained, three perspectives were identified: the service delivery perspective, democratic political perspective, and the perspective that the provinces were unnecessary.

3.1.1. The service delivery perspective

By far the most common view on the importance of the provincial system of government in South Africa focused on their role as administrative entities fulfilling a service delivery function within the country's political system. Virtually every one of the respondents who advanced this view did not regard central government as appropriate for the role, although local government was almost invariably mentioned – together with the provinces – whenever the function of service delivery was referred to. All the respondents perceived provinces in a functionalist perspective, portraying them predominantly in terms of their administrative and service delivery responsibilities. As will be shown, even those who were extremely critical of the provinces in general, focused their remarks on

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ineffectiveness in terms of the service delivery function, and nothing else.

Clearly the premise underlying this view is that the central government and its ministries are also not best placed to deliver basic social services directly to communities. Most of the respondents seemed to imply that the provinces are more able, even where it comes to co-ordinating and overseeing local municipalities in the function of service delivery. The implicit suggestion from these respondents was that central government was best placed to set overall legislative and policy frameworks for the two subnational spheres.

There was a strong view that the national government needs to provide financial assistance, technical support, and administrative capacity-building for the provinces to deliver services directly to local communities where they are competent to do so, or deliver services in collaboration with municipalities. There is thus a clear understanding and acknowledgement of a lack of administrative capacity, not only in many provinces but also in many municipalities. Nevertheless, there was a strong belief that the provinces would be best placed to continue delivering services to communities.

This idea of provincial governments continuing to play a service delivery role as well as co-ordinating and overseeing the work of local governments was fairly widespread among all the respondents, even those from the ruling ANC. It was usually tied to the premise that many local authorities lacked the necessary institutional capacity to fulfil this function on their own, and that the service delivery role of central government would be inappropriate. For instance Patricia de Lille, President of the ID, stressed that “there is no way that we can achieve effective service delivery from a centralised point only. We

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need to decentralise the powers and increase accountability.”⁶ She added that the provinces were in the best position to play “an intermediary role” and “oversight of local government for effective implementation of service delivery”.

Pieter Groenewald of the FF+ supported the idea of the provinces fulfilling the function of ‘oversight’, contending that due to the large number of municipalities in South Africa, the country needs “the provincial level [in] co-ordinating the different municipalities”.⁷ Again the clear implication is that the central government would not be able to effectively oversee and co-ordinate the work of all the 283 municipalities throughout the country. Groenewald added that each municipality on its own is too narrow in terms of its functional scope and strategic planning focus, and believes that the provinces are best able to provide the co-ordinating, oversight and strategic planning function at an intermediate/regional level. Patricia De Lille of the ID was particularly emphatic here, adding that “it is not the provinces alone that are responsible for service delivery – it is also the local government.” The implication is that the service delivery problems and constraints that communities suffer cannot entirely be blamed on the inadequacies of the provincial system of government.

The respondents from the ruling ANC also seemed to endorse strongly the view that the provinces are indispensable in terms of service delivery. The issue raised by the two respondents from the ruling party was that the provinces have become crucial in the context of continuing institutional and administrative capacity weaknesses and constraints across many municipalities, especially in the poorer provinces. Speaker of the Gauteng legislature, Richard Mdakane, argued that the capacity of local government to deliver services is still

⁶. Interview, 25/06/2008

⁷. Interview, 25/06/2008

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weak, suggesting that they will continue to rely on provincial support to fulfil this function for the foreseeable future. The DA's Parliamentary Leader, Sandra Botha, echoed the same view that "in as much as I very much believe that local government is hugely important where delivery is closest [to the people], I think the closer you are to the provinces the better likely you are to address their needs."⁸

The idea of provinces fulfilling these roles was referred to on a number of occasions by some of respondents who expressed views on service delivery. Although respondents were not probed further on this matter, it could be reasonably be surmised that many respondents put this idea forward as an alternative or residual role for the provinces, expecting that future reforms would lead to municipalities becoming the primary service delivery entities in the country.

Assuming that the provinces stay the same structurally, from a technical and technocratic point of view, 'co-ordination' and 'oversight' would imply mere administrative and managerial functions, consistent with enforcing the monitoring and accountability of municipalities towards the provincial government at an executive level (ie horizontal accountability). In this context, it would imply that 'co-ordination' and 'oversight' through the provinces means a narrow technocratic exercise, entailing a stronger role for the provincial executives than the legislatures. However, this is highly unlikely given that all of the respondents were politicians. Much more plausible therefore is the idea of 'co-ordination' and 'oversight' that incorporates both the technocratic/managerial functions fulfilled by the provincial executive, but privileging the function of political oversight over municipalities to ensure their political accountability for service delivery to citizens through the provincial legislature (ie

⁸. Interview, 25/06/2008

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vertical accountability). Here, aspects of the service delivery perspective obviously shade into the second perspective discussed in the next subsection.

3.1.2. The democratic political perspective

The second common perspective on the importance of the provinces in South Africa is that they play a democratic political role. Simply stated, this view arises because the provinces are elected and constitutionally entrenched democratic entities, with a full range of legislative and executive powers; they perform a political role of representing citizens within their areas of jurisdiction.

Many of the views emphasised the political role of the provinces as governments above their role as technocratic and administrative agencies managing policy implementation and service delivery. While there was broad consensus on this perspective from several respondents from the opposition and ruling parties, there were also important differences, which will be discussed below. Some of the opposition parties supporting this view, particularly the ID, FF+ and DA, placed more emphasis on the fact that the provinces were political entities resulting from the historic political settlement reached at the multiparty constitutional negotiations in the early 1990s, implying that this historic constitutional settlement should be respected and treated as sacred.

For instance, Patricia de Lille of the ID pointed out that the provinces were the outcome of a negotiated deal and a “compromise position between those who argued for a unitary state and those who argued for a federal state”. She added that other parties supported the deal as it helped forge a political consensus that gave the IFP a stake in the constitutional settlement. The DA's Jack Bloom stressed this point, implying the sanctity of the constitutional settlement, by saying

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“... it was part of the deal in 1994; we need to stick to that deal, because else you'll open the way for all other sorts of problems.” Bloom's colleague and the DA's Parliamentary Leader, Sandra Botha, emphasised that the federal principle has shaped the structure of her party as a federalised organisation, which explains the party's support for the current system of provincial government. However, like the FF+, the DA seemed to emphasise the country's geographic, regional, cultural, social and other differences, and the importance of the provinces in giving political expression to this diversity. Botha argues, for instance, that in an 'ideal' provincial system of government “you would have different views reflected ... in the national government”.

Implicit in the view of the provinces as important democratic political entities is the idea of decentralising political power from the national government to the provinces. Many of the respondents seemed willing to support the idea of greater powers for the provinces, although the respondents from the ANC were much more circumscribed in terms of the type of powers, the extent to which they would prefer to see power decentralised, and the purpose for which this would be done. For instance, while IFP President Mangosuthu Buthelezi called for greater autonomy for the provinces in legislative matters such as safety and security, Gauteng MEC for Safety and Community Liaison, Firoz Cachalia, placed more emphasis on greater responsibilities for the provinces to exercise current powers and functions with better intergovernmental co-ordination across the three spheres, particularly by strengthening the current intergovernmental relations structures.⁹

The idea of diversity was articulated by many respondents from the opposition parties, particularly the predominantly white political parties and the IFP. Many of them believe that the provinces serve as

⁹. Interview: 18/08/2008

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important political platforms for reflecting and articulating these differences (social, cultural, linguistic) within national policy-making processes. Respondents from the FF+ referred to the physical size of the country, and the ethnic, cultural, racial and other differences that characterise it were an important reason for the provinces to exist as political entities. For instance, Corné Mulder of the FF+ believed strongly that each region of the country, roughly reflected by the nine provinces, provided a mirror of the country's major ethnic and language groups. He added "if you peek at STATS SA's statistics, then you see the overwhelming domination of the Zulu language KwaZulu-Natal, North West is very much Tswana, the Eastern Cape is very much Xhosa, Gauteng is mixed, and Western Cape is strongly dominated by Afrikaners."

The IFP respondents proposed a fairly extreme version of this view of the political importance of the provincial system of government in South Africa. Party President, Mangosuthu Buthelezi, articulated the party's longstanding position that the provinces "are of extraordinary importance in our system of government" and that in terms of the country's Constitution, they were "meant to be centres of policy formulation where legislation is autonomously formulated in the matters of provincial competence".¹⁰ In his 'weekly newsletter to the nation' in March 2007, Buthelezi states "my party and I have always maintained that South Africa, like Australia, Canada, Nigeria and the United States..., is simply too large and diverse a country to be administered as a unitary state."¹¹ The party's Deputy Chair, Thembi Nzuza, went further and argued that in a purely federal system the provinces should be autonomous, "competing with each other and

¹⁰. Interview: 25/06/2008

¹¹. IFP, Media statement, 29th March 2007, Mangosuthu Buthelezi's weekly newsletter to the nNation?

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attracting investment on their own” and that “in this country [the system] is half-baked”.¹²

For one respondent from the ANC, more emphasis should be placed on the role of the provinces as political agents driving political transformation and nation building. For instance, Richard Mdakane believes that the political leadership in the provinces, not the national political leadership, has played a stabilising role in the past few years, especially during the periods of protest against poor or collapsing service delivery on the ground. He argued, “in my view even on the service delivery problems experienced, particularly the collapse of services ... if we did not have political leadership in the provinces we were going to be worse off because the capacity of local governments [to deal with the political crisis of service delivery at local level] is really questionable”.¹³

It is clear therefore that the provinces' political role assumes an important status for the ANC in terms of mediating social conflict in the regions, particularly in the context of an obvious political leadership vacuum left by weak local government structures; this became evident during the widespread protests about lack of service delivery.

Besides, the idea of the provinces serving as instruments of political socialisation and leadership skills development for future national political leaders was explicitly articulated by the ANC. The implication here seems to be that if the task of nation building is to be carried out effectively, it needs to be defined at national political leadership level, but implemented and co-ordinated at regional/provincial level by regional political leaders in the provinces. This view needs to be understood within the broader paradigm of the

¹². Interview, 08/07/2008

¹³. Interview, 19/08/2008

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ANC that seeks to overcome what the party has always seen as the politically divisive legacy of apartheid – racial, ethnic, and geographic segregation – and therefore sees the provinces playing a critical role in this process. For some of the opposition parties, particularly the predominantly white political parties and the IFP, it would appear that the provinces fit within a political paradigm that seeks to emphasise and celebrate these differences and elevates them to the level of political action. On the other hand, the other predominantly black opposition parties took a more extreme stance than the ANC respondents, preferring the national government to be the central political agency and leaving no role for the provinces.

3.1.3. *'Provinces are unnecessary' perspective*

Only two political parties, the PAC¹⁴ and the UDM, emphatically supported the proposition that the provincial system of government is an unnecessary extra layer of government that the country does not need and should therefore be abolished. The respondents from both the UDM and the PAC held the view that the provincial system of government came about as a strategic ploy to keep the IFP on board during the constitutional negotiations of the early 1990s. For instance, PAC President, Letlapa Mphahlele, argued, “from the PAC’s point of view the provinces are not important,” adding that they were “more of a compromise than a necessity” and that the “the three-tier government actually is not useful – you don’t know whose responsibility it is to deliver.”¹⁵ The party’s national spokesperson, Mudini Maivha, added “the government structure should be informed

¹⁴. The PAC has recently split into two factions –one aligned to Thami ka Plaatjie and the other to Letlapa Mphahlele – although both are denying the existence of these factions. The researchers assumed that this split did not affect the party’s position on the issues raised and examined in this study.

¹⁵. Interview, 09/06/2008

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by the principle of a unitary state.”¹⁶ Maivah argues that the PAC's position “goes deeper than simply being opposed to federalism”. He states that the party's opposition to the provinces relates to lack of resources, adding “we have duplication of expenditure of resources. We have ten governments in one country.” The PAC is one of the few political parties that look at that the provincial system of government from a financial cost point of view, believing that the system is too costly, and even putting forward an estimated figure of R100 million that Mr Maivha believes the country loses each year through wasteful spending and rampant corruption in the provinces.

The UDM also referred to the issue of costs, with one of its respondents saying “we must do away with the provinces. The provinces are costing the government a lot of money. You are paying millions in salaries...but service delivery is weak.”¹⁷

Similarly, the UDM seemed to regard the provinces as a second-best option that was taken to reach a political compromise at the Kempton Park Constitutional negotiations in the early 1990s. The party believes that the utility of the system was merely to help the country during the constitutional talks in order to minimise the risk of alienating the IFP during a critical moment of the Constitutional talks. For example, when asked what the importance of the provincial system of government was to his party or the country, UDM President Holomisa stated simply, “to be honest with you, I don't think we need them, they are not important.”¹⁸ He also invoked the notion of compromise, the result of political “compromise ... in order to accommodate the IFP”. UDM Chief Whip, George Madikiza, echoed his party president's view that “the provinces came about as a

¹⁶. Interview, 23/06/2008

¹⁷. Interview, Mr. Mhlaba, Leader of the UDM, Eastern Cape Legislature, 04/07/2008

¹⁸. Interview, 23/06/2008

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compromise at the CODESA¹⁹ negotiations where the majority of South Africans were for a unitary state.”²⁰

It became clear, particularly during the interviews with the respondents from the UDM and the PAC, that for these two parties the fact that the system resulted from a political compromise is regarded as a less than honourable outcome, and more of an obstacle. It would appear that if the consensus forged during the constitutional negotiations was reached to appease the IFP, the clear sentiment now is that it is no longer necessary because the IFP is perceived as a spent force, and the country no longer needs to pursue and maintain this political consensus. In other words, these parties seem to believe it is preferable to return to the polarised political stance of the pre-negotiations era. This sentiment was evident in this statement by one of the UDM respondents: “it was done to please the IFP and Chief Buthelezi ...but [the government] can see now that they have neutralised the power of the IFP so that now they do away with the provinces.”²¹ These sentiments are clearly in contrast to the dominant consensus among many of the respondents from the other opposition parties, including the ANC. For these, while acknowledging that the political compromise resulted in a less than ideal outcome for some parties, the dominant sentiment seemed to be that the system continues to fulfil important political and administrative functions within the country's system of government.

3.2. *Perceived problems with the provinces*

This subsection reports on the views and perceptions of the respondents on the problems with the current system of provincial government. This question was put to our respondents to try and

¹⁹. Convention for a Democratic South Africa (CODESA)

²⁰. Interview, 23/06/2008

²¹. Direct attribution of this statement has been omitted

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understand the different parties' perceptions about what, in some instances, prevents the provinces as governments from performing their functions. Based on the views expressed by all the respondents, four distinct problems were identified:

- resource waste, duplication and role definition problems
- poor, politically driven public service recruitment practices
- reinforcing the legacy of fragmentation
- poor provincial legislative output.

3.2.1. *Resource waste, duplication and role definition problems*

Only the PAC emphasised the view that provinces duplicated functions already performed by the national government. Party President Letlapa Mphahlele approached this from an economic costs perspective, questioning the rationale of having 10 ministers responsible for the same ministry. He asked, "... do we have the resources to foot the bill for the 10 ministers of education, when one would do ... because it's a duplication of responsibility."²² Similarly, echoing his president's view, PAC's national spokesperson, Mudini Maivha, argued that "It is a resources issue, because we have one national government and nine provincial governments. It means we duplicate the costs of running this country."²³

Embedded in the PAC's view is the notion that the duplication of responsibilities between national and provincial governments has high cost implications for the entire country. That is why the PAC views the provincial system of government as a waste of resources. The cost implications idea was underscored by the ID's Patricia de Lille, who emphasised the issue of administrative inefficiency, arguing, "you find that a premier will have a diary secretary, an administration secretary, security for a little fiefdom that they [have] built."²⁴

²². Interview, 09/06/2008

²³. Interview, 23/06/2008

²⁴. Interview, 25/06/2008

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Similarly, Pieter Groenewald of the FF + argued that the provinces are expensive to run at the moment, but believes that this has to do with the fact that “they have limited powers”, implying that they are prevented from exercising the full extent of their constitutional powers.²⁵

However, the view that provinces are a waste of resources was refuted by the ruling party. For instance Richard Mdakane, Speaker of the Gauteng Provincial Legislature and member of the ANC, noted that it was imperative to use all the available resources at the provincial level in order to strengthen democracy. He cautioned “... we should not move from the premise that it is very expensive to maintain provinces. We all agree that the democratic process is the preferred system of governance that is not perfect ... therefore it is important to use resources that are available to ensure that the project of nation building is achieved.”²⁶

The government's view of the problem affecting the provincial system emphasises role definition and the clarification of function. In its policy review document, the DPLG identifies these two specific points. Firstly, the document points to the lack of “a definite policy on provincial government” which has created “uncertainty about the role of this sphere in reconstruction and development”.²⁷ In an interview with a senior official from the DPLG, the issue of functionality was underlined thus: “it is a fact when it comes to the functionality of the provincial system, the issue of its role relative to local government ... had been a point of controversy.”²⁸ Secondly, the document argues that when the provinces were created, the constitution “did not specify distinct objects for provincial government within the overall system”.²⁹ This goes further than mere lack of role clarification. It means that the

²⁵ Interview, 05/06/2008

²⁶ Interview, 19/08/2008

²⁷ RSA (2007), Policy process on the system of provincial & local government: background: policy questions, process & participation', p. 6.

²⁸ Telephone interview (Derek Powell, DPLG), 01/08/2008

²⁹ RSA (2007), Op. cit., p.4

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provincial governments do not have a clearly defined purpose, which presumably explains their perceived ineffectiveness.

3.2.2. Poor, politically driven recruitment practices

The majority of opposition parties expressed the view that the ruling party has turned provinces into sources of patronage, where appointments to the high levels of the public service are made predominantly on political grounds rather than merit, qualifications, competence, and expertise. This, they argued, had a negative impact on the performance of the provincial public services in terms of effective service delivery. The thread running through the argument advanced by these parties is that the ANC 'deploys' unskilled and unqualified people to senior management positions in the provincial public services, thus debilitating the capacity of the public service at provincial level in terms of effective strategic planning, policy development and implementation, as well as undermining proper financial management practices and controls.

George Madikiza, UDM's Chief Whip, drew an unflattering image of the provincial public service, which he attributed this directly to what he believes are the deleterious effects that the ruling party's deployment of its cadres to the public service has on service delivery. He goes on to argue, "If a particular director general (DG) underperforms there is reluctance on the part of the political leader to chop that DG out ... I am sure this revolves around this partisanship. Because you'd find more often than not the DG ... might be, in the party structures, senior to the very executive member that should be overseeing him."³⁰ The leader of the UDM in the Eastern Cape Province, Maxwell Mhlaba, concurred with this view, arguing that "the government has mixed politics and administration. They deploy people who are politicians to administration."³¹ Mhlaba contended that because of this, "you don't have proper civil servants, you have political deployees". He drew the conclusion that "those people have

³⁰. Interview, 23/06/2008.

³¹. Telephone interview, 04/07/ 2008

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been put in administration not because of their merits, of their expertise, but because of their political affiliations ... and you can't dismiss them because they are political deployees."³²

Other political parties that agreed with this view are the ID, PAC and DA. Mahomed Kloote, leader of the ID in the Northern Cape, stated that "we've got a lot of problems with the issue of ... the appointment of people who are not actually capable of performing their duties."³³ PAC President, Letlapa Mphahlele, added, "I think the provinces to a large extent had become areas where the ruling [party] deployed their cadres irrespective of competence or effectiveness."³⁴ DA Parliamentary leader, Sandra Botha, added a different angle, suggesting that the appointment of provincial premiers was also problematic in terms of undermining the effective performance of the provinces: "you have the [political] appointees ... appointed by the president, instead of being elected by their provinces. And the moment that happens you find more interest is placed in serving ... the person who put them in power."³⁵ It is possible that the recent dismissals by the ruling party of its own premiers in the Eastern and Western Cape, and demands for the dismissal of others, such as Premier Sello Moloto in Limpopo, have unintentionally endorsed or given credence to those who advanced this view, possibly even within the ruling party itself.

In general therefore, there was a strong perception among many of the respondents that the 'deployment' by the ruling party of unskilled and unqualified personnel to the provinces has hampered the effective performance of the public services in the implementation of public policies and the efficient delivery of basic social services.

3.2.3. Provinces reinforce legacy of fragmentation

³². Ibid.

³³. Telephone Interview, 25 July 2008

³⁴. Interview, 09/06/2008

³⁵. Interview, 25/06/2008

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Only two parties, the UDM and the PAC, insisted that the creation and existence of the provincial system reinforces the apartheid-era ethnic fragmentation. UDM president, General Bantu Holomisa, was forthright though, saying that “the difference between the [old homeland system] and the provincial system of government is that the latter is a glorified homeland system... and it also tends to promote or reinforce ethnic tendencies.”³⁶ To substantiate his view he posed the question: “can you be a premier, for instance, in the Eastern Cape if you are from Limpopo? Can you be a premier in the Western Cape if you are from Gauteng?”³⁷

PAC President, Letlapa Mphahlele, adopted a slightly different stance, insisting that there has been an erosion of the country's national identity, “... saying I'm a Zulu, it is saying I'm from KZN [KwaZulu Natal], and saying I'm a Xhosa, it is saying I'm from the Eastern Cape. So all in all, in a very subtle way, our national identity and our unity as one nation, I think, is not done great justice because there are those relics of the past whereby, consciously or unconsciously, people still feel that they have to be loyal to their regions.”³⁸ Clearly, General Bantu Holomisa and Letlapa Mphahlele are implying that the provincial system of government is distorting the country's national identity and therefore that it creates a strong, parochial provincialism within the regions, which has a negative impact on the project of nation building. This view might have strong resonance within the ruling ANC, a section of which seems to support the view that the emergence of a strong provincialism within parts of the country is a potential threat to achieving the twin goals of nation building and national unity.³⁹

As indicated earlier, for the IFP and FF+ this view was turned on its head. Instead of the provincial system being seen as

³⁶. Interview, 23/06/2008

³⁷. Interview, 23/06/2008

³⁸. Interview, 09/06/2008

³⁹. This view was articulated by some members of the party especially in the wake of the Khutsong and Matatiele community protests against the re-demarcation of provincial boundaries, leading to these communities being incorporated into different provinces.

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problematic in the way it elevates ethnic and other differences to political significance, the IFP and FF+ believed it is proper and necessary that the provincial system of government accommodates and reflects the country's social, cultural and linguistic diversity.

3.2.4. Poor provincial legislative output

Virtually all respondents acknowledged the fact that the provinces were not passing significant amount of legislation, and that this was a declining proportion of their outputs over the past decade. Two key explanations were put forward during this study. The first relates to technical capacity and technical constraints, where the low rate of legislative output was attributed to a lack of necessary legal, law-making and bill-drafting skills at provincial level. The second explanation relates to party politics and problems of role definition. It suggests that the low legislative output is due to the fact that the majority of provinces are being led by the ruling party, which is believed to render them more deferential towards national legislative processes as they seek to avoid confrontation.

A variant of the second explanation is that provinces have ceded or deferred their law-making responsibilities to the national government. It would appear that persistent uncertainty over the application in practice of the concurrency functions as contained in the Constitution has become a key structural constraint for the system. This derives from the fact that many of the key areas in which the provinces enjoy legislative competence are shared with the national sphere through Schedule 4. Given the uncertainty about when and how the provinces can utilise these concurrent legislative responsibilities, a pragmatic solution of sorts has emerged over the years, whereby a virtual division of labour developed between the two spheres. In terms of this division of labour, the national level had focused attention on the development of national policy and legislative frameworks, while the provinces focused attention primarily on policy implementation and service delivery. This had become an accepted status quo.

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After the 2004 elections, many politicians at national and provincial level had accepted that the era of passing large volumes of legislation aimed at transforming the country structurally, politically, socially and economically, had come to an end, and that from 2004 onwards the country entered a period of accelerated policy and legislative implementation. It was presumed that the provinces and local government would become increasingly central to service delivery processes in the post-2004 era, with the provinces also increasingly focusing on ensuring oversight, support, and monitoring of municipalities in their areas of jurisdiction, and less involved in direct initiation of legislation.⁴⁰ It was also taken for granted that centralising the law-making function at national level would ensure the direct involvement of the subordinate spheres of government through intergovernmental processes articulated by the National Council of Provinces (NCOP), particularly in refining and/or amending the existing large body of post-apartheid transformative legislation.

However, the interviews conducted for this study have revealed a growing sense of disaffection with the pragmatic division of labour between the two spheres of government, particularly where it concerns concurrency functions. Even the DPLG has accepted that the area of concurrency functions is particularly problematic, and that the department is still in the process of trying to understand how concurrency works in practice.⁴¹ The view expressed by IFP President Mangosuthu Buthelezi encapsulates this disaffection: “the provinces have failed abysmally to perform the functions which the Constitution entrusted to them. All the legislation in matters of provincial autonomy has effectively been passed by the national level of Government.”⁴² He added – clearly invoking the party politics and role definition explanation – that the “provinces ... remain enormously important but they have been emasculated of their legislative and

⁴⁰. See a speech by Trevor Fowler (former Gauteng MEC for Local Government), The role of the provinces in the context of the newly transformed system of municipal government in South Africa, 14/06/2001

⁴¹. Telephone interview, 01/08/2008

⁴². Interview, 25/06/2008

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policy formulation responsibilities, which makes the provincial legislatures somehow redundant".⁴³

The two explanations start from the premise that the provinces do have the necessary constitutional competency to formulate legislation in their areas of jurisdiction, but that they have been unable to utilise these powers. For instance ID President, Patricia de Lille, clearly emphasised this right of provinces to make legislation, "... the provincial structures are hardly making any laws... They have the competency in terms of the Constitution to make laws but it is very seldom done."⁴⁴ Willem Doman, DA Member of Parliament and spokesperson on local government, also expressed disappointment at the fact that the provinces 'don't legislate enough', and decries them for not passing their own education bill and for operating 'on the national one'.⁴⁵ When probed to provide the reasons, Doman invoked the party politics explanation, "Because [the provinces] are ANC-oriented, they feel we have to take the key from national."⁴⁶ UDM's General Bantu Holomisa invokes the technical/capacity constraints argument, stating that "either they don't have the capacity, or there is nothing to amend ..."⁴⁷

UDM's Eastern Cape leader, Maxwell Mhlaba, also refers to capacity constraints, saying that the provinces have no skilled personnel to draft laws. Like ID President, Patricia de Lille, Gauteng MEC Firoz Cachalia also argued that there was "... scope in the current system ... to pass legislation [but] that this scope has not been utilised."⁴⁸ He also put forward a technical capacity constraints explanation for the low provincial legislative output, arguing that "we do not have skills and drafters in the system ... legislative drafting is a skill."⁴⁹ UDM's Maxwell Mhlaba reinforced this point, using the Eastern Cape legislature to illustrate the capacity constraints issues: "The

⁴³. Ibid

⁴⁴. Interview, 25/06/2008

⁴⁵. Telephone interview, 18/06/2008

⁴⁶. Ibid.

⁴⁷. Interview, 23/06/2008

⁴⁸. Interview, 18/08/2008

⁴⁹. Ibid

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Eastern Cape has no legal drafters. We were dealing with the legislation for traditional leaders; we had to call Mr Titus from Pretoria and ask him to come down to the Eastern Cape to draft the bill for traditional leaders ..."⁵⁰

Embedded in the views of many respondents, particularly those from opposition parties, is the implication that the low output levels of provincial legislation is a key constraint in the ability of the provinces to deliver services effectively. Presumably, legislation would be necessary to provide an enabling framework for effective service delivery. Another indirect implication of this argument is that the laws passed by the national government do not necessarily align with the circumstances of the different provinces because the latter have different socio-economic and developmental needs. It follows logically therefore that most of the respondents argued for greater freedom for the provinces to pass their own legislation to deal with their socio-economic, developmental and service delivery challenges.

3.3. Preferred remedies

This subsection reports on the views and perceptions of the different political parties on how to deal with the various challenges (or problems) identified earlier. The researchers believe that implied in these solutions are the policy options and preferences of the different political parties, however undeveloped, on what the future of South Africa's provincial system should be. Skimming through the responses offered by the respondents during the interviews, two clear views can be identified, which clearly imply that the current system cannot be left untouched. The key issue then becomes the nature and extent of what needs to be done to the system.

One extreme but seemingly straightforward view was for the current provincial system of government to be abolished. The second, more dominant and complex, view is in favour of retaining the system. At first glance the two views appear to be in stark contrast, but, as will

⁵⁰. Interview, 04/07/2008

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be shown later in this section, a closer analysis seems to suggest some areas of convergence in terms of the preferred remedy for the system. Such convergence seems to work out in favour of the option that seeks to retain the system.

3.3.1. The 'abolitionist' and 'unitarist' path to the future

Only two political parties, the PAC and the UDM, strongly advocated the principle of abolishing the current provincial system of government in South Africa as a preferred first-level option. This is partly on the grounds that it was no longer politically important, but also that it was a waste of resources and a structural duplication of the national sphere. Both parties believe South Africa is essentially a unitary historic entity that was fragmented by the legacy of apartheid rule, and that the provinces are rekindling these apartheid-era fragmentations. They hold the view that the country should revert to a unitary system of government. As indicated, this is a first-level preference for these two parties in order to achieve a long term goal of a unitary state. However, the two parties are aware of the complex constitutional, political and practical issues that have to be dealt with in terms of this option, and some of the possible political consequences for the parties themselves. They are therefore willing to adopt a more pragmatic, second-level preference which supports the idea of reforming the system. However, the nature of the reform contemplated here is far more thorough, and calls for a fundamental reconfiguration of the system, both in terms of its structure and its functions. This calls for a scaled-down restructuring of the provincial system in the short to medium term, reducing them in number and turning them into mere administrative instruments of national government policy. It is clear that this serves as a halfway measure towards the first-level option of eventually abolishing the system.

Letlapa Mphahlele of the PAC expressed support for this second-level, pragmatic option, "the PAC's position [seeks] to do away with the provinces. But we are aware that may be wishful thinking ... we would support those who want to reform." Explaining what he meant by reform, Mphahlele added, "reform in this case may even

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mean a return to the old system of ... the four provinces, or even if they [have] two provinces, the coastal and the hinterland".⁵¹ Echoing this view, Mudini Maivha, PAC's national spokesperson, said, "we are of the view that let's go back to administrative forms of provinces or provincial structures. It should not be a problem to consider reverting to what this country [once] had: the Transvaal, Orange Free State, Cape Colony, and Natal."⁵² The PAC's view is that the reduced number of provinces would be turned into administrative entities, focusing solely on the provision of services; this would help reduce costs and corruption. For instance, Letlapa Mphahlele thinks "we are going to gain because a lot of budget is going to be shared, and even corruption will be given a very small space to manoeuvre."⁵³

The UDM also supports the abolitionist option but is realistic enough to acknowledge the possible disruptions this might cause, and therefore supports the idea of reform, with particular emphasis on turning the provinces into administrative structures, concentrating attention primarily on service delivery. George Madikiza, UDM's Chief Whip, said that "the obvious way would be to dismantle the provincial system of government altogether, both in the administration and the legislative capacity. But one is afraid of a great leap and ... a vacuum [this might leave]."⁵⁴ The UDM is also opting for the reduction in the number of provinces to four. In terms of reforming the functions of the provinces, like the PAC the UDM envisages provincial entities shorn of their current democratic political and legislative encumbrances, but vested with technical oversight and accountability functions. For Bantu Holomisa, administrators are important because "their worry is to look at delivery, improve service delivery to the people of the provinces".⁵⁵

Implicit in these arguments therefore is the premise that the problematic element of the current provincial system is the elective

⁵¹. Interview, 09/06/2008

⁵². Interview, 23/06/2008

⁵³. Interview, 09/06/2008

⁵⁴. Interview, 23/06/2008

⁵⁵. Interview, 23/06/2008

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political components of the provincial system. Flowing from this are two key assumptions: firstly, that once the elected political component of the system has been eschewed, the problems of poor service delivery and corruption at provincial level would be eliminated. The second key assumption was that a reduction in the number of the provinces and turning them into administrative entities for service delivery would make them more effective and efficient. It is not clear whether fewer provinces are equated with fewer responsibilities, and therefore fewer and more efficient administrative structures. This position also assumes that South Africa is currently not a unitary state, which it clearly is – constitutionally, politically and administratively.

3.3.2. The retention and 'reformist' path to the future

Four opposition political parties (IFP, ID, DA and FF+) support the idea of retaining and reforming the current provincial system of government. These parties believe the system is important politically and administratively, and that the fundamentals of the provincial system should not be tampered with. The interviews with ANC respondents, combined with the party's Polokwane resolution on these issues, suggest that the party remains at best undecided, and at worst divided on this issue. Nonetheless, the views expressed by the ruling party's respondents seem to fall in the reformist rather than abolitionist camp.

The common thread running through the arguments of those favouring retention is that the system needs to be strengthened. Many of the respondents believe strongly that the solution is the devolution of more powers, if not more responsibilities, to the provinces. With the exception of the issue of safety and security, which virtually everyone interviewed agreed is a severe constraint in the ability of the provinces to deliver this service effectively, there was a certain level of confusion over the constitutional powers of the provinces. For instance, some respondents were convinced that the provinces lacked the necessary constitutional powers to fulfil their functions, while others believed that the schedule of concurrency powers in the Constitution created a debilitating uncertainty and therefore inertia for the provinces, which

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in turn undermines their effectiveness in many areas of service delivery. Yet others believe that the provinces have the necessary constitutional powers, but are being prevented either by an over-dominant central government or the ruling party, from exercising these powers.

The IFP is one of those parties that believe that central government has become too overbearing in its relations with the provinces, and prevents them from exercising their powers. Party President, Mangosuthu Buthelezi, clearly reflected this: "the national level of government must refrain from adopting legislation in the provincial fields of competence and must promote the capacity and initiative of provincial legislatures to cover the field of their own laws."⁵⁶ The DA's Willem Doman believes that assigning more powers to the provinces would be preferable. "I would really go for the question of the concurrent powers and get more exclusive powers ..."⁵⁷

Although it became clear during the interviews that the ruling party has not yet reached a firm decision about what to do with the provinces, it was clear that there was a strong preference to retain the current provinces as political entities but to reform them. It would appear that the ruling party would be willing to explore a range of areas for reform, including the option of assigning more legislative and policy responsibilities to the provinces. The ruling party would also be open to considering the idea of reducing the current number of provinces, but one of the respondents argued that such a reduction, if it is implemented, should be supported by scientific research and analysis that shows how fewer provinces would be more effective and efficient than the current number. The ruling party would clearly be willing to review the concurrency powers schedule of the Constitution, something Ministers Trevor Manuel and Mosioua Lekota broached as an issue for public debate in May 2007, although the ANC's policy discussion document preceding the party's Polokwane

⁵⁶. Interview, 25/06/2008

⁵⁷. Telephone interview, 18/06/2008

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conference seemed apprehensive about the idea of reducing the number of the provinces.⁵⁸

The idea of turning the provinces into mere administrative agents will not be a serious option for the ruling party. Gauteng MEC, Firoz Cachalia, argued "I don't think administrators are more likely to get better results in terms of delivery."⁵⁹ All this suggests that there remain key issues to resolve within the ruling party through its own internal debates on the future of the provinces.

3.4. Preferred process and approach

This subsection reports on the views and perceptions of the respondents in terms of what they believe would be the most appropriate procedure or approach for reviewing the current system of provincial government. This question was intended to enable researchers to test the attitudes of the different political parties towards the policy review process currently being undertaken by government to obtain public views and inputs on the current problems encountered by provincial and local governments, and their views on the future of these entities. The interviews conducted indicated that not all the political parties regarded the government's policy review process as an appropriate approach, and some parties may even not be taking it seriously enough to make official inputs to the process. In some cases it would appear that some of the parties have not even made any submissions or even discussed it internally in order to influence the outcomes.

An interview with a senior official from the DPLG did confirm that many political parties in the country have remained largely indifferent to the DPLG review process, and indicated that one of the parties did ask for a presentation from the department.⁶⁰ Even the ANC, in its December 2007 Polokwane discussions, noted the lack of

⁵⁸. Fewer provinces? *Insight Africa*, vol. 2, No 19 (18 May 2007) and *Business Day*, 16/05/2007 (Primary advantage of provinces ignored by worn-out debates)

⁵⁹. Interview, 18/08/2008

⁶⁰. Telephone interview (Derek Powell, DPLG), 01/07/2008

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enthusiasm from a range of key actors, especially the political parties, to the DPLG policy review process, stating that “inputs from political parties, provincial governments and national departments were not as numerous as expected.”⁶¹ More crucial is the hint contained in the party's resolutions document, suggesting that the DPLG policy review will lack the necessary legitimacy due to this unenthusiastic response from key role players: “the policy review process is denuded of the benefit of unlocking the practical experiences and insights of important stakeholders.”⁶²

From the views expressed by the respondents interviewed, there was a significant level of mistrust or lack of confidence in the current process driven by the DPLG. Some of the respondents felt that the DPLG's approach and orientation is unlikely to be purely instrumental, and that its management of the process is unlikely to be objective, but would probably be driven by internal technocratic and institutional imperatives towards a certain pre-determined outcome, especially given its role as a national institution with a mandate to oversee the functioning of the system. This sentiment obviously is in contrast to the department's view, which was “we are not starting with any assumptions – we are trying to look at the evidence, we are trying to engage the public ... what are the challenges ... are the problems institutional or is it a combination of factors and how do we move forward ... to get something more efficient? That is our point of departure.”⁶³

Nonetheless, some of the respondents felt that the department is unlikely to pay sufficient attention to the important political imperatives that gave rise to the system in the first place. One respondent said that “at the moment in fact to me it's just a joke.”⁶⁴ However, some of the interviews revealed a level of

⁶¹. ANC 52nd National Conference 2007 – Resolutions (Review of Provincial and Local Government)

⁶². Ibid.

⁶³. Telephone interview (Derek Powell, DPLG), 01/07/2008

⁶⁴. Direct attribution of this statement will not be made for purposes of ensuring confidentiality as this was expressed as a personal rather than official party view.

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misunderstanding or limited knowledge of what the DPLG is attempting to do, suggesting that either the DPLG has not succeeded in communicating its intentions to the public in general and the political parties in particular, or that some political parties themselves have not made sufficient efforts to fully acquaint themselves with the process. During the interviews it appeared that one political party respondent had a particular understanding of the purpose of the DPLG's policy review discussion document. When asked to describe the party's official response to the document, the respondent argued "no, we are not looking at the document at all – the way we understand it is that they are trying to say 'should we do away with [the provinces], should we decrease [them]'..."⁶⁵

Another respondent from another party believed the department "thinks that the provincial governments are a failure".⁶⁶ Nonetheless some of the parties seemed familiar with the DPLG review process. In the case of the ID, the party seemed the most prepared to engage with the DPLG policy review process compared to the others. Also, it appears to have moved farther than the others in that at the time of the interviews, it had already initiated a formal internal process which resulted in the drafting of an internal policy discussion document defining the party's position on the review of the provinces. The UDM was yet to prepare a party document in response to the DPLG policy document,⁶⁷ while the IFP indicated that the document was discussed in 2007 although it was unable to confirm during the interview whether or not a formal submission was made.⁶⁸

Based on the views expressed by all the respondents, three distinct options emerged as preferred approaches for reviewing the current system of provincial government in South Africa. The first option is for a multiparty national convention; second, a process led by the National Parliament, and third, a government-driven process

⁶⁵. Direct attribution of this statement will not be made to maintain confidentiality.

⁶⁶. Direct attribution of this statement has been omitted.

⁶⁷. Interview, 23/06/2008

⁶⁸. Interview, 08/07/2008

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supported by in-depth empirical research. These options are not necessarily reflective of party positions. In fact in some cases respondents from the same parties expressed preferences for different approaches, and in others the respondents from different political parties expressed preferences for the same option. This suggests that political parties have not given serious thought to, and/or developed, coherent positions on the way the process ought to be handled. In some instances elements of these three approaches were merged into a broader integrated approach by some of the respondents, which might also suggest that many parties would be fairly flexible in this regard and might be open to persuasion. Also, these options are not necessarily mutually exclusive. However, for purposes of this report they will be outlined separately for purposes of analytical clarity.

3.4.1. A national convention approach

The first option that emerged from the interviews with several respondents is that of convening a national convention involving all political leaders in the country to discuss the future of the system, as well as develop a common national consensus. The idea here seems to be that a national review of the functioning of the system should be undertaken, with the involvement of the DPLG only to the extent of putting together a team of competent researchers to carry out a scientific study of all aspects of the system of government, and develop viable options for presentation and discussion by the country at a national convention. Some respondents from the UDM, ID, IFP and DA seemed particularly in favour of this option.

For instance, de Lille calls for research to be conducted and a report containing the findings to be presented “to the country for negotiations on the pros and cons”.⁶⁹ The UDM supports this option, although General Holomisa is calling for a far more thorough process, saying that “I have been calling for a national convention. A national convention will look into our economy, our criminal justice system

⁶⁹. Interview, 25/06/2008

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...and in particular the renewal of our electoral system. While many of the respondents seemed to imply a limited process with political leaders as the primary participants in such a national convention, the IFP seemed to be calling for a much more open societal engagement “driven as much as possible by the institutions of civil society”.⁷⁰ Sandra Botha of the DA also supported the idea of a national inclusive review process that creates a consensus among key sectors of society.⁷¹ Even one of the PAC respondents, national spokesperson Mudini Maivha, hinted at the option of a multiparty convention, arguing that the political parties “must bring their own suggestions to the table for exchange and debate”⁷² although, as will be discussed later, the PAC’s preference is to eventually abolish the provincial system of government.

This option was put forward mainly by respondents from the opposition parties, particularly those who lacked confidence in the ability of the government in general, but also the DPLG in particular, to lead such as a review process. Some of the respondents felt that a DPLG-driven process was likely to advance the interests of the government and the ruling party towards more centralisation of power. However, this was an over-simplification of the ANC’s position, because our analysis in general suggests that the ruling party is at best undecided, and at worst internally divided, about what to do with the current system of provincial government. However, the issue of trust in government seemed less of a key factor overall than the fact that most of the respondents felt that, as the system came about through a national political consensus forged during constitutional negotiations, any process likely to lead to a review and a large-scale restructuring of the current system should be a formal and inclusive national process with the country’s political leaders at the centre of it.

3.4.2. A National Assembly-driven approach

⁷⁰. Interview, 25/06/2008

⁷¹. Interview, 25/06/2008

⁷². Interview, 23/06/2008

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The second option that was advanced by some respondents was that the task of reviewing the system of provincial government in South Africa should be led by the national parliament, presumably the two houses of parliament, with the involvement of the nine provinces through the National Council of Provinces (NCOP). Clearly this option seems like a call for a formal constitutional review process. This option differs slightly from the approach currently adopted by the government through the DPLG-driven process, in that while the current DPLG process will table its findings before cabinet prior to the national assembly getting involved, this option would place the national parliament in charge of the review process. This means that the findings of any study or evaluation would be under the aegis of parliament, and would therefore first be tabled before it.

Those advancing this option seemed driven by the need to see the legislative arm of the state play a more dominant role, rather than seeing the executive arm assume its traditional dominance, which is the case in the current DPLG-driven policy review process. This option therefore implies a more formal legalistic/constitutional amendment process, at the centre of which will be a popularly elected democratic institution of parliament as the appropriate institution driving the process. While many respondents were clearly in favour of a constitutional amendment, there were clear differences about the outcome of a constitutional amendment; some respondents referred to an amendment of the constitution which, while intended to lead to the re-definition and re-distribution of the powers and functions between the different spheres of government, nonetheless leaves the basic constitutional framework in place. Sandra Botha of the DA cautioned against tampering with the Constitution, arguing that "it is an important agreement that was contested, and has become ingrained in the culture of the new South Africa."⁷³

Yet other respondents, particularly those from the UDM and PAC, were clearly in favour of a constitutional amendment process that

⁷³. Interview, 25/06/2008

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would eventually lead to the abolition of the provinces. Irrespective of these differences over the eventual outcome of the review process, this approach clearly seeks to affirm the authority of the legislative arm of the state and the role of elected public representatives by placing them at the centre of any process of reviewing the current system of provincial government.

3.4.3. Government-driven approach based on scientific research

Unlike the two options discussed so far, which minimise the role of government in general and the executive in particular, this option to a significant extent entails the government playing an important role in the process of review. For instance, in a resolution at its Polokwane conference in December 2007, the ruling ANC seemed to give an official endorsement of the current DPLG-driven policy review process by resolving that “the incoming NEC must ensure that an ANC summit is held to formulate an input into the process to develop a white paper on Provincial Government and to review the Local Government White Paper.”⁷⁴ However, the party did not indicate when this summit would be held. This option appears to emphasise the need to conduct a thorough scientific research study to carry out an in-depth examination of all the problems affecting the functioning of the country's political system, in order to generate appropriate solutions informed by empirical findings and evidence.

This view seems to cut across political boundaries. Those who supported this view included respondents from the ID, DA and ANC. The common thread that ran through the views of these respondents was the emphasis on the need for pragmatism and less on predetermined ideological positions. Firoz Cachalia, MEC for Community Safety and Liaison in Gauteng, argued for “a more differentiated study ... to reassess how the structures of the

⁷⁴. ANC 52nd National Conference 2007 – Resolutions, Review of Provincial and Local Government (Resolution)

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intergovernmental co-ordination, including the area of safety and security, have functioned".⁷⁵

4. DISCUSSION OF THE FINDINGS

The findings of this study reveal a number of key issues for the provincial system debate. It is clear that the system continues to enjoy considerable political support and commitment from the major political parties in South Africa, including the ruling party. This is despite the shortcomings of the system. Although not all the political parties represented in the National Assembly were interviewed for this study, those that were constitute a large proportion of its membership, as well as of the provincial legislatures. It is significant therefore that the provincial system still enjoys considerable political support among these parties. In particular, there seems to be support among the parties for the provinces to play more than just an administrative role of managing and administering government policies and delivering social services. There is also strong support for them to continue fulfilling a democratic function of broadening political representation and enhancing democratic political accountability to citizens at regional level.⁷⁶ As already indicated, only two opposition parties (the PAC and UDM) did not give their political support and commitment to the provinces.

The apparent widespread multiparty party political support for the system needs to be put into the proper context. While on the one hand this political support might signify that these entities do serve some important political and administrative imperatives within political system (ie as instruments of democratic political legitimisation, broadening citizen democratic representation, etc), they also serve an important patronage function whose benefits accrue to all political parties. In other words, many political parties have full-time party representatives employed in provincial structures (both political and administrative). It would be difficult for many

⁷⁵. Interview, 18/08/2008

⁷⁶. See *Sowetan*, 20/08/2002, Firoz Cachalia, The best way to govern.

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political parties to provide alternative forms of patronage for their members should the provinces cease to exist, as some political parties would prefer. For the smaller political parties with fairly limited chances of either winning power or significant numbers of seats at national level, the provinces provide valuable opportunities for this purpose. This would explain the widespread desire among political parties to retain these entities, despite their administrative weaknesses.

For many political leaders, the provinces, not municipalities, seem to serve as an acceptable second-best option for those unable to get accommodated at national level, hence the unpopularity of the idea of turning the provinces into mere administrative agencies. This may explain why many respondents called for greater responsibility for provincial leaders to be given authority to make political decisions on matters affecting provincial government, including the use of resources, and be held directly and politically accountable to citizens for these decisions. However, despite this widespread political support and desire to retain the system, there is considerable dissatisfaction with the effectiveness of the provinces, especially their administrative capacity and efficiency in service delivery.

It was therefore logical that virtually all the respondents would call for the provinces to be given increased resources and technical capacity. There is still deep division about the idea that provinces need to be assigned greater authority to exercise constitutional responsibilities, because some respondents believe that the provinces already have the scope to exercise greater authority in terms of their constitutional responsibilities. In this regard, the controversy over the concurrency functions has become an interesting point of contention. Therefore a proper understanding of the right circumstances under which the provinces would be authorised to exercise a range of their constitutional functions and responsibilities as contained in the concurrency schedule might just hold the key to resolving the perception that the provinces do not have sufficient constitutional powers to fulfil their responsibilities.

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The second key issue to emerge from the findings is that the problems identified as impacting on the effectiveness of the provinces are not perceived as entirely endogenous to these entities. With the exception of those who seek to abolish the provinces, the majority of the respondents argued that South Africa is a unified country with a mandated intergovernmental relations system of government, where the actions and/or failures in one sphere affect the effectiveness of others. Hence, many of them believe strongly that the current problems of poor service delivery have their roots across all three spheres of government, and not only in the provinces. This implies that the scope of the reforms to be implemented should focus on the whole system of government in South Africa rather than narrowly concentrating on the provinces.

The third key issue is that, while the majority of the respondents preferred to see the system of provincial government retained, many were willing to consider the idea of reviewing the number of provinces. This is important, especially in the wake of a call by two cabinet ministers, Trevor Manuel and Mosiua Lekota, early in 2007 for the country to consider reducing the number of the provinces.⁷⁷ This would suggest that many political leaders in the country do not necessarily see the current number of provinces as special or sacrosanct, nor do they see all the provinces as representing fully formed and immutable social group identities or geographic entities. It also implies a predominantly instrumentalist conception of the provinces, suggesting that while many parties seem politically supportive of the idea of provinces, they might not be committed to a specific configuration of the system or even a specific number. It means that the chances of the current number of the provinces being reviewed and possibly changed are fairly high. However, certain provinces, such as KZN and Western Cape, seem to evoke intense political commitment from parties such as the IFP and DA.

Various numbers and configurations have been put forward in the case of a review of the current number of provinces. For example,

⁷⁷*Social Housing Foundation News*, 04/05/2007, Manuel joins calls for fewer provinces.

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the ID suggested a possible merger between Western and Eastern Cape, and North West and Northern Cape. A UDM respondent argued for Northern, Eastern and Western Cape provinces to be merged into one. The DA would be willing to see a merger between Limpopo and Mpumalanga, but is extremely wary of any suggestion to merge Western and Eastern Cape provinces, insisting that this smacks of political gerrymandering to disadvantage the party electorally. It is clear that many respondents considered the Northern Cape Province to be unviable and unsustainable as an entity, and would not oppose its merger with another province. MEC Firoz Cachalia also seemed open to the idea of reviewing the number of the provinces, but only if this is supported by a thorough scientific study. The majority of those willing to consider such a review were more inclined to consider reducing rather than increasing the number. Only the FF+ took a different view, suggesting a possible 10th or 11th province. The figures suggested for the total number of provinces therefore ranged from two to 11. All this means that there would not be significant political obstacles to the idea of the number of the provinces in South Africa being reviewed and possibly changed, and it is probable that such a change would tend towards a lower figure.

The fourth important issue is that all the political parties were keen on a more inclusive, national process of dialogue to review the current provincial system of government. This suggests a level of indifference – if not outright dissatisfaction – with the current policy review process driven by the DPLG. It would appear therefore that the ruling party's endorsement of the DPLG process through one of its Polokwane resolutions might have been merely a strategic ploy to buy time, given that the party has not yet developed and outlined a clear, official and coherent party position about the future of these entities. For now, the party seems content to buy time by allowing the DPLG process to unfold while the system is retained in the short term.

The fifth issue is that the views and arguments of the different political leaders interviewed for this study were not as deeply ideological and anchored to the old 'federalism versus unitarism' divisions of the early 1990s. There is a considerable shift in the debate towards more immediate and pragmatic 'bread and butter'

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issues of service delivery and administrative efficiency, although some of the opposition parties still vested the provinces with a certain amount of emotive value – considering them to be an important product of an historically significant moment in the country's history (ie The CODESA constitutional negotiations). This also left the impression that the idea of having the system was more important than the details and specificities of the system itself.

Finally, the findings of this study indicate that the problems facing South Africa's provincial system of government are not too dissimilar to those experienced by other multi-sphere systems of government elsewhere. Even the various approaches identified by the respondents for driving the process of review, particularly the general consensus on the need for national dialogue on the future of the provinces, have also been used in different forms in other countries. Many of the respondents are actively pushing for a national dialogue of some sort, either driven by the National Assembly or the country's political leadership and civil society.

Several countries have recently undergone intense debates on reviewing and reforming their states or provinces, driven through elaborate national dialogue processes. For instance, in 2005 Germany initiated the first stage of a formal process, driven by a bi-cameral commission of both houses of its national parliament, to modernise its federal system of government and deal with the challenges it faced.⁷⁸ The German process focused mainly on reviewing the division of powers and responsibilities between the central government and the *Länder* or states. Australia and Canada⁷⁹ have also regularly reviewed their systems, focusing on the key issues and challenges

⁷⁸. Felix Knüpling (2007) German länder to control own taxes, federations, vol. 17, no. 1; Rudolf Hrbek (2007) The reform of German federalism: Part 1, *European Constitutional Law Review*, 3: 225-243; Fritz W. Scharpf (2005) No exit from joint decision trap? Can German federalism reform itself? The Max Planck Institute for the Study of Societies (Working Paper 05/9).

⁷⁹. For additional reading on the reviews of the Canadian federal system, see Gary Munro (1989), Constitutional change in Canada: the Meech Lake Accord, *The Journal of Commonwealth & Comparative Politics*, vol. 27, no. 2; Robert Vipond (1995), From provincial autonomy to provincial equality, in Joseph Carens (ed) *Is Quebec nationalism just?: Perspectives from Anglophone Canada*, McGill-Queen's University Press.

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affecting the effectiveness of these systems. Australia undertook a review of its federal system of government in 2007 and 2008. Like South Africa, Australia faces a similarly vexing issue of concurrency powers, particularly the unclear division of powers and functions between the centre and the states. Other problems include an ineffective system of intergovernmental relations, a dominant central government, and financially weak states that are largely dependent on central transfers.⁸⁰

Crucially, the German, Australian and Canadian approaches to reviewing their systems adopted high-profile national processes such as constitutional conventions, or national summits or commissions that allowed the states or second-level governments to participate directly as organised interest groups. Although the majority of the respondents in this study also seemed to prefer a high-profile national convention review or similar approach, it is doubtful that South Africa's highly party-driven system of government would allow the provinces to participate as a collective interest group. Instead, it is possible that a national convention model, involving political parties as key role players, would be adopted, with the risk of the old ideological 'federalism versus unitarism' divisions being revived.

5. CONCLUSIONS AND IMPLICATIONS FOR POLICY

A number of key conclusions can be drawn from the findings of this study and relevant policy implications will therefore be derived from them.

Firstly, there is considerable political support for the provincial system of government in South Africa. This support seems to come

⁸⁰. See John Wanna (2007) Improving federalism: drivers of change, repair options and reform scenarios, *The Australian Journal of Public Administration*, vol. 66, no. 3 (pp. 275-279); Anne Twomey (2007) Reforming Australia's federal system, University of Sydney Law School (Legal Studies Research Paper no. 07/80); Anne Twomey (2008) Australia's Commonwealth government ends blame game: window of opportunity opens for co-operative federalism, *Federations*, vol. 7, no. 3; A.J. Brown (2007) Federalism: time for bold leaping, not just gentle stroking, ABC News (www.abc.net.au/news/stories/2007).

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from many of the major political parties in the country, including the ruling party. This, however, does not mean that there are no differences about the purpose of these entities. Therefore, for purposes of policy action, it is crucial that a formal process of national dialogue is initiated before the tenure of the post-Mbeki government is over. Such a process of dialogue should involve other key role players and interest groups in society and not only the major political parties. It should also involve civil society and other organised social interest groups, and enable the provinces as governments to participate as a distinct interest group.

Secondly, the division of constitutional powers and functions between the centre and the provinces continues to be a festering sore in our political system. The majority of respondents in this study continue to believe, rightly or wrongly, that the provinces lack the necessary powers and functions to fulfil their constitutional responsibilities and deliver social services effectively. The DPLG policy review process currently under way seeks to address this. However, it might be necessary for a more in-depth and scientific research study to be undertaken into the constraints, if any, resulting from the current division of the powers and responsibilities between the provinces and the national government. Included in such a study should be a thorough review of the concurrency functions of the Constitution. Such a study needs to draw from the lessons of countries such as Germany, Australia, India and Canada, not only as concerns their approaches to reviewing their systems, but also on substantive issues such as the division of powers and functions, and intergovernmental resource divisions. As already indicated, Germany has recently undertaken a thorough two-stage process of review of its system of government through a bi-cameral commission. The lessons emerging from that process might be valuable for South Africa.

Thirdly, it can be concluded that the majority of respondents in this study believe that the problems experienced by the provincial system of government are not confined to the provinces. Also, a convincing argument has yet to be put forward to substantiate the view that the current problems of poor service delivery are inherently

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related to the existence of the provincial system of government, and that such problems will be resolved by abolishing the system.

Finally, the findings indicate that a review of the system of government in South Africa needs to be comprehensive and far-reaching in its scope. Such a review needs to look at several key areas, such as the role of all three spheres of government and a review of the country's public service, including the process of recruiting public servants across all three spheres of government. It might be necessary for such a process to be linked to other key areas, such as the review of the electoral system, the structure and functions of the intergovernmental relations system, and the effectiveness of its institutions.

6. INTERVIEW RESPONDENTS

- ANC: Firoz Cachalia, (MEC, Community Safety & Liaison, Gauteng Province)
- ANC: Richard Mdakane, (Speaker, Gauteng Legislature)
- DA: Jack Bloom, (Party Leader, Gauteng Legislature)
- DA: Sandra Botha, (Parliamentary Leader)
- DA: Willem Doman, (Member of Parliament & DA Spokesperson)
- DPLG: Derek Powell, (Deputy-Director General, Governance, Policy & Research)
- FF+: Corné Mulder, (Member of Parliament)
- FF+: Pieter Groenewald, (Member of Parliament)
- ID: Mahomed Kloote, (Party Leader, Northern Cape Legislature)
- ID: Patricia De Lille, (Party President)
- IFP: Mangosuthu Buthelezi, (Party President)
- IFP: Professor Msimang, (Party Deputy Secretary-General)
- IFP: Thembi Nzuza, (Party Deputy Chair)
- PAC: Letla Mphahlele, (Party President)
- PAC: Mudini Maivha, (Party National Spokesperson)
- UDM: Bantu Holomisa, (Party President)
- UDM: George Madikiza, (Party Chief Whip)
- UDM: Maxwell Mhlaba, (Eastern Cape Leader)