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FROM SLOGANS TO SUI

A perspective on the ANC constitutional guidelines

South Africa's civil constitution has failed in its most essential task: to mediate and control the conflicts that threaten the security and privilege of the dominant. The state has armed itself with a potent military, statutory and judicial arsenal. The majority of its democratic opponents equally are determined not to submit. The rise of neo-fascism, the Strijdom Square massacre, and KP implementation of NP policy are but recent manifestations of apartheid. Coupled to our present economic meltdown, the country endures a deep, all-pervasive socio-political crisis. The brutality of everyday township life is emphasised by the political egg-dancing of arrogant rulers.

Diverse politicians scamper around looking for solutions. Thus the HRSC, Constitutional Planning and Development civil servants, academics and others produce plans aplenty: partition, the boerestaat, race federations, confederations, the devolution of power, the extension of the tri-cameral system to local levels, fancy franchises. The common denominator, largely, is an oblique one, of trying to identify which democratic principles can be sacrificed to race prejudice and economic privilege in order to retain some quintessential elements of white privilege and domination in disguise.

Political debate is curtailed by many legal and customary restrictions. The statute-book is replete with examples of

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the former. The latter reside in a popular, largely white, conception that 'democracy' is unsuited to African conditions, and/or is too closely aligned to 'communism'. Since 1985, information has been further restricted by neurotic Media and Security Regulations. Popular participation and the debates that emerge from and illuminate such activity, have been battered by the States of Emergency and the forces who implement Pretoria's version of 'law and order'. Pretoria attempts constantly to impose its interpretation of reality on South Africa and the world. It recently witnessed its interpretation of 'treason', for example, endorsed in the Delmas judgement.

Debating political options or settlements involves some recognition of the principle of negotiation. There is considerable difference of opinion about the mechanics of negotiated settlements. Should they, for example, emerge from elite discussion and accommodation, the participation of ethnic entities in the nascent National Council, or from a sovereign constituent assembly based on individual Selection and universal franchise? Most organisations have acknowledged a principled preference for negotia-

tion. But negotiation also implies the existence of alternative programmes for discussion.

At this stage, the state has not proscribed the ANC's 2002 constitutional guidelines as it did the Freedom Charter for

many years. Not that that action would of itself remove the document from public consideration; witness the process that led to the virtual unbanning of the ANC itself during the present period. More significant is the government's recent total ban on the ANC's statement on the question of negotiations itself.â\200\235 The symbolism of that act speaks volumes about Pretoriaâ\200\231s intentions. Will the conflict between â\200\234oppressor and oppressedâ\200\235 end â\200\234either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classesâ\200\235 ?Â°

The ANCâ\200\231s \*â\200\230Constitutional Guidelines for a Democratic South Africaâ\200\235 form an integral part of the turbulent context of the present. Not only are they the product of a major actor today, they also are linked to a powerful tradition of political struggle.

#### GUIDELINES

The guidelines formally have their origin in the work of the National Executive Committeeâ\200\231s constitutional committee, the Legal Affairs Department, and a series of \*â\200\230in-house seminarsâ\200\235 that drew on many people from all sections of the movement. The seminars, in particular, provided the basis of the ANCâ\200\231s hopes, priorities and plans. They discussed, inter alia, the role of religion and of education in post-apartheid South Africa, womenâ\200\231s and workersâ\200\231 rights, the nature of different electoral systems, bills of rights and the resolution of the national question. The constitutional committee conducted comparative analyses of dozens of constitutions: socialist and non-socialist, unitary and federal. Two major concerns, for example, included the ways in which workersâ\200\231 rights are protected both in law and in fact, as well as the relationship of central to local government, and how that affected theories of popular autonomy and accountability.

Debate within the ANC alliance is neither new nor surprising, yet it is clear that a number of influences began to coalesce prior to 1983/84 that merged to form its current approach to a post-apartheid South Africa.

First, there is a long tradition of discussion and interpretation of the Freedom Charter within the movement itself. The Charter occupies a special position within the Congress tradition, and in the history of ANC policy-making in particular. Even before its adoption by Congress in 1956, it had been the subject of numerous exchanges, many of them hostile. Significantly, many contemporary critics seem ignorant of the development of an internal, if at times not wholly public, debate about the meaning and role of the Charter. Nelson Mandela's New Age articles of the 1950s, the defence submissions of the Treason Trial, its assessment as a â\200\230â\200\230revolutionary programmeâ\200\235 in 1969, and the numerous discussion articles in the official journals of ANC and allied organisations all form part of an interpretative dialogue.? The present guidelines continue the process of elaboration.

Second, the apparent ill-preparedness of Zimbabwe's resistance movement at Lancaster House perhaps played some role in alerting ANC people to the need to establish a coherent set of proposals if negotiations began. Equipped with such a package, the ANC could hold a much stronger position than if they were caught unprepared or were armed only with slogans.â\200\235 Thus, from the early 1980s at least, more solid proposals than the suggestive clauses of

the Freedom Charter were considered necessary.

Another change since 1985 was a transformation in the ANC's status. It became a major contender for power, not only particularly in the eyes of whites locally, but also internationally, given the recognition accorded the movement by Pretoria's traditional allies. The ANC's visibility and obvious popularity within the country increased dramatically in the wake of the national repression that followed the stirring rebellion of 1983/4. That domestic challenge coincided with and reinforced the increasing success that the organisation achieved in its international diplomatic and public campaign to isolate Pretoria and its policies, most notably in western Europe and the USA. Pretoria's dwindling moral authority after its violent response to the events of 1976/7, not least the death of Steve Biko, received another blow with its States of Emergency and the failure of its reform. The ANC's increasing importance internally and as a semi-government-in-exile (a status the ANC resists?) also focussed critical attention on the organisation and its policies. Foreign conservative governments thought in terms of their own foreign policy imperatives and the nature of alliances with an ANC controlled government; local critics looked for greater cohesion and sense of pragmatism that they could not find in the Freedom Charter or the general statements of the movement. It is important to note that the constitutional appraisal began prior to the high profile exposure of whites to the ANC and the subsequent complaints voiced in the liberal press about the ANC's reliance on vague formulations rather than solid proposals.

#### MOOD OF THE MOMENT

It also seems probable that some people within the movement were also influenced quite considerably by the mood of the moment in 1984/5, when the regime appeared to be under considerable strain and near breaking point. The transition to a post-apartheid South Africa was not far off in these calculations. Essentially though, it was accepted that objective and subjective features/conditions in SA were changing, and that a post-apartheid South Africa finally seemed imminent, rather than a mere vision or future dream. Hence the necessity to convert the Freedom Charter from a vision for the future into a constitutional reality, or as Zola Skweyiya, chairperson of the Legal Affairs Department put it, to take the idea past the slogans and towards realisation. Against this reading, the state's proven resilience might remove some of the urgency of the new guidelines, but may not affect their detail, or indeed their general role, in any particular way. This feature may indeed be the parallel to Swaziland's experience that induced it optimistically, too, as it turned out to host international seminars under the auspices of the United Nations Institute for Namibia on development strategies in the late 1970s and early 1980s. :

The ANC guidelines have a particular status that needs consideration. Both Skweyiya and President Tambo have stressed that the proposals are 'no more than guidelines.' The document itself stresses that it comprises only basic guidelines for the foundations of government. Originally, the organisation planned to publish a fully-fledged draft constitution. The idea was shelved, it appears, because of its recognition that although the Congress movement is in the forefront of the resistance,

Congress itself is not representative of all anti-apartheid organisations. More pointedly, it argues that a new constitution should, ideally, be the product of the deliberations of

a sovereign, popularly elected constituent assembly. In the final analysis, the process will depend on the nature of the transition'" (whether through negotiation or through insurrection and armed overthrow of the state, or, what seems more likely, a delicate combination of both). As guidelines, they are meant to initiate and encourage debate within the country, to assist in mobilisation and the formation of a democratic, broad-based unity against the regime. At the same time, the organisation wishes to clarify its own principal formulations to its constituency and to the country as a whole.'?

## PREAMBLE

The proposals have to be read in conjunction with the preamble, a section that has not been printed by most newspapers. It specifies some general principles. The Freedom Charter is placed firmly at the centre as the embodiment of "the political and constitutional vision of a free, democratic and non-racial South Africa". The removal of discriminatory legislation is not sufficient to create the new society: state structures and social practices associated with apartheid will have to be dismantled and discarded. Corrective action is necessary to guarantee a rapid and irreversible redistribution of wealth and opening of facilities to all. The protection of individual rights irrespective of race, colour, sex or creed, and the cultural and linguistic rights of all are guaranteed. The protection of group or minority rights based on ethnicity or race are specifically rejected, because such protection would entrench and perpetuate the status quo where the white minority controls/possesses 87% of the land and 95% of the national wealth. The preamble also suggests that the success of the new system depends on the greatest possible involvement of all in every sphere of government and administration.

The guidelines envisage the establishment of one central legislature, executive and administration responsible to the people as a whole, but permits the delegation of powers to subordinate bodies for administrative purposes. Traditional institutions such as hereditary rulers and chiefs will be transformed in accordance with constitutional principles. State structures, i.e. all organs of government including justice, security and armed forces will be democratised and defined not in terms of loyalty to a government, but rather to the Constitution. The above proposals do not extend much beyond the 1969 Morogoro Conference analysis of the Freedom Charter, which stressed the undemocratic and racist nature of state instruments under apartheid. The 1969 analysis referred more particularly, however, to the abolition of current structures and their replacement with democratic organs of self-government in all the Provinces, districts and towns of the country. The current proposals' failure to specify what is meant by transformation and democratisation may highlight ANC reluctance to produce a final constitution. Still, the self-evident problem of democratising, say, the SADF, SAP, or Special Branch cannot be minimised.

## BILL OF RIGHTS

A Bill of Rights based on the Freedom Charter will embody the principles of the Constitution. It would guarantee basic human rights and stipulate pro-active duties of citizens and state institutions to eradicate the social and economic inequalities produced by apartheid.

Basic freedoms, such as those of association, worship,

expression, thought, press, and the practice of multi-partyism, are defined by the rejection and criminalisation of racism, fascism, nazism, and the incitement of ethnic and/or regional exclusiveness. The latter confirms, for example, the ANC's rejection of bantustans and ideas such as the â\200\234â\200\230boerestaataâ\200\235, or an independent Kwazulu/Natal. Political parties that endorse racist policies and espouse racial membership, like the NP, KP and others, would also be proscribed. Apartheid and racism are rejected internationally with good cause. Significantly for the ANC, a Bill of Rights should extend beyond justiciable limits to become a legal programme, one that seeks to protect rights and eliminate racism and socio-economic injustice. Practical implementation of the latter desire is formidable: consider the issue of property rights, the unjust 13/87 % distribution pattern, in the context of agronomy. That pattern, established by the â\200\234hoary segregationist frameworkâ\200\235, has led to â\200\230excessive land use and soil exhaustion in the homelands and its underuse in other areasâ\200\235.

The misunderstood â\200\230â\200\230national groupâ\200\235 phraseology of the Freedom Charter has been dropped. Instead, there is now a clearer commitment to the creation of one South African national identity. The recognition of the linguistic and cultural diversity that exists in the country remains. Minority rights qua ethnic rights are rejected. Again, the present proposals echo the Morogoro analysis which elevated national and cultural rights to the level that whites had assured for their own culture, to the detriment of others.

## ECONOMICS

The economic clauses are less direct than the Freedom Charter in its references to nationalisation. Against the backdrop of the preambleâ\200\231s comments about redistribution of wealth, the current document reserves to the state the right to determine national economic policy and direction. It confirms numerous ANC statements that favour a mixed economy (how â\200\234mixedâ\200\235 cannot be determined abstractly). An important attempt is made to draw the rural, peasant agricultural sector into the national economy through the combination of a co-operative sector with village enterprises, small-scale family and farm activities, all supported by the state. Affirmative action in the acquisition of managerial, technical and scientific skills is also promised. Finally, â\200\234property for personal use and consumptionâ\200\235 will be guaranteed, restrained by the stateâ\200\231s right to â\200\230â\200\230direct and limit the rights attaching to the ownership and use of private productive capacityâ\200\235. Like the Freedom Charter, the economic references of the proposals do not envisage an inevitable transition to socialism, but they are not necessarily incompatible with the development of socialism. A restructured economy within the above terms in present-day South Africa would have a remarkable effect. Perhaps the one notable absence in the new proposals is a detailed definition of the land question and the issue of land redistribution. This latter element received more attention in the Morogoro analysis, and its exclusion here may be in deference to the practical problems of destroying the bantustan system, the question of nationalisation without compensation, and the like. The urgency of the question, especially given the phenomenon of resettlement, is paramount. The references to small-scale farm activities and co-ops in a post-apartheid South Africa could indeed refer to the break-up of current

ownership inequalities and the redistribution among a newly established peasant class. A good deal has been



said about the inclusion of the rights of workers. The Morogoro analysis stipulated the freedom of all who work. . . to form trade unions, to elect their officers and to make wage agreements with their employers. Furthermore, that analysis maintained that the rights of all miners, domestic workers, farm workers, and civil servants were the same as other workers, namely, the right to form trade unions and join political organisations. Teachers also were assured this right.

Finally, the proposals elaborate a policy of non-alignment in international affairs and a commitment to work within the OAU and UN for world peace and disarmament. All the latter featured in the Freedom Charter, the Morogoro analysis and more recent statements as well.

#### DEBATE

As yet, no definite procedures have been outlined publicly for the ratification or otherwise of the guidelines. Debate around the document is already widespread throughout the country, a process assisted in part by the publication of the major points of the guidelines in sections of the mainstream and alternative press, including a simplified version of the text.

Most critics argue that the guidelines are too inspecific and/or are prescriptive. The ANC scotched the idea of producing a detailed constitution as such. To demand too much detail is to contradict the allegation that they are prescriptive. Furthermore, such arguments mistake the ANC for a political party, rather than as a mass movement. The guidelines are not final either, although a major difficulty here is how to engender discussion in such a way that feedback occurs. At the same time, the ANC works from the broad idea that a constitution must not only reflect the formal structures of society but must also provide a programme.

Harold Laski, writing when fascism loomed large in Europe, argued forcefully that it is not enough within a social system to proclaim the supreme desirability of peace until we are satisfied with the purposes for which peace is made. In the South African context it is not enough merely to bid the sickness cease. Furthermore, many believe that no concessions ought to be made to privilege that has been the reward of apartheid, to a social order built on the exploitation of the many by the few, to the evil of racism or of ethnicity that has been transformed into an instrument of subjugation and division. Ultimately, the ANC constitutional guidelines form part of a wider democratic tradition. As such, they are part of the wider discourse about the future. That tradition is as rich and fertile as the heritage of Pretoria and sundry schemers is barren and bankrupt. A future dispensation may involve compromise and concession, but these must be defined within particular parameters. As one person put it, freedom will be achieved at all costs, but not at any price.

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