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THE PRELIMINARY NATURE
OF THE
.CONST.1TUTIONAL DOCUMENTV

Any constitutional document drawn up at this stage must of necessity be incomplete and provisional. It will be incomplete because we still await clear guidelines or questions such as economic policy and education, and because we lack important politico-demographic information..

Thus, the political strategy to be adopted in relation to the mechanisms for the re-distribution of wealth will have a considerable bearing on what will probably be the most scrutinised part of the Constitution, namely, the rights and duties attached to property. Similarly, though less fundamental, the phrase in the Freedom Charter: "The law shall guarantee the right to all to educate their children" raises important questions as to whether private or church schools should have constitutional protection (our feeling was against, nor did we feel that the constitution should expressly oblige, nationalisation of all schools - but we await a report of the Education working group on the issue. Lastly, it would be foolhardy to propose an electoral scheme without first having clear information on population distribution and likely voting behaviour amongst the different sections of the population in the different areas of the country. i .

The Constitution we draw up will also be incomplete in another important sense, namely, that it would have to be complemented by another document which attends to the arrangements necessary to ensure the transition from the apartheid to the democratic constitutional order. To take one simple practical point:

a voter's roll would have to be established covering the whole population. Arrangements for an interim government and for interim control of the armed forces and security would have to be made. There could even be provision for how the Constitution would come into effect. We could, for example, propose as an alternative to a National Convention that our Constitution be put to a referendum of the whole people; but this would not be in the Constitution itself.

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Secondly, any document we propose must have a provisional character. If we had already succeeded in destroying the coercive power of the apartheid regime and establishing popular organs of government through the country, we would be able to proclaim a new constitution corresponding to this new reality. Since, however, the question of a new constitution may well be placed separately on the agenda before such stage is reached,

we have to prepare a document consistent with a reality somewhat less favourable to our position. Our document accordingly would be provisional in the sense that if the situation were to advance dramatically and irreversibly in our favour before the new constitution were put into force, it would be possible to propose a new version containing provisions reflecting more advanced forms of popular power. I

STATEMENT OF THE PROBLEM

All over the world Think Tanks and individual Experts are being commissioned to answer a problem put in the following terms: How is it possible to devise a constitutional scheme for South Africa whereby power is equitably shared between black and white, where the rights of the majority are at last recognised but without prejudicing the rights of the minorities?

We do not accept the problem put in those terms. Just as in the ANC we do not have majorities and minorities, but only members subject to the same rights and duties, and just as

the Freedom Charter conceives of a single non-racial citizenship and sovereignty belonging to the people as a whole, so

in a free South Africa we will not have legally constituted majority and minority populations. Majorities and minorities will constitute themselves - as in any other country - on the basis of voting preference and not on the basis of skin colour or origin. Even if voting behaviour happened to coincide exactly with race, which we know would not be the case, this would be on a voluntary basis and not in terms of an imposed and unalterable constitutional principle.

We feel the problem should be re-formulated in the following terms: How is it possible to design a Constitutional scheme that: '
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Grants to the oppressed majority their inst
national rights;

Outlaws racial diserimination in all its forms;

Ensures the comple dismantlement of apartheid
structures and their replacement by democratic.
ones; '

Prevents the resurgence of racist policies and
programmes, whether in their old form or new ones;

Overcomes the effects of centuries of racial
domination and inequality by ensuring a substantial
redistribution of wealth and the complete.opening
up of access to facilities for all;

Encourages the active involvement of all sectors
of the population in government and economic and
cultural life;

Promot es the habits of non-racial thinking, the
practice of non-racial behaviour and the acquisi-
tion of a genuine, subjectively-held patriotic
conSciouSness;

Creates conditions for the speediest achievement
of these goals with the least possible disruption
to the tranquility of the country and to the
production of the goods and services necessary for

a decent life for the community as a whole?

Guarantees the security for the achievement of the 1
goals set out in the Constitution. _

Some Key Questions

Five key questions emerged from the disdu'ssi'Lon.'i

The first related to how we should deal with the so-called
problem of power-sharing or the rights of 'minOrities';
associated with this is the problem of existing property

The second is how to reconcile the principles of freedom of
speech, organisation and of electoral activity with the need to
combat the stimulation of racial and tribal division and hatred.

The third is how to devise an electoral system and appropriate
structure of government that will give the best chance that
the electoral process itself and the government elected will
encourage in the Constitution.

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Fourthly, how to devise forms of regional and local government that will be consistent with the constitutional aims set out above.

Fifthly, how to establish mechanisms for maintaining an ongoing legal system while rapidly dismantling the legal and institutional structures of apartheid.

(i) The Problem of: 'Power-Sharing and the Rights of Minorities'

Our vision of a non-racial, democratic and united South Africa, and the constitutional scheme which will flow from it, has three great advantages over anything which the various Think Tanks can come up with. Firstly, it corresponds to the needs and wishes of the overwhelming majority of South Africans.

Secondly, it corresponds to internationally accepted democratic theory on constitutional matters.

Thirdly, it corresponds to the fact that ever since 1910 South Africa has been governed as a single united State (the relatively new Bantustan scheme never having achieved legitimacy either internally or internationally). f, u

In effect, what we are asking for is the democratisation of

the basic constitutional structures that have existed since 1910, but making them truly representative of the whole population. As far as we are concerned, the basic guarantees that no one will be oppressed, harassed or humiliated on the grounds of not belonging to the 'majority', are essentially political rather than legal.

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They lie in the character of the Freedom Charter and of the

ANC. Anyone seriously wishing to ensure that all South Africans, independently of race, colour or creed, have an honoured and active role in the new South Africa, can do no better than to support the campaigns led by the ANC for a democratic South Africa. Constitutions can be torn up or departed from, as we saw with Ian Smith's UDI and with the way the voters' roll in South Africa was manipulated by the Nationalist Party. What is vital is to have a government committed to non-racialism and experienced in the practices of nonracialism, in other words,

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a government led by the ANC."In addition,-there are objective factors which provide a material base for the development of non-racial government, namely, the economic inter-dependence of all the people of the country.

It will make political sense for any new government to do its utmost to maintain high levels of production and therefore to draw on the skills and managerial capacity of all sections of the population. This would facilitate the implementation of the social, economic and cultural transformations envisaged by the Freedom Charter. ' ' '

In short, our basic position is that we believe in a phstitution which guarantees democracy and equity and which seeks to , prohibit the Violation of the fundamental human rights-ofhany: citizen, whether black, white or brown. In this sense, our -: Constitution would have the same,non-racial character as the American Constitution, and like the latter, which has an-Amendment expressly forbidding slavery or practices that bear the badge of slavery, could include a section expressly forbidding apartheid or the practices of apartheid.

The,other schemes being put forward are fundamentally different in concept. What they have in common is that they cannot break away from linking political rights and race (tribe).

Race and tribe become the foundation of all political thinking, and their main constitutional problem is to devise a scheme that permits something that can be called universal suffrage (that is, everyone has the vote, even if in different territories and only for people of their own race or tribe), so that it can be said that power is shared and all participate in government, thus producing a state that can be accepted by the world community. .We may take it that the concept of partition and, independent Bantustans will be progressively abandoned, although the Bantustans will continue to be given important roles in the new dispensation; The basic schemes for preventing what is called 'swamping' of the whites are as follows:

Confederation - a voluntary association of independent tribal and racially based states, having loose central authority which

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represents them all internationally and is responsible for certain agreed matters, such as a common finance policy.

Federation 4 this is tighter than a confederation, in that the central government has far more authority and the federal units, though sovereign in certain spheres; are not independent states. Thus the Soviet Union is a Confederation (the Ukraine and Byelorussia are represented in the General Assembly of the UN) and the USA a Federation, even though both are called a Union. In the South African context, various versions of federation are projected. There are the variants based on the old race federation of the United Party, that presupposed a territorially united country but a federation of races in a central parliament. A quadricameral parliament would be an example of a federation of this kind. Another variant is to permit the racially selected members to function in the same chamber, but to reserve certain themes - called 'own affairs' to members

of a certain race or tribe only. A further variant is to permit mixing and voting on all issues by all members, but to allow for racial group vetoes.

All these variants are anathema to the ANC - voting according to race, legislation according to race. How any of these schemes can be regarded as dismantling apartheid is a mystery. It is not only that their results will be bad, preventing the emergence of any government capable of dealing with the whole heritage of apartheid. The very electoral and legislative processes will be designed to encourage racial and tribal identification and division and entrench apartheid right at the heart of the Constitution.

More serious attention needs to be given to three other mechanisms that might be used to introduce racial vetoes but indirectly rather than directly, that is, organising the governmental structures, electoral system and scheme of protected rights in such a way that a de facto white veto exists. This is a dangerous area where one can be sure that the anti-racist ANC Think Tanks will be well serviced with demographic and opinion poll information. The least that we can do is to avoid ourselves putting forward schemes that will have the result of denying the people a decisive say in government and

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their just share of the country's wealth. At the same time we can confront the problem of 'allaying minority fears' with our own proposal 5 so that the initiative rests with us. What we can expect is an attempt at a regional sub-division of the country so that power is decentralised and the central government relatively ineffective; voting schemes designed to aggregate all the non- and anti-ANC forces; entrenched clauses which will require special majorities; other clauses of a social and political nature which will be disguised as relating to fundamental human rights and as such be inviolable by the legislature even with a hundred per cent majority.

We believe that we can put forward a constitutional scheme that acknowledges and grapples directly with the central problem. The basic problem is not that of political representation or of cultural identity. Democratic principle requires one person one vote, each vote to have roughly equal value. International conventions and universally recognised standards require non-racial criteria for the suffrage and the composition of legislature, executive and judicial bodies. There are no natural territorial divisions that correspond to areas of compact majority ethnic occupation, which could serve as the basis for a territorial federation made up of national states, on the model, say, of Yugoslavia. Nor are there compact majority linguistic areas which could form the basis of linguistic federations such as Belgium or Switzerland. The real problem lies in how to combine implementation of the programme of redistribution of wealth contained in the Freedom Charter with active involvement of the present dominant minority in future political and economic life, all the time encouraging a free and active association of all with a view to creating a genuine common citizenship. Put another way, how is it possible constitutionally to fulfil the historic mission of restoring the land and its resources to the people, while at the same time maintaining the economy at a high level, so that what the people inherit is an ongoing affair and not a memory of past riches? How can one encourage the collaboration of working-class and professional whites as well as of the more enlightened sections of the capitalist class, without postponing forever the just economic and

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social claims of the mass of the people?

Our basis preposai is to'combine Bill of Rights with a consti-
tutional reqairement on the state and all other bodies to take
affirmative action to correct the accumulated social and
economic inequality of the past. Certain rights, such as the
right to vote, to worship; to be free from racial insult shallt
be inviolable. Other rights of a socio-economic nature shall
be protected but subject to the overriding need to take affirm.
atiVe action to redress the inequality created by apartheid.

The term 'affirmative action' was created by the US Supreme
Court as a device to correct manifest inequality in US society
based on race or sex. Sometimes called 'positive discriminau
tion', it has been used to require employers to give more job
opportunities to blacks, Medican-Americans and wemen. It
corresponds to requirements on local authorities to desegregate
housing and on school boards to provide busing to bring about
integrated education. 'Though its effects have been limited in
the USA because of lack of government enthusiasm, in the South
African context, given forceful pressure from the people and
government, it could prove an effective instrument for promoting
substantive and orderly change. (It is worth noting that when
it comes to setting out fundamental human rights, the African
Charter on Human and Peoples Rights is a relatively advanced
document which incliides the so-called Third Generation of
rights. The First Generation are the classical liberal rights
contained lh the UN Uiversal Declaration, the Second are the
Social Economic and Political Rights contained in UN Conven-
tions of the 1960s and the Third includes the Rights of the
Peoples to Peace, Development and a Clean Environment).

By affirmative action we mean the duty on the State and other
bodies to take active steps to alter the'structures of-inequa-
lity inherited from the paSt. Its advantage to the formerly
oppressed is that it states clear goals³and can be legally
enforced with the full power of the State. Its advantages to
those obliged to make alteratiohs to patterns of employment,
housing'rand so on, are that it gives scope for negotiation and
voluntary dequiescence, is a process that can be governed by
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clear criteria, and encourages an orderly reduction of inequalities that takes account of priorities and the time factor. . Since this is a key and innovative concept in the South African context, its implications merit full study.

(ii) How to reconcile freedom of speechL_organisation

and electoral activity with the need to combat

the dissemination of racial and tribal hatred

This is relatively easy in constitutional terms. The Freedom Charter as well as international conventions require that the practice of national, race or colour discrimination and contempt shall be a punishable crime'. In this sense, freedom of speech and of organisation shall be subject to the express and overriding constitutional provisions preventing the dissemination of racist ideas. We feel that the promotion of tribalism and tribal division should be covered in the same way.

Our constitutional draft pressupose in general a multiplicity

of parties and the existence of what is referred to as political pluralism. This would not permit, however, the formation of parties restricted on racial or tribal bases, or parties dedicated to programmes'of racial or tribal division. Nor would other parties or individuals be permitted to indulge in racialist or tribalist propaganda er activity;' As far as electoral activity is concerned, the Electoral Act should prevent participation by organisations constituted on purely racial or tribal bases or which campaign for racial or tribal division. The Constitution should make it clear that campaigning on the basis of promoting the perpetuation or re-introduction of apartheid shall be prohibited.

(iii) How to_ devise an electoralmwystem and
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wil encourage the achievements 6? them
principles contained in the Constitution

The two major problems in this area relate to whether to propose a Presidential or a Prime Ministerial type of government, and whether to adopt a voting system based on single member constituencies or an proportional representation. The two questions are interlinked and definitive answers cannot be given in the absence of hard and'reliable information on population distribution and likoay political preferences. The first
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elections will be the most important ones, for they will determine who will hold the reins of legislative and executive power. at the time when the Constitution comes into force. What we offer at this stage are certain preliminary preferences based on 'general information presently available to the movement.

In Presidential systems, the President is both head of State and head of Government. The so-called Executive President, such as in the United States or France, exercises considerable power, both directly and through the patronage he or she has to offer. Normally the President is elected by direct vote of the total population and holds office independently of the composition of the legislature.

In the Prime Ministerial system, the Head of State may be a constitutional monarch or a President chosen by Parliament, but the head of the government is the Prime Minister, normally chosen to form a government on the basis of leading the party or coalition of parties that commands a majority in Parliament. The Prime Ministerial system originated in Britain and owed its existence to the fact that the continuation of the monarchy after the establishment of Parliamentary sovereignty meant that different persons should be head of state and head of government. Today, the Prime Ministerial system is to be found in former British colonies as well as certain Scandinavian and other northern European states. Some of these countries are monarchies, but most are republics, with a President as head

of state. (Similarly, certain countries with Executive Presidents have Prime Ministers as well e.g. Zambia, France. In these countries the Prime Minister attends to much of the business of the government and of the legislature, but the person really in command is the President). The racist Republic of South Africa recently changed from a Prime Ministerial to a Presidential style of government. 2 1

Our preference at this stage is for an Executive President. We feel that the country will need strong, clear and directly legitimated leadership, especially in the early years of the new Constitution. Since the ANC has undoubtedly more popular support than any other grouping, and since it has personalities of major projection, a Presidential election would seem to be a relatively secure means of ensuring ANC leadership of the

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government. Certainly, the ANC would succeed if the system used-in many Latin American countries were adopted, namely, the Presidential candidate who gets the highest number of votes on the first round is elected, even if he or she does not get an absolute majority. But if the French system were adopted, namely, if no candidate gets an absolute majority on the first round, a second round is held at-which all the candidates stand down except the top two, the chances of an ANC victory, although still strong, would be somewhat reduced. If the ANC were to command a clear absolute majority in the country of the order of, say, 60 per cent, then either the Presidential or the Prime Ministerial system would guarantee an ANC-led government.

If however, the ANC had more support than any other body, but commanded support of only, say, 40 per cent of the voters, a study would have to be made of where the second preferences would go of the other 60%. Would they all rally behind a 'compromise' candidate in an alliance against the ANC, or would at least 10% go for the ANC candidature? There are circumstances where a solid 40% vote for candidates for Parliament running in a multi-party contest in single-member constituencies is more reliable than the same percentage in a two-person run-off in a Presidential race. Thus in Britain today, the Conservative government has a huge majority in Parliament with only about 40% of the vote. Labour, the SDP and the Liberal Party sharing the rest of the votes between them. In recommending a demographic and opinion survey, we are not suggesting that each and every proposal of ours should be made dependent on opinion poll knowledge of our popularity at any stage. But we feel we should be armed with as much information as is obtainable in order to make the best decisions.

Our provisional view was that given the importance of the President's office, consideration should be given to having a Vice-President running on the same ticket as the President.

As in the American system, candidates for President and Vice-President would run together. The disadvantage of having a Vice-President is that it detracts from the office of President,

and keeps an important figure in an office Without clear functions, save to be a reserve in case the President is

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incapacitated. The advantage is that in the event of incapacitation or death, the succession is guaranteed without the need for fresh elections until the term of office runs out. In our concrete case, assuming an ANC person were elected President,

we feel the vice-president could exercise important functions inside the ARC itself. A third leading figure in the governments would be the Prime Minister, whose function it would be to chair the normal business meetings of the Cabinet and to steer legislation through Parliament.

These same considerations would apply in relation to the voting

system for the legislature. The two main possibilities are the single-member constituency system or proportional representation. Until now, the racist legislatures of South Africa have

been elected on the basis of single member constituencies. This

is derived from the British system. The country is divided up

into voting areas called (constituencies) delimited according to certain criteria, mainly population strength. In the South

African system, the candidate in each Constituency who gets the

highest vote - even if not a majority of the votes cast - is

declared elected. In the French system a second round of voting

is held between the top two candidates to ensure that the winner

has at least 50% of the votes cast. If the question of delimitation

is important in present day South Africa, it will be even

more so under the new-Constitution. The effect of the apartheid

system is to divide the population spatially in terms of race. Constituency boundaries could be drawn in such a way as to

encourage cross-race voting, or else they could follow existing

housing pattern, or else have a mixture of the two. Our objec-

tive should be to create an electoral system that: ' '

That all sections of the population are well represented in Parliament; e

That the most progressive elements in each community have the best chance of election;

Thus, we would like a system that encouraged black support for progressive whites without encouraging white support for reactionary blacks! Though the details of delimitation at this stage need not be gone into, it is important not to forget their significance in the overall scheme.

13/...

(Special consideration would have to be given to the position of mineworkers and other migrant workers.; The general feeling was that they should vote in the area where they worked, so as not to encourage ethnic identification. But consideration should also be given to their' feelings on the matter (an extra item for the proposed Demographic-political enquiry), and also to the impact on voting balance in areas where the ANC is relatively strong and relatively weak. In general terms, we feel that the Constitution should appear manifestly fair and democratic and not loaded in favour of the ANC. But at the same time, it would be worse than foolish to gratuitously introduce provisions which weakened the electoral prospects of the ANC.

Given their great strategic significance in relation to the achievement of the goals of the Constitution, the composition of the three Commissions takes on special importance.

Proportional representation rests on a different idea. In its fullest form parties put up lists on a national basis, with candidates in order of preference. The number of candidates elected will be proportional to the votes cast for that list in relation to the total number of votes cast. Thus if a party list gets 20% of the votes, the party will get 20% of the seats. To prevent a proliferation of small parties, a minimum percentage say, 5%, is sometimes required. Many variations of this system are possible. In Zimbabwe, p.r. applies, but in relation to lists in eight different provinces. This gives some intimacy in relation to voters and candidates, while maintaining the principle of seats in proportion to votes.

In terms of efficient, stable government sensitive to the will of the people, there are arguments for and against both systems. The question is not one of 'pure' theory of government, but of which, in the concrete situation of South Africa would be most likely to promote the implementation of the Freedom Charter. There is nothing in the Charter itself to favour one system over the other. Our initial preference is for the single member constituencies, which encourage the formation of national parties, and which have the advantage of being already well-known to our people (it might be possible simply to take the existing provisions for the white assembly and delete the

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racist clauses . it would be difficult to refute the argument that if it was good enough for the whites for 75 years, why is it not good enough for us?

(1v) How to establish forms of regional and local government that will be consistent with the aims of the Constitution

This is an area that needs much attention. The old system of administration division based on national, provincial and local levels with which most of us are familiar is already being dismantled by the regime, which seeks to establish tri-cameral type local government with an element of 'urban black' participation, as the basis for building up from the bottom and perhaps one day making the region the decisive unit in the whole government structure. At the same time, popular insurrectionary-type struggles at the local level have created the embryos of future units of community government at the local level.

The question of regional and local government therefore has already assumed especial significance, and since it is at these levels that concrete questions such as housing, services and education are dealt with on a day to day basis, they will obviously be even more important in the future.

As far as the region is concerned, there are evident administrative advantages in sub-dividing such huge areas as the Cape Province into regions. But care has to be taken not to allow regionalisation to become another way of incorporating the Bantustans as permanently underdeveloped feudal and reactionary units into the new governmental structure. In general terms, we have to avoid permitting the term 'regions' to become an apparently neutral description for a South Africa divided into ethnic homelands. On the contrary, the regions we envisage should be designed to counteract the isolation of the Bantustans and to promote the introduction to them of democratic organs of self-government. As the Pondoland uprising demonstrated many years ago, the peasant communities have strong traditions of community government. In our view, boundaries should be drawn; both at the regional and local levels, so as to

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to ensure that rich and poor areas are included side by side. This has important implications for finance as well as for breaking down patterns of inequality.

Our point of departure therefore should be that regional and local government structures are important because:

They deal with concrete questions directly affecting the lives of the people; '

They involve large sections of the population directly and actively in questions of government;

They will be the scenes of direct transformation of the lives of the people.

We do not, however, envisage the regions as being a substitute for a centre, or that national policy should be made at the regional level. We have to encourage all the people in all areas to think of themselves as South Africans, to take on a national vision, to be sensitive to and aware of the complexity and diversity of all of South Africa, to take on the dimension of the country as a whole. We should oppose Balkanization of our thinking as much as we oppose it in relation to our political system. i

Any system of local government we devise must also take account of the realities of our cities and towns. Most of the white population lives in the urban areas. Since there are likely

to be more black reactionaries than white progressives, an alliance of whites and reactionary blacks might be able to capture control of major cities, if careful attention is not paid to the problem. Democratic control of SOWETO is one thing. Democratic control of Greater Johannesburg is another (one sees here the importance of black unity as the basis for winning - over significant sections of the white community to support

the Freedom Charter).

It is obvious that a supplementary part of the demographic/opinion study should be a study of local government, including questions of finance. The possible administrative division of South Africa into regions also requires more precise

information than we possess at present.

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dismantling_the legislative and institutional
structures of apartheid

As far as the law itself is concerned, it will be possible to
have a general constitutional clause to the effect that all
laws not repugnant to the Constitution remain in force until
amended or repealed. Certain apartheid laws could be listed
in a schedule and repealed automatically (e. g. those that
restrict freedom of choice in relation to where to live, trade
etc.)

Others that are obnoxious because of their racist character,
but which have important practical consequences, such as pay-
ment of teachers' wages, payment of rent etc., could be repealed
in part (the openly racist clauses) but not in toto, pending
submission to the Affirmative Action Commission pending new
legislation. The Roman-Dutch Law, the Companies Acts and so

on will continue until altered by' Subsequent legislation.
Special attention would need to be paid to the future of tradi-
tionai (customary) law, but this need not be a constitutional
question, unless it is felt that exceptions to the section on
Fundamental Rights and Duties of Citizens should be made so as
to permit inconsistent traditional law prac tices to continue.

Our proviSional view is that no such exceptions should be
permitted and that throughout the country as a whole community
courts at a grass roots level be created to resolve disputes
within a defined competence according to relevant legislation
(perhaps) to be codified and simplified for application at

this level), interpreted in the light of the principles of the
Constitution (or the Freedom Charter), applying traditional
norms and practices in certain areas where these are not incon-
sistent With the Constitution. Thus long overdue reforms such
as that relating to the subordinate position of African widows,
would be immediately effected, while other questions, such as
the legal status of lobola could be studied.

The miserable record of theESouth African courts in recent
years strengthens the claim that the judiciary needs to be
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transformed to make it a truly representative organ that can

be relied upon to implement rather than frustrate the terms of the Constitution. The judiciary as at present constitution, with a few honourable exceptions consists of persons largely imbued with the apartheid philosophy, who, far from mitigating the evil effects of apartheid, and far from using the limited power at their disposal to denounce torture and abuses, have covered up for the police and authority. As such it is the

last organ that could be given the position of watchdog of the Constitution. In particular, it would be unthinkable to entrust the vast programme of social and economic reform contemplated by the concept of affirmative action, to the scrutiny of these judges. Parliament is the place where social and economic issues are decided. Our proposal is that consideration be given to the creation of a Constitutional Commission under the control of Parliament to supervise the application of the Constitution. The Commission could have a Judicial Section to give advisory opinions on points of interpretation. The Constitutional Commission would liaise closely with the Affirmative Action Commission, but not be drawn directly into its day to day activities.

A third commission with important functions especially in the period of transformation would be the Public Service Commission. The present body bearing this title would have to be thoroughly democratised so that a new body could supervise access to and promotion within the Public Service. Although 'Party political' criteria in the narrow sense should not be used, willingness

and proved capacity to work for the fulfilment of the Constitution should be regarded as an important factor to be taken into account together with technical qualifications.

The great problem here will be to give the public service a democratic and non-racial character as quickly as possible while causing the least possible disturbance to the carrying out of functions such as transport and telecommunications.

Granted the strategic importance of these three commissions in carrying out the fundamental goals of the Constitution, great attention would have to be paid to their membership. Our proposal is that appointments should be made by the President
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subject to ratification by a special committee appointed by Parliament. This would dignify the involvement of both the Executive and the Legislature in ensuring that the best Commissions are appointed.