

File

Mr. Zola Skweyiya
Legal Department
ANC(SA)
Lusaka
ZAMBIA

MCH 01-92-7-3

10th August 1990

Dear Zola

This is a postscript to the letter I sent you several weeks ago. I hope it reached you.

The purpose of this note is to say that English friends at the Bar here have now informed me that they had a meeting with Judge Olivier here recently at which he informed them that he had finished a draft of a Bill of Rights and a new Constitution for South Africa. They had preliminary discussions with him on both documents. The Judge will return to London on or about 16th December, 1990, for further discussions with them. He will then finalise the drafts for presentation to Government by the end of December, 1990. The drafts, suitably amended, will then be used by the Government in negotiations with the ANC. I don't think I need comment further on this subject.

Yours in the struggle,

N. M. MASEMOLA

N. M. M.

c.c Mr. O. R. Tambo, President;
Mr. Alfred Nzo, Secretary-General;
✓ Mr. Albie Sachs;
Mr. Kader Asmal;
Mr. Dullah Omar.

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**AFRICAN
NATIONAL CONGRESS**

FAX COVERSHEET
LEGAL AND CONSTITUTIONAL AFFAIRS DEPT

DATE : 25 NOVEMBER 1991
FAX TO : ALBIE SACHS
FAX FR : ZOLA SKWEYIYA
FAX NO. : 0944 71 5205878
OUR FAX NO. : 011 333 4509

Dear Albie

The meeting of the Negotiation Commission will be held on the 28 November, 1991. The Secretary General (Cde Cyril Ramaphosa) has requested the presence of all the Constitutional Committee and the NEC members in this meeting.

I therefore appeal to you to be present in this meeting. Kindly call our office to confirm your attendance so as to finalise your flight bookings.

Regards

ZOLA SKWEYIYA
DIRECTOR : LEGAL AND CONSTITUTIONAL AFFAIRS DEPT

Phoned SLS's office & left a message to say AS in CTown on 27th. Please book him to leave with other CT. people going to meeting of 28th

Don 25. 11. 91

Dorothy - Good a.m!
Can you face this
marked 'Very Urgent -
please pass on to the
S.G. at the NEC
meeting.'

He will then give it
to Zola.

Albie

P.S. I've gone for coffee-
espresso. Am expecting
2 people from BBC
before Cheryl.

Dear c. Zola,

This is a quick first draft. It will give the NEC an idea of the themes and format that could be used. I would suggest giving them a copy of the 1982 Namibia principles as well.

Is the Constitutional Committee meeting on Thursday? Can you let me know today, if possible?

Monday a.m., Albro.

Zola Skweyiya

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Keep numbers

***** UF-250 ***** -JOURNAL- ***** DATE 25-NOV-1991 ***** TIME 10:24 *****

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-ICS-LONDON

***** -PANASONIC- ***** - *****

PRINCIPLES

1. The Constitution will apply to the whole of the territory which constituted the Union of South Africa and which is presently recognised by the international community as being South Africa.

2. South Africa will be a sovereign, independent, united, democratic, non-racial and non-sexist republic.

3. Government will be constituted and will function according to universally recognised principles of democracy and freedom.

4. Government will function at national, regional and local levels. The Constitution will define the functions, responsibilities and powers of government at each level as well as the relationship between the different levels, and will create means for determining the number and boundaries of regions and local areas. Government at each level will be elected, and will function according to the principles of accountability, openness and fairness.

5. There shall be a system of multi-party democracy, with free, fair and periodic elections at all levels. Voting shall take place according to the system of universal franchise on a common voters' roll with each vote having equal value. The basic electoral principle shall be that of proportional representation.

6. There shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances to prevent over-concentration of power.

7. The legislature, representing the electorate, shall, within the framework of the Constitution, and respecting the provisions of the Bill of Rights, be the supreme law-making authority in the country.

8. The executive shall be accountable to the legislature, save that consideration may be given to having a directly elected Executive President with appropriate powers and functions.

9. There shall be a representative and independent judiciary, headed by a Constitutional Court, whose function it will be to interpret and enforce the Constitution and the laws of the country, and which shall have the power to declare unconstitutional any act of the legislature or the executive which violates the Constitution.

10. The Constitution shall contain an entrenched and justiciable Bill of Rights guaranteeing fundamental rights and freedoms as set out in the Universal Declaration of Human Rights and other universally accepted international human rights conventions. Special attention in the Bill of Rights shall be paid to securing the defence of religious, language and cultural rights, and to providing guarantees against any forms of domination, discrimination or abuse of majorities, minorities or individuals.

11. The fundamental principle of the Bill of Rights shall be that of equal rights and non-discrimination; affirmative action to promote equal opportunity and equal access to skills and resources shall be regarded as supportive of this principle.

12. The Constitution shall make appropriate provision for the existence of a mixed economy guaranteeing equal opportunity for all to engage in economic activity, and providing scope for the government to fulfill its responsibilities in securing basic social rights for all.

12. Property rights shall be respected in terms of the following principles:

special protection shall be given to personal possessions, including one's home and personal belongings;

special procedures and principles shall be laid down to ensure that claims to land are dealt with in a fair manner according to equitable principles which will take into account the interests of those dispossessed by past discrimination, the interests of present title-holders and the national interest in maintaining food supplies and guaranteeing social peace;

where the public interest, including the interests of those dispossessed by past discrimination, requires measures which affect the interests of current property-owners, just compensation taking into account all relevant factors shall be paid.

12. The civil service, the security forces and other organs of the state shall function according to the principles of drawing on the skills and life experience of all sections of the community, competence, impartiality and accountability.



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Faculty of Law
Fakulteit Regsgeleerdheid

*for Albie
with my compliments
Kader*

11 March 1993

Dr Zola Skweyiya
Legal and Constitutional Affairs
JOHANNESBURG

By fax: (011) 330 7119

Dear Zola

Greetings.

I have just returned from my Border Region duties and Dullah has informed me that there is a Constitutional Committee meeting on Saturday next. Alas, I shall have difficulties. Four weeks ago, I agreed to do an analysis of the regime's proposals on women and this comes at the start of the Women's Commission workshop on Saturday. It is something I cannot get out of.

However, if Catherine lets my office know where the venue is, I will take a taxi later in the day for part of the proceedings of the Committee.

There are a few matters which I would like to bring to your attention and which may be matters for Saturday's meeting. I shall enumerate them:

1. Yesterday, the U.S. political officer at the Embassy attended a briefing following the Cabinet Negotiations sub-committee meeting. He told me that the Government is committed to handing power over to a Constituent Assembly on condition that (i) there is a proper Interim Constitution and (ii) there is in place an interim and comprehensive Bill of Rights. This is on the understanding that we have, since December 1992, agreed to these interim arrangements. I understand that the regime is adamant about this. What do we do on the Constitutional Committee about this?
2. When I was in the Border office, I was shown a faxed copy of a draft Electoral Bill circulated to Regions by the Election Commission. There are a number of points which we need to discuss and take a position on before the draft is accepted. In particular, we need to look at the concept of advance voting (which violates the principle that voting should take place on fixed days and which has been exploited by white parties) and whether there should be an appeal from the Independent Election Commission to the Supreme Court. However, there are only two matters.

3. We need to respond quickly to the public debate on the Bill of Rights, especially when commentators try to equate us with the regime. The response is not helped by the preliminary revised version of the Draft Bill of Rights being dated as February 1993. This gives the impression that the revision was carried out this year. What should have been printed out is that the text is the one adopted by the Policy Conference in May 1992.
4. The Secretary General's office has sent two documents to me, among other members of the Constitutional Committee, which require a response from us. First, this is long Dave Dalling document on law reform and, secondly, a copy of a document from African Enterprise of 9 February 1993, seeking a meeting with members of the Constitutional Committee on religious freedom. Can we arrange for an appropriate response from us.
5. The Goldstone Commission has announced (see press reports of 9 March) that they are to hold a special enquiry into "curbing the potential for public violence and intimidation in a national election! Well and good. But the Commission will deal with matters which are really concerned with negotiations and the work of the Independent Election Commission. For example, they want to discuss (and they will have a panel of South African experts and "appropriate international experts will be consulted") such matters as the role of government departments, the police and the international community, which is a bloody cheek.

Submissions have to be sent in by the end of May. We cannot leave this matter to our Goldstone lawyers, *please*, and the Secretary General should urgently co-ordinate the response, if any, which should be prepared by the Constitutional Committee, the Elections Commission and the Peace Desk. I think the Goldstone Commission is being used to get round the negotiations process. But it is too late to complain about this now.

With best wishes

Yours sincerely

Kader Asmal

cc Dullah and Bulelani