

MCH 91-92-8-6

Zanele Mbeki
National Women's Secretariat
A.N.C.
PO Box 31791
Lusaka
Zambia.

October 11, 1989.

Dear Zanele,

With the help of my comrades, the Lord, and various friends, I am thriving. Thank you for your good wishes. I was thrilled to get the documentation prepared by the Women's Secretariat. What a leap forward! Thank you for asking me to contribute.

I enclose ^{*} quite a large number of papers for yourselves; please make them available as well to Bridget Mabandla.

I am preparing a paper on constitutional aspects of the gender question in South Africa and would like to feed it into the discussion.

Can you confirm the dates of the seminar? I have to plan well in advance and might not be coming directly from London.

Please let me hear from you.

Yours

Albie Sachs

cc: Thami Ngwevela

* In separate parcel

13/8/90.

Comrade Brigitte Mabandla,

This is to confirm that I will not serve as a consultant for the Commission on Gender Family & Children.

I have previously criticised the appointment of an all male Constitutional Commission by the NEC, and had been given to understand that there was now a greater political understanding of the need for a policy on the question of gender within the ANC.

Certainly, this is reflected in the NEC's statement of May 2nd.

It appears now, that the extended Constitutional Commission of over 20 members, contains only 1 woman. Am I to

understand that the NEC does not know of any capable women lawyers in our country?

I do not believe the Committee as presently constituted can deal with the question of gender, which needs to be reflected in all aspects of policy and within the Constitution. I therefore have no confidence in it, in regard to this issue.

As women, we have tried to "influence" + "persuade" for too long. It is time we stood up + spoke out honestly. This I am trying to do by refusing to be a party to a "consultative" exercise in a process where decisions are being made exclusively by men.

S.A. has too many examples
of this, in regard to
consultative machinery for
blacks. Let the new South
Africa not follow in those
footsteps in regard to
women.

I apologise for this
hand written letter, written
in a hurry but after
much thought on the
principles at stake.

Yours in the struggle.

Frene Ginwala

c.c. Comrade Gertrude Shope.

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PROPOSED PROGRAMME OF ACTION FOR THE CONSTITUTION COMMITTEE'S
COMMISSION ON GENDER, FAMILY AND CHILDREN

Objective:

To consult widely on the subject of Gender, Family and Children, for the purpose of drafting a constitution for a democratic, non-racial, non-sexist South Africa. The immediate task of the Core Group of the Commission is to present the Draft Programme of Action to the Constitution Committee for approval.

WOMEN

Terms of Reference: The proceedings of the Commission on the subject of Women shall be guided by the following:

- a) Resolutions of the ANC In-house Seminar on Constitutional Guidelines, on Women, Family and Children.
- b) Resolutions of the Malibongwe Conference.
- c) Recommendations of the workshop organised by NWC in April 1990 on the formation of the Women's League inside South Africa.

How to function: It is proposed that an initial meeting should be convened with the consultants three weeks after the approval of the Programme of Action. The meeting should discuss the best possible method of consultation. It should identify issues to be addressed, propose the best method of addressing such issues, determine immediate tasks for the consultants and distribute tasks amongst the consultants.

CHILDREN

Terms of Reference:

- a) The resolutions and recommendations of the ANC In-house Seminar of the Constitutional Guidelines on Women, Family and Children.
- b) The recommendations of the Gaborone Consultative Meeting on Children.
- c) Recommendations of regional workshops/seminars during the Child Rights launch.

How to function:

The proposed meeting of NCCR to review the launch, should also address the issue of a demographic study based on age as well as a situation analysis on children and women. The review of the launch should form the basis for consultation. A consultative

meeting must be organised with G. MacFadden for the purpose of determining his role.

FAMILY

Terms of Reference: Recommendations and resolutions of the In-house Seminar of the Constitutional Guidelines on Women, Family and Children.

How to function: An initial meeting is proposed, three weeks after approval of the Programme of Action by the Constitution Committee. The meeting should:

- identify issues to be addressed;
- determine the best possible way of addressing the said issues;
- allocate functions to the consultants.

COMMISSION MEMBERS

Core Group: Zola Skweyiya
Penuell Maduna
Albie Sachs
Brigitte Mabandla (Convenor)

Consultancies:

Women: Mavivi Manzini
Frene Ginwala
Dr. J. Cock

Children: G. MacFadden
NCCR

Family: Barbara Masekela
Lulu Gwagwa
Mbalu Mncadi

TASKS

1. Convenor - Brigitte Mabandla
 - a) Prepare Programme of Action for Commission.
 - b) Recruit and organise office of Commission.
 - c) Convene Meetings of Core Group.
 - d) Direct Consultancy.
 - e) Programme feedback of data.
 - f) Convene broad-based seminars and workshops.
 - g) Introduce acquired data to the Constitution Committee.
2. Core Group - Z. Skweyiya, P. Maduna, A. Sachs, B. Mabandla

- a) Advise convenor.
- b) Approve or veto recommendations of convenor at Core Group meetings.
- c) Participate at Consultancy meetings, workshops and seminars.
- d) Advise and direct Commission at all levels.
- e) Advise on expertise required both nationally and internationally.
- f) Support, introduce or recommend available data to the Constitution Committee.

3. Consultancy

- a) Avail itself to the Commission whenever required.
- b) Advise and direct Commission.
- c) Engage in research as requested by Commission.
- d) Recommend experts and interested groups for seminars and workshops.
- e) Participate in seminars and workshops organised by Commission.

PROFILES OF CONSULTANTSWOMEN:

1. MAVIVI MANZINI: BA Admin (UNZA). Members of NWS from 1980
2. DR. J. COCK: Professor of Sociology (Witwatersrand). Author of 'Maids and Madams'. Written various articles on women, e.g. Women on Militarisation in War and Society.
3. FRENE GINWALA: LLB (London). D Phil (Oxford). Barrister at Law. Head of Political Committee - Office of the President.

FAMILY:

4. BARBARA MASEKELA: Secretary for Arts and Culture.
5. MBALI MNCADI: BA Law, LLB (UNISWA). Crown Counsel - Attorney General's Chambers Swaziland (dealing with civil law re: Government). Member of DLCA (Lusaka). Research Assistant at SA Constitutional Studies Centre - Institute of Commonwealth Studies - University of London on Local Government.
6. LULU GWAGWA: MSc (School of Economics, London). Social Policy, presented a paper on 'Family' at In-house ANC Constitutional Guidelines Seminar 1989 on 'Women, Family and Children'. Presently doing PhD in housing.

CHILDREN:

7. G. MACFADDEN: PhD in Child Rights. Presented a paper on Child Rights at ANC In-house Constitutional Guidelines Seminar 1989 on 'Women, Family and Children'.

Workers

- t) A charter protecting workers' trade union rights, especially the right to strike and collective bargaining shall be incorporated into the constitution.

Women

- u) Women shall have equal rights in all spheres of public and private life and the state shall take affirmative action to eliminate inequalities and discrimination between the sexes.

The Family

- v) The family, parenthood and children's rights shall be protected.

International

- w) South Africa shall be a non-aligned state committed to the principles of the Charter of the Organisation of African Unity and the Charter of the United Nations and to the achievements of national liberation, world peace and disarmament.

CONSTITUTIONAL GUIDELINES FOR A DEMOCRATIC SOUTH AFRICA

The Freedom Charter, adopted in 1955 by the Congress of the People at Kliptown near Johannesburg, was the first systematic statement in the history of our country of the political and constitutional vision of a free, democratic and non-racial South Africa.

The Freedom Charter remains today unique as the only South African document of its kind that adheres firmly to democratic principles as accepted throughout the world. Amongst South Africans it has become by far the most widely accepted programme for a post-apartheid country. The stage is now approaching where the Freedom Charter must be converted from a vision for the future into a constitutional reality.

We in the African National Congress submit to the people of South Africa, and to all those throughout the world who wish to see an end to apartheid, our basic guidelines for the foundations of government in a post-apartheid South Africa. Extensive and democratic debate on these guidelines will mobilise the widest sections of our population to achieve agreement on how to put an end to the tyranny and oppression under which our people live, thus enabling them to lead normal and decent lives as free citizens in a free country.

The immediate aim is to create a just and democratic society that will sweep away the centuries-old legacy of colonial conquest and white domination, and abolish all laws imposing racial oppression and discrimination. The removal of discriminatory laws and eradication of all vestiges of the illegitimate regime are, however, not enough; the structures and the institutions of apartheid must be dismantled and be replaced by democratic ones. Steps must be taken to ensure that apartheid ideas and practices are not permitted to appear in old forms or new.

In addition, the effects of centuries of racial domination and inequality must be overcome by constitutional provisions for corrective action which guarantees a rapid and irreversible redistribution of wealth and opening up of facilities to all. The Constitution must also be such as to promote the habits of non-racial and non-sexist thinking, the practice of anti-racist behaviour and the acquisition of genuinely shared patriotic consciousness.

The Constitution must give firm protection to the fundamental human rights of all citizens. There shall be equal rights for all individuals, irrespective of race, colour, sex or creed. In addition, it requires the entrenching of equal cultural, linguistic and religious rights for all.

Under the conditions of contemporary South Africa 87% of the land and 95% of the instruments of production of the country are in the hands of the ruling class, which is solely drawn from the white community. It follows, therefore, that constitutional protection for group rights would perpetuate the status quo and would mean that the mass of the people would continue to be constitutionally

trapped in poverty and remain as outsiders in the land of their birth.

Finally, success of the constitution will be, to a large extent, determined by the degree to which it promotes conditions for the active involvement of all sectors of the population at all levels in government and in the economic and cultural life. Bearing these fundamental objectives in mind, we declare that the elimination of apartheid and the creation of a truly just and democratic South Africa requires a constitution based on the following principles:

The State:

- a) South Africa shall be an independent, unitary, democratic and non-racial state.
- b) i. Sovereignty shall belong to the people as a whole and shall be exercised through one central legislature, executive and administration.
ii. Provision shall be made for the delegation of the powers of the central authority to subordinate administrative units for purposes of more efficient administration and democratic participation.
- c) The institution of hereditary rulers and chiefs shall be transformed to serve the interests of the people as a whole in conformity with the democratic principles embodied in the constitution.
- d) All organs of government including justice, security and armed forces shall be representative of the people as a whole, democratic in their structure and functioning, and dedicated to defending the principles of the constitution.

Franchise

- e) In the exercise of their sovereignty, the people shall have the right to vote under a system of universal suffrage based on the principle of one person, one vote.
- f) Every voter shall have the right to stand for election and be elected to all legislative bodies.

National Identity

- g) It shall be state policy to promote the growth of a single national identity and loyalty binding on all South Africans. At the same time, the state shall recognise the linguistic and cultural diversity of the people and provide facilities for free linguistic and cultural development.

A Bill of Rights and Affirmative Action

- h) The constitution shall include a Bill of Rights based on the Freedom Charter. Such a Bill of Rights shall guarantee the fundamental human rights of all citizens irrespective of race, colour, sex or creed, and

shall provide appropriate mechanisms for their enforcement.

- i) The state and all social institutions shall be under a constitutional duty to eradicate race discrimination in all its forms.
- j) The state and all social institutions shall be under a constitutional duty to take active steps to eradicate, speedily, the economic and social inequalities produced by racial discrimination.
- k) The advocacy or practice of racism, fascism, nazism or the incitement of ethnic or regional exclusiveness or hatred shall be outlawed.
- l) Subject to clauses (i) and (k) above, the democratic state shall guarantee the basic rights and freedoms, such as freedom of association, expression, thought, worship and the press. Furthermore, the state shall have the duty to protect the right to work, and guarantee education and social security.
- m) All parties which conform to the provisions of paragraphs (i) to (k) shall have the legal right to exist and to take part in the political life of the country.

Economy

- n) The state shall ensure that the entire economy serves the interests and well-being of all sections of the population.
- o) The state shall have the right to determine the general context in which economic life takes place and define and limit the rights and obligations attaching to the ownership and use of productive capacity.
- p) The private sector of the economy shall be obliged to co-operate with the state in realising the objectives of the Freedom Charter in promoting social well-being.
- q) The economy shall be a mixed one, with a public sector, a private sector, a co-operative sector and a small-scale family sector.
- r) Co-operative forms of economic enterprise, village industries and small-scale family activities shall be supported by the state.
- s) The state shall promote the acquisition of managerial, technical and scientific skills among all sections of the population, especially the blacks.
- t) Property for personal use and consumption shall be constitutionally protected.

Land

- u) The state shall devise and implement a Land Reform Programme that will include and address the following issues:
 - i) Abolition of all racial restrictions on ownership and use of land.
 - ii) Implementation of land reforms in conformity with the principle of Affirmative Action, taking into account the status of victims of forced removals.

MATTERS OF PARTICULAR CONCERN.

a) Women's Emancipation in the context of Constitutional Guidelines:

- Meeting went through the guidelines, clause by clause. It was pointed out that it would not be enough for us to add 'sex' all over, but what is necessary is an elaboration on the clauses themselves in as far as they guide the constitution and their implication for the future of South African women.

Preamble: Paragraph 4 line 3 to read "abolish all laws imposing racial and gender oppression and discrimination".

Paragraph 5 line 1 - In addition, the effects of centuries of racial domination, women's subordination and inequality.

The State: a. "South Africa shall be an independent, unitary, democratic, non-racial and non-sexist state"

b." The institutions of hereditary rulers and, chiefs and chiftainesses shall be transformed to"

Bill of Rights and Affirmative Action: j. "The stateinequalities produced by discrimination based on race, sex and creed

1. Subject tofurthermore the state shall have the duty to protect the right to work for men and women, and guarantee"

Land: u. i) Abolition of all restrictions on ownership and use of land based on race and gender

ii) Implementation of, taking into account the Land Act of 1913 and 1936 and the status of victims.

Workers: The meeting suggested that aspects such as equal wages, living wage and the right of women workers must be incorporated in the constitution and must spell out clearly what the future is meant to hold for them.

Women: In the same way as workers have been promised a Charter

to protect their rights there is a need for a document, Charter or Bill of Rights to protect women's rights as women have been disadvantaged historically. This document should elaborate on where and how women feature in the economy.

Family: The movement should draw up a family code as the family is an arena where women feature a lot. Under Economy there is a need for a clear definition of family as reference is made to "family sector". In this context parenthood also needs to be defined in clear terms.

Children: warrant a section/clause on their own as a special and very sensitive group of the population. The Constitution must not deal with them in passing.

International: "South Africa shall beto the achievements of national liberation, development, world peace and disarmament".

Additional Points: 1.

1. The ANC must sign the Convention on the elimination of all forms of discrimination
2. Our lawyers and economists must help us deal with the concept of "unemployed workers" and the question of the enormous amount of unrewarded labour of our women - especially - in the domestic sphere.
3. Legislation should define some of the concepts that cannot be elaborated by a constitution.

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DRAFT PROPOSAL FOR THE GENDER COMMISSION (TEC)

Motivation for the need of a Gender Commission

Pursuant to the Declaration of Intent which recognises South Africa as a nonracial and nonsexist state, negotiations and all transitional structures should be gender sensitive. We recognise that the noble ideal of a nonsexist state will not be realised if the TEC stage of the transition does not have women represented in all structures as well as an appropriate structure to level the playing fields with regard to gender. It is therefore proposed that during the TEC stage, a gender commission is set up. This will have a direct impact on the TEC.

The establishment of a Gender Commission does not replace women's participation in the TEC itself and all other transitional structures. It should in fact enhance women's participation in all these transitional structures.

Status of the Gender Commission

It should be an independent commission of a specialised nature.

Composition of the Gender Commission

It should be composed of 7 (seven) to 11 (eleven) gender specialists.

Functions / Powers of the Gender Commission

1. Functional relationship with the TEC.

It should supervise the TEC and its subcouncils with the intention of ensuring gender sensitivity in all issues. The Gender Commission should have the power of:

- a. Vetoing all recommendations that emerge in the function of these structures if such recommendations adversely affect the situation of women. For example the security services subcouncil.
- b. It shall also make an input into legislation pertaining to the reform procedures that impinge on the rights of women.
- c. No legislation, regulations or any other form of law should be valid if it has not been endorsed by this commission.

2.. Relations with other transitional structures

a. Independent Electoral Commission: One of the tasks for the IEC would be to set out rules that would enable maximum participation in the first nonracial elections. We believe that such rules should ensure that women participate effectively in elections.

Special procedures will have to be drawn so as to realise this goal. The commission will be in the best position of defining enabling legislation for women's maximum participation.

The following are examples of these functions. There is the need to be sensitive to women's situations such as the double burden of women which is employment and family management. Accordingly, electoral procedures should conform to the times when women are most available. Another is that of general illiteracy amongst women. Voter education should be tailored to suit women. There are current indications that women under certain tribal authorities are denied the right to organise meetings. The probability is that intimidation would increase during elections. There is therefore the need for educational material to be produced informing the populace and women on women's rights to vote.

b. Media: Currently there is a move towards setting up a media board. The drafting of guidelines for fair usage of the electronic media during the transitional government dominates the media discourse. The gender commission will make appropriate recommendations in this regard. The media personnel as relating to the board should include women. The commission will also define in terms of the gender perspective what fair coverage implies. These factors should also apply to the print media.

c. Goldstone Commission: This body has failed in addressing the position of people under difficult circumstances such as women and children. In its character and functions it does not address gender. It is composed of few women and the description of its functions do not include a gender perspective. It therefore does not have a mandate to address violence affecting women.

Devoid of gender statistical information, its reports fail to expose particular violence directed at women. For example the public has yet to learn of action taken in the rape allegations by Battalion 32 in 1992 in Alexandra and surrounding informal settlements. There is evidence that women in single - headed households suffer more in strife - torn areas and rural areas. However, there is no mention of the actions taken in this regard by the Goldstone Commission. We believe that the gender commission will play an important role in guiding investigations by the Goldstone Commission as well as identifying females for conflict - resolution. Lessons from other countries indicate that women are effective in mediation.

**Compiled and submitted by:
Brigitte Mabandla & Mbali Mncadi.**

cc: ANC Constitution Committee members.

**Extracts from South African Law
Commission's Report on Constitutional Models,
Volume 1 Section on unitary/federal State.**