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FAX COVER SHEET

DATE : 15 JUNE 1993

TO : SACTWU
FAX NO : 478515

ATTENTION : EBRAHIM PATEL

SUBJECT : CONFERENCE - WORKER RIGHTS IN A NEW SA

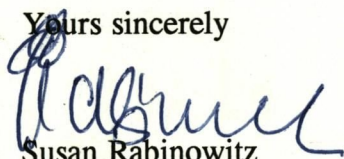
FROM : ALBIE SACHS

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 6

Dear Ebrahim Patel

I attach a copy of Albie's paper which he will present at the conference on Friday.

Yours sincerely


Susan Rabinowitz
Assistant to Albie Sachs

Encl:

ADVANCING HUMAN RIGHTS IN SOUTH AFRICA
ALBIE SACHS

OXFORD UNIVERSITY PRESS, 1992

10 Workers' rights as human rights

ALBIE SACHS

Constitutional rights do not come from the heads of lawyers, but from the struggles of ordinary (and extraordinary) men and women. Apartheid kept South Africa so backward that time-honoured concepts, such as equality for all and freedom of speech, are still new and slightly astonishing for us; so, too, is the idea of guaranteed constitutional rights for workers.

Until recently, the notion of enforceable workers' rights, was officially regarded as 'not South African', particularly if the workers were not white; the only right conceded to a black worker was the right to hope for a kind employer. More recently, certain homeland leaders also threw their weight against workers' rights, alleging that they were 'not African'; in their view, the only right a worker had was the right to ask for protection from a strong chief or warlord.

Now we are considering writing workers' rights into an entrenched bill of rights. We want them to be inviolable rights embedded in the heart of the new constitution. No employer, no government, no political party will be able to take them away.

We are not used to the idea of a constitution, a real constitution, that is, a document that guarantees certain rights that are regarded as so fundamental that no one can override them, not even a future parliament, not even a democratically elected one. We are on the verge of having such a constitution in South Africa, one that will have a strong bill of rights so that everyone can feel secure and no one will feel threatened by either minority rule or majority rule. It is for this reason that it is important that fundamental rights for workers receive full and unambiguous acknowledgement.

When the persons responsible for drafting the text of the new constitution search for the appropriate language in which to guarantee workers' rights for all time to come, they will be inventing nothing, nor will they be importing strange ideas into our country. Rather, they will be finding the right terms to consolidate what generations of South African workers and workers' organizations have fought for.

Lawyers might have an important role to play in choosing the precise

words that make up a constitution, but the real text is written in the lives and struggles of the people as a whole. If, as the Freedom Charter says, South Africa belongs to all who live in it, so must the constitution of South Africa be the property of all South Africans. It is not a document that confers favours on anybody; rather, it recognizes, defends and rounds off what people have claimed and fought for over the decades.

The new South African constitution will reflect the multiple experiences of the diverse communities that make up the South African nation. Its richness and resilience will depend in large degree on the extent to which it embodies in legal form the experiences and longing for dignity of all South Africans.

The basic guarantee of any constitution, more important even than any institutional mechanism, is that those who live under it believe in it. People will identify with a constitution if they have fought for it and taken part in its elaboration, if they see themselves reflected in it and feel that in defending the constitution they are protecting themselves.

If a constitution is the self-portrait of a nation then each and every one of us has the right and the responsibility to take part in its creation; like any serious artist, we will not gloss over the weaknesses of the subjects — ourselves — nor shy away from their/our capacity for nobility.

Now is the moment when all of us, workers and non-workers alike, must declare what we want to see in the new constitution and establish definitively the outlines of the kind of country we want to live in and the character of the rights we want to enjoy.

Trade unions over the years have given workers experience in self-management, as well as autonomy and dignity. Through trade unions thousands of persons have learnt to rise above racism and demolish the myths of sexism. They have trained themselves in constitutionalism, the idea that there are basic rules and values governing conduct, and appropriate means of choosing leadership and of ensuring its accountability. They have instructed members on the importance of democracy in settling disputes, of the vote, discussion and tolerance. Long before we were thinking of a new constitution with entrenched rights for the nation as a whole, trade unions were establishing the idea of a constitution guaranteeing rights for workers in their own organization.

Unions have been schools of citizenship and democracy in which the disenfranchised were both the teachers and the taught. However much their activities might have irritated employers, no one can doubt that, along with churches and other religious bodies, they have been one of the most important agencies for cutting across barriers of race, gender and region, and as such have been major building units of the new non-racial, non-sexist South Africa that we all desire.

Just as apartheid depersonalized workers, so now is it necessary for

workers in the new South Africa to repersonalize themselves. Workers are not just creatures whose sole destiny it is to labour for others and then to be discarded when no longer needed. Before work, during work and after work, they have rights and dignity, not just to wages and holidays, but to a safe and dignified work environment, to training and to advancement.

The blockage of career possibilities because of race and gender has been particularly severe in South Africa. People who have been unjustly held back for generations have the right to special support to obtain the qualifications and experience to enable them to get ahead.

It is not the function of the constitution to spell out all the rights of workers in great detail. That can be left to a Workers' Charter or a Labour Code, or both. The scope and function of a Workers' Charter needs to be clearly examined. The charter could be what in another part of the world has been deemed Organic Law, that is, a law of particular substance and importance attached to the constitution and having special weight, though not being as rigid as the constitution itself. (Papua-New Guinea has been creative in this as in other aspects of its legal system). Alternatively, the charter could be an ordinary statute set out in comprehensive form and subject to periodic amendment like any Act of Parliament.

At the moment legislation dealing with the rights of workers is split into various statutes. There might be advantages in creating a comprehensive Labour Code which would make for easier reference. The very process of integrating the statutes in the context of the enhanced position which workers can expect to have in a new South Africa, could well be educative in itself.

What the constitution must do is to ensure that workers themselves have guaranteed rights to defend their rights. This means the right to set up independent unions, the right to engage in collective bargaining, and the right to strike. The crucial element is that workers must have guaranteed freedom to organize in autonomous bodies, free of control by employers, the state or any political party.

One of the issues that will have to be considered in relation to the right to strike, is whether this right should be restricted in the case of services of special importance to the community. The progressive trend in modern societies is to enlarge the area of trade union activity and to reduce the sphere in which strikes are not permitted. Thus in many countries the police, prison warders and ambulance drivers have been allowed to strike.

General Pinochet in Chile complained that he did not want his army to be like that of West Germany, namely 'full of trade unionists and homosexuals'. The question is do we want our military to be full of

people like General Pinochet, or do we want an army of citizens in uniform with all the ordinary rights of citizens?

Public servants have every right to receive the same protections as all other workers in the country. Civil service rules should supplement rather than detract from basic employment rights.

The authoritarian culture in the security forces has not served South Africa well. While discipline is essential, it should be based primarily on voluntary acceptance and not on fear of punishment.

Democracy is not necessarily the enemy of efficiency. On the contrary it goes well with accountability to the community. This is an area that will require comprehensive and tactful investigation.

Another controversial area is that of the closed shop. If trade unions are set up on the basis of freedom of association, what is the position of workers whose consciences do not permit them to join unions or who simply prefer not to?

Closed shop arrangements with employers are convenient all round. They normally involve compulsory deduction from wages of trade union dues. While the general benefits of such a system have received extensive acknowledgement, the rights of individuals who think differently must also be considered. On the one hand, they receive all the benefits of trade union activity. On the other, they are denied freedom of choice.

It seems that it is possible to get around problems such as these by means of what has been called 'agency shop', in terms of which an amount equivalent to union dues is deducted from the salaries of non-joining workers but paid to a charity or some other fund rather than the union.

Attention has to be paid to what sort of courts should hear disputes in labour matters. Experience has shown that industrial tribunals have been far more skilled and effective than the ordinary courts in handling these matters, and it would seem that the jurisdiction of these tribunals should be retained and built upon.

The function of the envisaged new Constitutional Court would then be only to deal with matters that involve broad constitutional principles. The judges of the industrial tribunals, chosen for their special experience and sensitivity as well as their acceptability to unions and employers, are more likely to produce a just result in cases of disputes arising from the day to day struggles on the shop floor. In constitutional matters involving industrial issues, the Constitutional Court could be supplemented by members of the Industrial Court or Labour Appeal Court.

New questions about the rights of workers are coming on to the agenda all the time. In some countries trade unions, employers and the government establish an enforceable compact each year which

prescribes a standard wage around which all collective bargaining takes place. In Germany, the principle of co-determination gives workers specified rights of representation in management and administration. Do these experiences have any relevance for South Africa?

Workers will be interested in each and every aspect of the constitution, since it will touch on every part of their lives. In that sense, all human rights are workers' rights.

Workers will look to the constitution to protect their basic rights and freedoms, to guarantee that in future their leaders are not banned and never again have to go underground in order to continue functioning. They will look to it to protect them from ever again being forced to live in segregated squalor because of racist laws. They will expect the constitution to create a framework of principles that will facilitate their achieving the reality of equal access to health, education, housing, sporting facilities, land and employment. They will seek a constitution oriented towards guaranteeing progressive improvement of their lives, and to the rapid furnishing of basic utilities so that every home has an electric light and access to drinkable water.

They will expect their children to have rights as children, and not to have to leave school to go to work at the age of 14. They will want to see a clause that protects them against discrimination on grounds of birth, background, disability, marital status or gender. Workers who happen to be gay will consider it their right to lead their lives without discrimination or harassment, at work and outside, like everyone else.

Working women will have particular interest in seeing how the constitution helps them get rid of their many burdens and disabilities. Many are cleaners and domestic and farm workers, with the hardest conditions, the poorest pay and the least organization. Women in general are denied equal pay, held back from advancement and expected on their own to bear the full responsibility for child care. They are subjected to harassment at work, are unsafe on the streets and are often subjected to abuse in the home.

The constitution will not in itself transform their lives, but it can consolidate the gains they have made in struggling for their rights, and lay the basis for further advance. Women trade unionists have a particularly important role in helping achieve rights not only for themselves but for all women in the country.

Central to the constitution will be the fact that for the first time all the workers will have the chance to vote. We can expect to see workers and workers' leaders in parliament and in the government. The organized trade union movement will work with employers and government to determine economic policy. Workers will be consulted and listened to when new legislation affecting their lives is being considered.

Samora Machel used to say that the people never die. The same applies to the workers and the workers' movement. The nature and the structure of the working class may change. New organizations, new leaders, new philosophies may come and go. Yet there will always be the need for bodies set up and controlled by the workers themselves to defend their interests and secure their place in society.

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SACTWU

SOUTH AFRICAN CLOTHING AND TEXTILE WORKERS' UNION

TO: ABBEY HOLDINGS

FAX NO: 222 626

ATTENTION: ALBIE SACHS

DATE: 10/06/93

FROM: EBRAHIM PATEL

SUBJECT: CONFERENCE PROGRAMME + SPEAKERS CHECKLIST

NO. OF PAGES TO FOLLOW THIS PAGE 6

MESSAGE:

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+ Kasper

PLEASE ADVISE PROMPTLY IF TRANSMISSION IS NOT LEGIBLE

SPEAKERS' CHECKLIST

SPEAKER: PROFESSOR ALBIE SACHS

PROGRAMME: Please see draft programme faxed herewith. This is a confidential draft - please do not circulate.

Kindly check the following:

- A) The title of your talk.
- B) The time allocated for the delivery of your speech. (Note - a typed speech is requested - should it be longer than can be accommodated in the time allocated to you, we will still publish the entire speech, but request that your delivery be confined to the scheduled time.
- C) Your name and title (Kindly check whether we have spelt your name correctly, and whether you have been properly titled for this conference.

YOUR SPEECH: We kindly request the following:

- A) A typed copy of your speech.
- B) That you address in your speech at least the following issues:
 - * What are the key ANC Bill of Rights proposals in regard to worker rights.
 - * Why does the ANC believe these ought to be in a Bill of Rights.
 - * How important are these rights.
 - * What general provisions of the ANC Bill of Rights may impact on worker rights, and how.

THE VENUE: The conference will take place at the SACTWU Hall, Industria House, 350 Victoria Road, Salt River. A route map is enclosed. The venue is 5 minutes from the city centre.

Contact telephone number: (021) 474570

TRANSPORT ARRANGEMENTS: Kindly advise if you require any transport, to or from the venue.

CONFERENCE:

We invite you to attend the entire conference, and at least to join us for cocktails and snacks on Friday at 6.30pm.

(Faint handwritten text, possibly a signature or initials)

Draft programme
Sactwu
Workers Rights Conference
 18-19 June 1993

Subject to change.

VENUE: Industria House, 350 Victoria Road, Salt River, Cape Town.
HOST: South African Clothing and Textile Workers Union

FRIDAY 18 JUNE 1993

- 8.45 - 9.00 Theme introduction: *The fundamental importance of a culture of worker rights.*
- 9.00 - 9.20 *A Bill of Rights - should it be a charter to entrench or to undermine worker rights ?*
 Professor Halton Cheadle,
CENTRE FOR APPLIED LEGAL STUDIES, UNIVERSITY OF WITWATERSRAND.
- 9.20 - 9.35 *The Bill of Rights and worker rights - an ANC perspective.*
 Professor Albie Sachs,
 National Executive Committee,
AFRICAN NATIONAL CONGRESS.
- 9.35 - 9.50 *The Bill of Rights and worker rights - a Democratic Party perspective.*
 Mr Tony Leon,
 Member of Parliament,
DEMOCRATIC PARTY
- 9.50 - 10.05 *The Bill of Rights and worker rights - a government perspective.*
 Mrs Sheila Camerer,
 Deputy Minister,
 Department of Justice,
SOUTH AFRICAN GOVERNMENT
- 10.05 - 10.20 *Are worker rights adequately addressed ? - an assessment of the current Bill of Rights proposals of political parties.*
 Mr John Copelyn,
 General Secretary,
SOUTH AFRICAN CLOTHING & TEXTILE WORKERS' UNION.
- 10.20 - 11.15 Questions and discussion.

- 11.15 - 11.45 Tea
- 11.45 - 12.15 *The role of the trade union movement in shaping South Africa's new constitution.*
Mr Cyril Ramaphosa
Secretary General,
AFRICAN NATIONAL CONGRESS
- 12.15 - 12.45 Questions and discussion
- 12.45 - 1.45 Lunch
- 1.45 - 2.00 Theme introduction: *New institutions of decision-making, and its implications for the allocation of powers in a constitution.*
- 2.00 - 2.15 *The golden triangle in practice - reflections on the National Economic Forum, and pointers for the future.*
Mr Derek Keys,
Minister Of Finance and Trade and Industry,
SOUTH AFRICAN GOVERNMENT.
- 2.15 - 2.30 *The constitutional and economic dimensions of tripartite institutions - the example of the National Economic Forum.*
Mr Trevor Manual,
Head of Department of Economic Planning,
AFRICAN NATIONAL CONGRESS.
- 2.30 - 2.45 *The role of the National Economic Forum in deepening democracy, and empowering civil society - implications for the constitutional debate.*
Mr Jayendra Naidoo, National Negotiations Co-ordinator,
CONGRESS OF SOUTH AFRICAN TRADE UNIONS.
- 2.45 - 3.00 *Market power, political power and the National Economic Forum - implications for democracy and the constitutional debate.*
Mr Bobby Godsell,
ANGLO AMERICAN CORPORATION.
- 3.00 - 3.30 Questions and discussion.
- 3.30 - 4.00 Tea
- 4.00 - 4.10 Theme introduction: *A democratic state and the trade unions: new conditions, new opportunities and new dangers ?*

4.10 - 4.25

The relationship of the trade union movement to a democratic government - a COSATU perspective.

Mr Sam Shilowa,

Deputy General Secretary,

CONGRESS OF SOUTH AFRICAN TRADE UNIONS.

4.25 - 4.40

The relationship of the trade union movement to a democratic government - a NACTU perspective.

Mr Cunningham Ngukana,

General Secretary,

NATIONAL COUNCIL OF TRADE UNIONS.

4.40 - 4.55

The relationship of the trade union movement to a democratic government - a FEDSAL perspective.

Mr Piet Heymans,

FEDERATION OF SALARIED STAFF ASSOCIATIONS.

4.55 - 5.30

Questions and discussions

6.30 - 7.30

Cocktails and snacks

SATURDAY 19 JUNE 1993

9.00 - 9.15

Theme introduction: *Reshaping bargaining institutions and new procedural rights.*

9.15 - 9.45

Promoting worker rights through constitutional and legislative mechanisms - the international experience.

Mr Hector Bartolomei;

Director,

International Labour Standards Department,

INTERNATIONAL LABOUR ORGANISATION

(Delivered by Mr David Tajgman,

International Technical Advisor,

International Labour Standards Department,

INTERNATIONAL LABOUR ORGANISATION)

9.45 - 10.15

Questions and discussion

10.15 - 10.30

Empowering workers through new policies and new institutions .

Mr Alec Erwin,

National Education Secretary,

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA.

- 10.30 - 10.45 *The basic rights of workers which should be incorporated in the constitution and legislation.*
Mr Clive Thompson,
Head of the Labour Law Unit,
UNIVERSITY OF CAPE TOWN
- 10.45 - 11.00 *Freedom of Association, the closed shop and the agency shop - towards a new conception of rights.*
Mr Marcel Golding,
Deputy General Secretary,
NATIONAL UNION OF MINeworkERS.
- 11.00 - 11.30 Questions and discussion.
- 11.30 - 12.00 Tea
- 12.00 - 12.20 *The role of the trade union movement in shaping South Africa's new constitution.*
Mr Fanus Schoeman,
Deputy Minister of Constitutional Affairs,
SOUTH AFRICAN GOVERNMENT.
- 12.20 - 12.40 *The role of the trade union movement in shaping South Africa's new constitution - an COSATU perspective.*
Mr Jay Naidoo,
General Secretary,
CONGRESS OF SOUTH AFRICAN TRADE UNIONS
- 12.40 - 1.00 Questions and discussion
- 1.00 - 1.15 *Closing address*
Mr Amon Ntuli,
President,
SOUTH AFRICAN CLOTHING AND TEXTILE WORKERS' UNION.
- 1.15 Lunch