

THE LUSAKA AMENDMENTS

Tom Lodge

The ANC's recently published constitutional proposals have received only perfunctory acknowledgment in South African newspapers as a consequence of the official reluctance to accord publicity to the ANC. This is the first time since the appearance of the Liberal Party's *Non-racial Democracy* that an African political organisation has published a blueprint and rationale for a new constitution. The proposals deserve attention not least because they conform to the general understanding of what a democratic political settlement in South Africa would require.

For the ANC, the proposals are a Freedom Charter. The intention is to articulate the broad principles of the new constitutional provisions. The document is referred to as the "guidelines" as the ANC prefers to avoid the implication of a finality and therefore an interpretation of the document.

The document begins with a preamble which sets the requirement for "corrective action" to guarantee an irreversible distribution of wealth and "opening of facilities" to all. The preamble calls for the protection of individual human rights but argues that the protection of group rights would entrench the existing inequality of property ownership.

Twenty five clauses follow divided into sections concerned respectively with the State, franchise, national identity, a bill of rights and affirmative action, the economy, land, workers, women, the family and international relations. The clauses speci-

fy a non-racial form of popular sovereignty based on universal suffrage represented in a central legislative and administration.

The government and popular making, powers should be devolved to more localised structures of judicial, police and military powers with other sections of the state to be popularly representative in structure. The constitution should guarantee linguistic and cultural development, the prohibition of racial discrimination, the abolition of apartheid, fascism, nazism, and ethnic cleansing, and subject to these conditions the freedom of association, thought,

and movement. In this sphere the guidelines prescribe a framework in which "the State shall define the general context in which the various spheres of life shall take place" and in which the State shall be obliged to co-operate with the

State in realising the objectives of the Freedom Charter". Apart from the public and private sectors, the economy should include co-operative and small-scale family enterprises. The State would direct a programme of land reform. Workers' trade union rights (including the right to strike) as well as the equality of women would be constitutionally entrenched.

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The ANC's recently published constitutional proposals have received only perfunctory acknowledgement in South African newspapers, perhaps as a consequence of the official restrictions on any publicity accorded to the ANC. This is a pity, for it is the first time since the appearance in 1962 of the Liberal Party's *Non-racial Democracy* that any South African political organisation has produced a detailed blueprint and rationale for a unitary democratic constitution. The proposals deserve serious consideration not least because they conform more closely than any other set of constitutional projections with international understanding of what an acceptable democratic political settlement in South Africa should be.

For the ANC, the proposals do not replace the Freedom Charter. The intention is rather to translate the broad principles of the Charter into explicit constitutional provisions. The proposals or "guidelines" as the ANC prefers to call them, represent therefore an interpretation of the Charter.

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Twenty five clauses follow divided into sections concerned respectively with the State, franchise, national identity, a bill of rights and affirmative action, the economy, land, workers, women, the family and international relations. The clauses speci-

fy a non-racial form of popular sovereignty based on universal suffrage represented in a central legislature, executive, judiciary and administration.

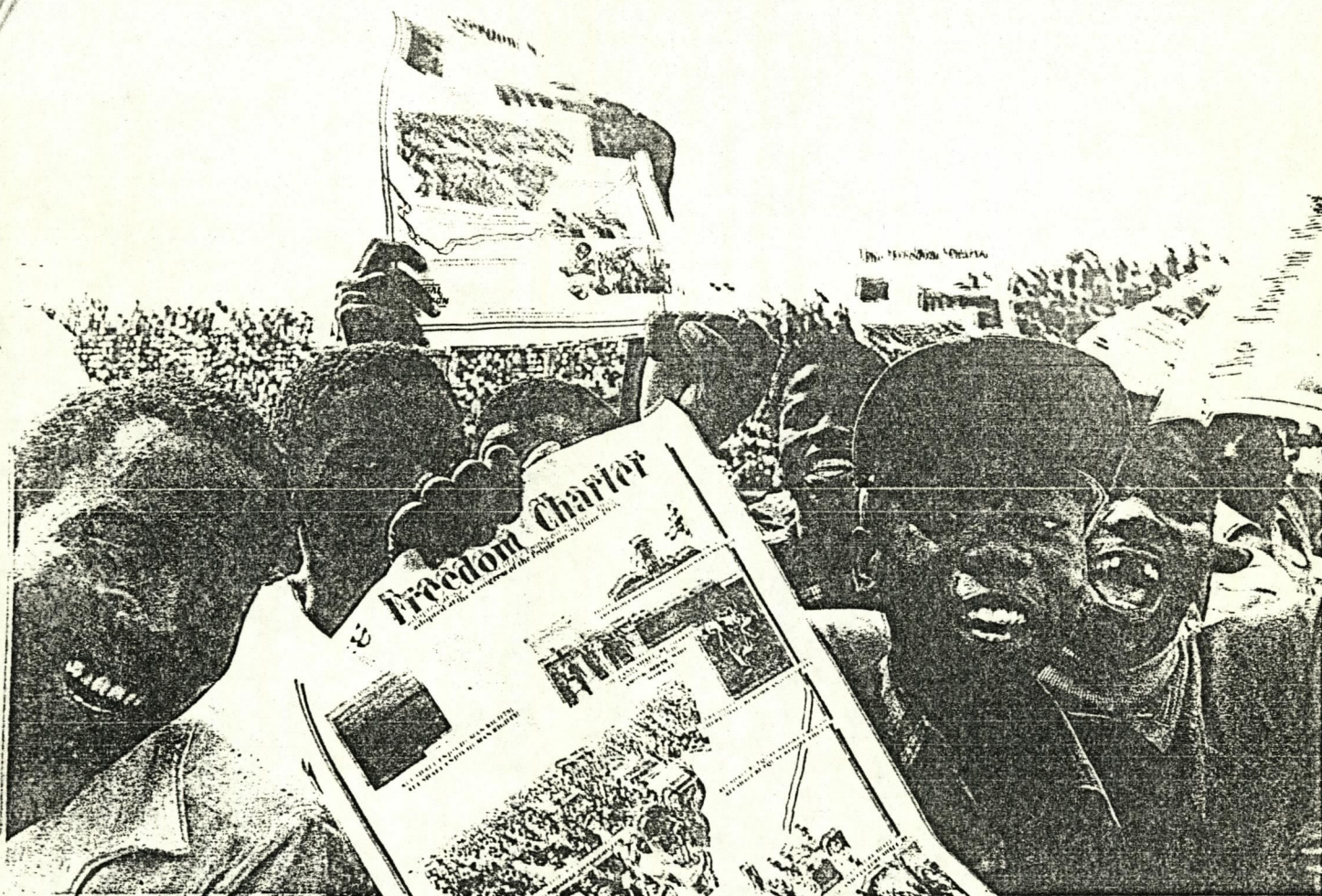
To enhance efficient government and popular participation in decision making, powers should be delegated from central government to more localised administrative bodies. Judicial, police and military organs of government, as with other sections of the administration, should be popularly representative and democratic in their structure. The constitution would guarantee "free linguistic and cultural development", the eradication of racial discrimination, the prohibition of racism, fascism, nazism, and ethnic or regional sectionalism; and subject to these constraints, guarantee freedom of association, thought, worship and the Press.

Within the economic sphere the guidelines prescribe a mixed economy in which "the State shall have the right to determine the general context in which economic life takes place" and in which the private sector "shall be obliged to co-operate with the State in realising the objectives of the Freedom Charter". Apart from the public and private sectors, the economy should include co-operative and small-scale family enterprises. The State would direct a programme of land reform. Workers' trade union rights (including the right to strike) as well as the equality of women would be constitutionally entrenched.

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UDF supporters waving Freedom Charter posters at a rally in 1985.

the economy. Here, a comparison with the Freedom Charter is illuminating.

The Freedom Charter in its political provisions largely concerns itself with the composition and election of representative institutions. The clause that calls the courts to be "representative of all the people" can be interpreted to refer merely to the racial composition of the judiciary. The guidelines go much further with their call for democracy in the structure and functioning of all branches of government. The Freedom Charter did not specifically rule out federalism, whereas the guidelines explicitly advocate a centralised unitary state.

The guidelines emphasise to a much greater degree than the Charter, the concept of popular participation as a defining characteristic of democracy. ANC constitutional thinkers seem to believe that a high degree of democratic participation can be reconciled with centralised forms of decision making. Local government in the guidelines is depicted as the bearer of *delegated* powers rather than independent sources of authority.

This kind of understanding is reflected in the view expressed by one of the ANC's legal experts at the internal ANC seminar held in Lusaka during March which reviewed a draft of the guidelines. Here it was argued that local government should be an agent of central government, that central govern-

ment should not be excluded (as for example in the United States) from intervening in certain local or regional affairs. Perhaps one way of preventing centralisation of decision making from becoming authoritarian or remote from the concerns of electors would be to make representatives subject to recall, an option raised at Lusaka.

In general, as several of the Lusaka papers make clear, ANC constitutional thinkers favour a fairly simple electoral system. As the academic expert Kadar Asmal argued, within South Africa during the last decade, there have been a succession of extremely intricate forms of electoral machinery which all have the effect of diminishing the impact of majority preferences. Asmal himself, whose thinking seems to be reflected in the guidelines, contends that a majoritarian "first past the post" Westminster system would have strong advantages in the South African context. It would enhance the effectiveness of government, minimise the role of sectional parties unless they were regionally based, emphasise policy and ideology and hence allow for major swings in public opinion, and promote national integration.

Consistent with the emphasis on participatory democracy, ANC lawyers also favour a more popularly accountable legal system. This need not, though, imply revolutionary changes in the administration of justice. At the Lusaka seminar former

reason trial advocate Tony O'Dowd presented a fairly restrained programme of legal reforms. These included separate constitutional, administrative and business courts such as exist in several European liberal democracies, the codification and retention of a substantial proportion of the existing body of legal doctrine, the retrieval of the jury system, and the introduction of elected judges and lay magistrates in lower courts.

The economic principles spelled out in the guidelines are all-embracing but cryptic. They can be interpreted in a number of ways, but it is interesting that they do not include the specific commitment of the Freedom Charter to nationalise the mines, the banks and monopoly industry. Leftwing critics of the ANC will no doubt seize upon this omission with relish as confirmation of a bourgeois predisposition within the ANC leadership. But it would be misguided to make too much of the absence of references to explicitly socialist commitments. The principles supplement the Charter and are not intended to contradict its clauses. The Charter, though, is not a constitution but rather a statement of objectives.

Some ANC and Communist Party authorities contend that a fairly lengthy period of transition may be required before all the aims of the Charter can be realised. For example, in 1985, "Nyawuza" in an *African Communist* polemic directed at the Trotskyite "Inqaba" group contended: "The problem with people advocating 'socialism now' is that they expect those blacks who cannot read or write to run socialist industries and mines. The danger here is that we find ourselves depending on the expertise of the very forces we want to defeat: people who are against our socialist principles. The result would be economic chaos."

In 1986, Joe Slovo conceded that "for some while after apartheid falls there will undoubtedly be a mixed economy, implying a role for levels of non-monopoly private enterprise represented not only by the small racially oppressed black business sector but also by (white) managers and business people of goodwill". Oliver Tambo, when he and his colleagues met the South African business delegation at Mfuwe, Zambia, in September 1985, suggested that nationalisation of "monopoly" industry could take the form of a 51% State shareholding which, of course, would still leave a substantial role for large privately owned companies.

Certainly even non-communist leaders within the ANC favour an ultimate transition to socialism: the ANC's "Strategy and Tactics" adopted as early as 1969 portrays the ANC's struggle as "taking place within an international context of transition to the socialist system", but clearly there is a growing perception that the transition may be a gradual one accomplished, in words used both by Slovo and Tambo on separate occasions, through "debate rather than on the streets". For the ANC, a post-apartheid constitution has to provide workable principles for the administration of that transitional period; this may have been a consideration in drafting eco-

nomical clauses which allow for a greater degree of flexibility than the Freedom Charter section on public ownership.

Nevertheless the economic guidelines would, if implemented, require a quite radical redistribution of productive property. The hostility to the notion of group rights as well as the antagonism to federalism in ANC constitutional thinking mainly derives from the quite reasonable belief that in South Africa, advocacy of such concepts is mainly motivated by the concern to protect the existing allocation of resources and property.

Albie Sachs, one of the ANC's most influential legal theorists, stresses in his writings the organisation's commitment to "second generation rights" or broad socio-economic liberties which include the right to health, shelter, nutrition, and so forth. In his view such rights at times should have precedence over individual freedoms. To take one of his examples: "What would be more important: the right to sue your doctor or the right to health?"

A strong centralised State, the ANC believes, would be the most effective guarantee for the realisation of second generation rights. In the economic clauses, as we have seen, not only does the State control a public sector but it also regulates activity in the private, co-operative and family domains. The last of these most probably refers to agriculture. Jack Simons, in his contribution to a commemorative volume on the Freedom Charter, asserted in 1985 "that most peasant workers . . . are not yet class conscious enough or ready for the adoption of a socialist solution". Sachs believes that the ANC in power would show some sympathy for the position of those "white farmers with a deep attachment to and love of the land".

In his and other ANC theorists' thinking there is a conviction that ownership of productive assets should be limited to those with "productive skills". Sachs, though, does suggest as a possible scenario that a post-apartheid South Africa might retain a group of landlords (for whom certain rights and obligations would have to be legislated), though presumably these would be required to perform an active managerial role as opposed to merely living off rents.

ANC discussion of economic issues is much more tentative and considerably less precise than its constitutional prescriptions. A cynical explanation for this would be that the organisation is anxious not to alienate different constituencies with sharply opposed interests. There may be some truth in this. Presumably the ANC uses a different language when it talks to visiting South African trade union delegations from the terminology employed, say, when encountering a deputation from Nafcoc. But there may be other more important reasons for not specifying a detailed economic blueprint.

Quite apart from a shortage of appropriate expertise (lawyers are well represented in the ANC, economists are not) there are significant ideological differences within the organisation's leadership. Pallo

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Jordan, for example, writing at a time when even communists within the ANC were emphasising the possibility of a lengthy transitional phase before the attainment of socialism, suggested in 1986 in a Zimbabwean journal that in the event of liberation it might well be that "class" revolution and "national" revolution could be "coterminous". This is a view of the "two stage" revolution with which most ANC leaders would sharply dissent. Strategic debates about the future contribution of the armed struggle - all-out war towards a seizure of power or military compulsion to attain a negotiated settlement - also reflect different perceptions of what degree of socio-economic reconstruction would be possible or desirable after apartheid.

What is most characteristic of ANC constitutional thinking is its caution, degree of qualification, and eschewal of utopianism. In certain respects it is remarkably conservative: Tony O'Dowd, for example, suggested at the Lusaka seminar that with respect to those courts which had a primarily criminal field of jurisdiction "many present judges could probably be continued in office". In general, the constitutional restructuring envisaged by the ANC includes strong elements of adaptation. Theorists demonstrate considerable sensitivity to what they understand to be broad legal and politico-administrative traditions in South Africa and employ these to help justify many of their recommendations. They also draw on other models and historical experiences which range from the Anglo-Saxon and more generally Western bourgeois liberal heritage to Eastern European and Third World models of democratic practices.

The ANC guidelines, notwithstanding the open-ended character of the economic provisions, are extremely comprehensive and reflect sustained research, analysis and debate. They are the outcome of a process initiated at the 1985 Kabwe Consultative Conference. The guidelines are intended to stimulate further discussion and inquiry; they are constituted as a draft. The historical precedent for this undertaking would be the campaign which preceded the adoption of the Freedom Charter. As well as the public canvassing of demands for inclusion in the Charter, a series of lengthy discussion documents were circulated within Congress circles. Certainly the degree of attention which the ANC has devoted at various points in its history to developing a programme of government distinguishes it sharply from the experience of most revolutionary organisations.

The ANC's guidelines are unlikely to recruit converts from among its opponents. They do represent, though, an impressive effort to recapture the tradition of South African radical liberalism which is presently usurped by rightwing libertarians and Gradgrind free-marketeers. Nevertheless, people who genuinely favour social justice and non-racial democracy may still remain sceptical about the extent to which the ANC takes its own guidelines seriously as a set of undertakings to be honoured in the future. It would not be the first time that revolutionary movements have adopted a reformist programme in

order to win temporary allies only to later jettison both the allies and the promises made to them. The Khmer Rouge stands out as an especially intimidating example.

There are reasons, though, for viewing the guidelines as representing a more profound commitment to restraint than the motivation of merely an elaborate public relations exercise. The ANC's own historical consciousness includes a strong respect for tradition and continuity; in a popular history of the organisation published recently by Francis Meli, the editor of *Sechaba*, a major theme is the argument "that there is no historical justification for an artificial demarcation between the ANC of today and the 'early ANC'". This sense of historical deference to the legacy of previous generations may help to account for the extent to which the constitution is evolutionary and adaptive - even conservative. These qualities may also reflect the influence of leaders such as Oliver Tambo, Dan Tloome, or Joe Slovo whose prominence within their respective organisations dates back to the mid-Forties.

There is also a strong quality of legalism about the ANC's own procedures - doubtless the influence of the lawyers who have made such a strong contribution from its inception to the leadership of the organisation. This finds its expression in the carefully hedged and qualified language of ANC policy statements, in its painstakingly drafted internal constitutions, in facets of its behaviour - it remains the only insurgent organisation to be a signatory to the Geneva convention, and in its concern for precedents set by its own history.

One of the reasons for its public reluctance until recently to elaborate on the provisions of the Freedom Charter (let alone change or update them), is its own belief that the Congress which adopted the Charter was a manifestation of popular sovereignty which in exile the ANC is unable to replicate or repeat. Hence the status of the guidelines as a draft. Then, the thinking which underlies the guidelines seems premised on a recognition that compromise will probably be a political fact of life and that the necessity for compromise will remain even after the transfer of power. If transition takes the form of negotiation then that would imply that those groups or classes who would be most favoured by a revolutionary restructuring would simply be unable to impose their terms upon others unilaterally.

The guidelines are essentially geared to defining the parameters of what the ANC considers negotiable. But at the end of the day people will have to be guided by hope and trust. The intellectual quality of the procedure which produced these proposals suggests a considerable moral integrity among those involved. This is reinforced by the information which is available about ANC leaders generally; if power and domination were all they were interested in, then for many there were easier routes toward gaining these than the hard life they have chosen.