

Mctt91-92-8-3

Fax (021) 222626
Tel (021) 222424

1002 NBS Waldorf
80 St George's Mall
P O Box 3684
CAPE TOWN 8000

FAX COVER SHEET

DATE : 14 SEPTEMBER 1992

TO : ANC H.Q.
DEPT OF LEGAL AND CONSTITUTIONAL AFFAIRS
FAX NO : 011-3339090

ATTENTION : ZOLA SKWEYIYA

SUBJECT : REGIONS DOCUMENT

FROM : ALBIE SACHS

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 1

Dear Comrade Zola

I am looking again at a simplified version of the document "Ten Proposed Regions for a United South Africa". What do you want to me do with it?

On Page 17 I think the last three paragraphs should be rewritten.

Also Page 16 at the top, I have a few other corrections that ought to be made, some of which are quite important.

On Page 6 there is reference to a national plan. This term is a loaded one and is not found in the initial document. I would prefer a national vision and a framework of national laws.


ALBIE

6 MAY 1993

Dear Albie

CONSTITUTIONAL COMMITTEE MEETING

The meeting will take place at the De Vere Hotel at 10.30 a.m. on Saturday 8 May.

LAND AND PROPERTY CONFERENCE 21-23 MAY

The correct name of the conference and Buliani has asked if you would please invite Oscar to attend.

FAX	TO: OSCAR MONTEIRO
FAX NO: 0933-1-45004857	PAGE: 1 OF: 1
ATTENTION OF: OSCAR MONTEIRO	
FROM: SUSAN RABINOWITZ	DATE: 8/5/93
COMPANY: ALBIE SAULS' OFFICE	
FAX NO: (021) 222626	Post-It TM Notes from 3M

the Multi-Party talks...
contacted by the...
ward for the...

SUSAN

Fax to Oscar Monteiro

Can you attend a conference
in the Eastern Transvaal
organised by the ANC South
Committee and the
Land Rights UWC?
June 21-23 May 1993

(for one day)
It is...
Political overview
all expenses will be covered, Albie.

African National Congress

51 Plein Street
Johannesburg 2001
P O Box 61884
Marshalltown 2107



Tel: (011) 330-7000
Fax: (011) 333-9090
Telex: 421252

October 7, 1993

TO : ALL CONSTITUTIONAL COMMITTEE MEMBERS
FROM : ZOLA SKWEYIYA

Dear Comrades:

RE: CIVIL SERVICE UNIT WORKSHOP "PORTRAITS OF GOVERNMENT AT THE TOP."

This is to remind you of the above Civil Service Unit workshop to be held in Johannesburg on 18/19 October, 1993. The workshop is being sponsored by the Canadian IDRC. The aim of the workshop is to discuss key issues that our future leaders at national and regional government level will face. We will be introduced to government at the top by the following experts:-

- Canada - Mr Bevis Dewar, former Deputy Minister (DG or PS of several departments, and former Associate Secretary of the Cabinet;
- Sweden - Mr Staffan Herrstrom, Undersecretary of State at the Prime Minister's Office;
- UK - Sir Angus Fraser (former top British Cabinet Secretary);and
- US - Mr James B. MacRae, Deputy Administrator, Officer of Information and Regulatory Affairs, Office of Management and Budget.

Given the serious nature of the workshop, and the proximity of the date (October 18/19) I would appreciate it if you could forward the relevant names at your earliest convenience possibly before Wednesday 13 October 1993.

Sincerely,

Zola Skweyiya
Director Legal and Constitutional Affairs Dept.

The People Shall Govern!



The UNIVERSITY of WESTERN ONTARIO
Faculty of Law

FACSIMILE COMMUNICATION COVER SHEET

TO FAX TELEPHONE NUMBER: 011-27-21-222-626

PLEASE DELIVER ATTACHED PAGES TO:

NAME : Dr. Albie Sachs
Republic of South Africa

YOU WILL RECEIVE 6 PAGE(S) OF COPY, INCLUDING THIS COVER SHEET. IF THE ENTIRE TRANSMISSION IS NOT RECEIVED, CALL/CONTACT THE SENDER AS SOON AS POSSIBLE.

FROM: Professor Robert Madhiv
Canada

TELEPHONE NUMBER: (519) 661-3348

COMMENTS:

OUR FAX TELEPHONE NUMBER IS (519) 661-3790



The UNIVERSITY of WESTERN ONTARIO
Faculty of Law

1 February 1993

Dr. Albie Sachs
1002 NBS Waldorf
80 St. George's Mall
P.O. Box 3684
Cape Town 8000
REPUBLIC OF SOUTH AFRICA

FAX: 27-21-222-626

Dear Albie,

Re: A.N.C. Constitutional Committee

Your letter to me of 16 September 1992 arrived here via Sydney. I am, as you can see, not there yet.

My purpose in writing is to comment on the May 1992 "preliminary revised text" of the Bill of Rights.

As a general observation, I think it is much improved from the original. It is more tightly written and less ambitious in its scope. It promises to protect basic rights, a goal which a constitution can assist in achieving, not to guarantee an ideal society, an end far beyond the limited abilities of a constitution.

What I would like to do is comment on certain specific features of the revised Bill. I will refer by number to those Articles which raise concerns.

Article 2 (7) I have to observe that there was a certain amount of piety in the original draft. By that I mean there were many statements of vague goals, goals which might be impossible to quantify in practice and which were probably judicially unenforceable. This provision, with respect, is a bit of piety which survives. What is

A.N.C. Constitutional Committee

2

this guarantee intended to mean? What is it to protect people against? What is "harassment"? What is the "impairment of dignity"? Taken literally, the provision says that if I am the victim of violence I can seek redress against the state for demonstrably having failed to protect me. The goals underlying this section could be better achieved through human rights legislation or the criminal law.

(8) This provision should state expressly that it is intended to create a right to review of detention by way of habeas corpus proceedings.

(9) (10) These two sub-articles appear to contradict each other.

(12) This could be made even clearer, to state that release on bail is to be the norm and a remand in custody is to be the exception.

(14) One of the serious flaws in the Canadian Charter is the vast judicial discretion it permits. If a Bill of Rights is to contain a guarantee like this, it should state exactly what it means. What is "reasonable"?

(23) This provision could go further. Why not constitutionally adopt the rule from the Indian Evidence Act, 1872 that no confession made to a police officer is admissible?

(26) This is exceedingly vague and a bit pious.

(30) This provision would prohibit the application of significant parts of the Sharia to marriages of Muslims. It might also be in conflict with Article 5(3).

(32) This provision takes away with one hand what it purports to give with the other.

(33) This is ungrammatical. Since it opens with "All South Africans", the reference to "he or she" is not appropriate.

Article 3

I believe it is essential to retain the reference to "citizens". I say this for two reasons. First, human rights undoubtedly belong to everyone, all men and women. Political rights belong only to citizens. Secondly, the precondition to democratic politics is the

A.N.C. Constitutional Committee

3

citizen. The idea of common citizenship is one which should be constantly emphasised in all democracies, but especially, I would think, in a non-racial South Africa.

Article 4(1) "The right to reply" seems to limit the freedom of the press. Why, to go further, should the press be constitutionally obliged to comment and report "fairly"? If the press comments in an unfair way about me personally, I can sue for defamation. And who is to decide whether reporting about a government or its policies is "fair"? This qualification represents a serious limitation on this most fundamental of freedoms. Do not forget that the press in South Africa has always been free to report and comment in ways which the government thought were "fair". That has been the problem.

Article 5(2)

I understand the sentiment which motivates this provision, but it does seem to me to give constitutional blessing to interest-group politics. Is it necessary to include this statement in the Constitution?

(10) I believe this provision is seriously misguided. It must be clear that a major challenge which will face post-apartheid governments for decades will be that of creating a sense of common citizenships. The educational system should play a central role in this process. This provision would directly contradict that goal. There will be more than enough fissiparous pressures in a democratic South Africa. There is no need to give constitutional recognition to these pressures. Of course, if parents wish to see their children taught a particular language, they should be free to do so. But I don't believe the state should pay for it. Furthermore, it must be obvious that a key factor in gaining access to wealth and power and, more modestly, jobs in the new South Africa will be, whether one likes it or not, one's ability to use English. This provision, I believe, will put a policy which is, politically and socially, highly questionable on a constitutional footing.

(12) I would think this is already covered in Article 4(1).

Article 8(3) This is dangerous and directly contradicts Article 4(1). What is "stereotyping"? What is included in "other social institutions"? What are "other types" of stereotyping. To repeat a point I made earlier, this provision seems to be saying that the media shall be free, but only as long as they don't publish anything which might offend anyone. This sounds very much like the "freedom" the South African media have always enjoyed.

A.N.C. Constitutional Committee

4

Article 9

I would think these provisions should be in human rights legislation, rather than the constitution. I am deeply skeptical about the assertion that there are "nine million" disabled persons.

Article 10(4) Would this also apply in criminal prosecutions of children?

(5) Why be so restrictive? Why not simply prohibit child labour outside the family (or maybe even inside)?

Article 15(4) Once again we have direct conflict with Article 4(1).

(6) Would not "representation" or even "representativeness" be better than "representativity"?

Article 16(3) Is this necessary? Is it not generally accepted that you may not do indirectly that which you may not do directly? And should we not talk of a restriction "on" something, rather than a restriction "to" something?

Article 17(1) I have serious reservations about this provision. First, the phrase "where appropriate" suggests to me that the Constitutional Committee has not really decided when the Bill of Rights would apply as against non-state actors and when it would not. Second, I think it is a mistake to apply a Bill of Rights to non-state actors. This would encourage litigiousness, but there is a more important problem. American lawyers have attempted to convince the world that all social relations should be mediated through law. The fact your Bill of Rights contains Article 17(1) indicates how successful they have been. In my view, liberation means "Power to the People", not "Power to the Lawyers". Article 17(1) encourages the view that men and women must seek the assistance of lawyers and courts in order to address their own reality. This is not an approach which I would think the A.N.C. would wish to support.

Bills of Rights exist to offer citizens protection against the state. There is value in confining the state and civil society to their respective spheres. Article 17(1) endorses and encourages the eclipse of civil society.

Article 20 I think this entire article is excellent. It is original and thoughtful and directly addresses a number of the most difficult questions relating to emergencies.

Article 22 This is also a well-thought out, original and highly desirable provision.

A.N.C. Constitutional Committee

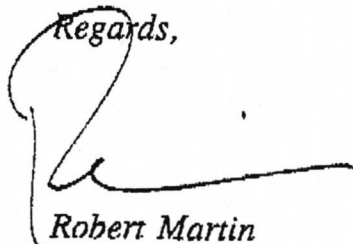
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Let me recapitulate. First, I think there are far too many restrictions on the guarantee of freedom of expression set out in Article 4(1). A free press is bound to say things which will offend and annoy. If the press isn't offending somebody, it isn't doing its job. More to the point, I believe freedom of expression is essential to democratic politics. A constitution should seek to promote free expression, not to limit it.

Second, let me quote from an essay written in 1951 by Karl Loewenstein, "Reflections on the Value of Constitutions in our Revolutionary Age". He observed, "In their naive optimism the political theorists and the politicians themselves believed that all that was needed for a well-ordered society was a well-ordered constitution". Social reality cannot be transformed by constitutional fiat. We have in Canada been involved in a long and tedious attempt to do just that. Fortunately, the people had the good sense to reject the whole business. I think the Bill of Rights is still too ambitious. Where it addresses the sorts of issues which are amenable to legal resolution, such as the treatment of detainees during a state of emergency, it is direct and innovative, but there remain places where the draft attempts to provide constitutional remedies for social ills. These merit reconsideration.

I sincerely hope my comments are helpful. I would be happy to elaborate on any of them.

Regards,



*Robert Martin
Professor of Law*

RM/ka



The UNIVERSITY of WESTERN ONTARIO
Faculty of Law

1 February 1993

Dr. Albie Sachs
1002 NBS Waldorf
80 St. George's Mall
P.O. Box 3684
Cape Town 8000
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FAX: 27-21-222-626

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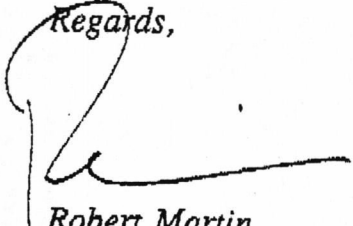
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Regards,



*Robert Martin
Professor of Law*

RM/ka

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Johannesburg 2001
P O Box 61884
Marshalltown 2107



Tel: (011) 330-7000
Fax: (011) 333-4509
Telex: 421252

DEPARTMENT OF ARTS AND CULTURE

12 October 1993

SEND TO: Linda Zama, Zola Skweyiya, Phatekile Holomisa, Penuell Maduna, Thozamile Botha, Dullah Omar, Kadar Asmal, Albie Sachs, Barbara Masekela, Cheryl Carolus and Thabo Mbeki

FROM: MAKI MATHEBULA

Dear Comrades

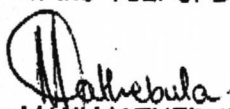
The CDC recommended very strongly that a new government should have a Ministry of Culture. This proposal will be taken forward to a Brainstorm Session with you and everybody mentioned above. The purpose of this session is to further the suggestion on the Ministry of culture, to ensure that the proposal is taken up by the Negotiations Commission of the ANC and relevant structures, and finally, to discuss how best to take forward the work done by the commission.

This meeting will take place in Johannesburg, on Saturday the 30 October 1993. We request you to confirm this date before the 20th of this month. This will help us to facilitate the transport and accomdation question as quick as possible.

We look forward to receiving your confirmation

With Best Regards

In the Year of Democratic Elections!


MAKI MATHEBULA
SECRETARY TO HOD

file -
visit to
USA



NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

Suite 503, 1717 Massachusetts Avenue, N.W. Washington, D.C. 20036 (202) 328-3136

■ FAX (202) 393-6666
■ Telex 510615068 NDIIA

MEMORANDUM

TO: John Arbogast
FROM: Patricia Keefer
DATE: November 27, 1991
RE: Follow-up

I ma sorry that I missed you last week. I will be on vacation for the next week and a half and I asked Mary Hill to send the following suggestions based on our conversation in South Africa

ANC - CONSTITUTIONAL AND LEGAL AFFAIRS COMMITTEES VISIT TO THE S (TOPIC: FEDERALISM)

1. Washington, DC
 - A. One day seminar sponsored by the senate Judiciary Committee on the constitutional and legal parameters for the application of federalism in the United States.
 - B. Meetings with constitutional experts from court and academia on constitutional revisions, based on federalism in the United States, and how it has evolved in the 20th century.
2. Boston/Cambridge, MA
 - A. Four-day colloquium on federalism at Harvard University sponsored by the Law School and the Kennedy School of Government.
Subjects to be addressed:
 - * Public Financing (revenue sharing)
 - * Commerce (inter/intra state)
 - * Social Burden Sharing
 - housing
 - education
 - health
 - * Body of Law
 - B. Town Meetings
 - * attend various town meetings in Massachusetts
 - * other appointments to discuss the decline of the Massachusetts economy (These meetings would be with representatives from both government and business)