

Business Class

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FAX COVER SHEET

DATE : 12 JANUARY 1993
TO : MARTIN AND CO INC
FAX NO : 011-8382344
ATTENTION : RICHARD JESSE AND JEROME O'REGAN
SUBJECT : A BUSINESS CHARTER
FROM : ALBIE SACHS

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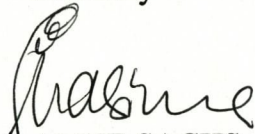
Dear Richard Jesse and Jerome O'Regan

Many thanks for your letter of 8th December which only seems to have reached me now.

I suppose once you have thrown down a gauntlet you can't pick it up again. In any event I am very happy to receive your basic points. What one would dearly love to see would be a gathering of business people from right across the board working out common principles, that is, the Charter should have the same appeal for a mining magnate as for a street trader, for a woman in business as for a man, for a black person feeling excluded from entrepreneurial activity as for a white person occupying the dominant heights. Then all the business people would speak to each other and see if they could find a common way of expressing the essence of what would be fundamentally just and fair for everybody, irrespective of where he or she stood.

Anyhow please regard this as an initial response. I look forward to further discussions with yourselves.

Sincerely


ALBIE SACHS

p.f.



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Mr A Sachs
African National Congress
P O Box 61884
JOHANNESBURG
2000

8 December 1992

Dear Mr Sachs

A BUSINESS CHARTER

Your challenge at the FM conference recently (30 October 1992) was for business people to enumerate their requirements for a set of rights. Your "disappointment" that they have not yet clamoured for such a charter is probably misplaced. People in business are by definition more accustomed to adapting to and anticipating change in their operating environment than to trying to change the environment itself. That is not to say that they are not capable of lobbying for changes favourable to their businesses, but the larger field of politics is not generally a field in which businessmen understand or in which they are successful. There are things that business would like which are not rights : a stable political environment, as little government interference as possible and so on. A recognition that Derek Keys' "Golden Triangle" - a productive alliance between the state, business and labour - is the best way to achieve the growth we so badly need would be welcomed, but it is hardly a right.

Another point that should be made is that investment decisions can be adversely affected by capricious changes to tax legislation. The history of the past few years suggests that where incentives are introduced they will be removed within years. None would say a government has no right to change its mind, but sometimes the reversal has been applied retrospectively, thus adversely affecting investment decisions made years before. The retrospective application of adverse tax changes is morally insupportable and we would like to see such changes outlawed. But whether this can be enshrined in a bill of rights is probably questionable.

Nevertheless, we have put together some basics which we think would be fair and incontrovertible. An obvious prerequisite is that the rights be justiciable : there should always be the right of recourse to a court of law in the case of dispute. But that is surely a *sine qua non* of a bill of rights. We have not attempted to distinguish between first and second-generation rights.

We think the basic points in a business charter would be the following :

1. The right to private property. The Law Commission's proposed Bill of Rights qualifies this, we think reasonably: "provided that legislation may, in the public interest, authorise expropriation against payment of reasonable compensation."

2./...

2. The right to employ freely.
3. The right to remunerate all stakeholders freely, with pay levels negotiated between employer and employee (including trades unions) and dividend payments determined at management's discretion.
4. All businesses should have the right to equal treatment in the eyes of the state as to tax, protection etc. This is not to say that tax incentives cannot be used to promote certain kinds of investment; but incentives should be freely available to all who wish to use them.
5. The right to purchase resources and raw materials from whatever sources are in the best interests of the business.
6. Right to fair competition.
7. The right to choose a business freely and to carry on that business freely, provided the business does not involve infringements of basic human or environmental rights.
8. The right to freedom of association.

Some of these, of course, are rights that most groups would want enshrined in a charter and are not of exclusive application to business people.

We hope that this letter goes at least some way to picking up your gauntlet. We would welcome the opportunity to discuss the issues further with you or others : please feel free to contact us.

Yours sincerely


RICHARD JESSE

 PP Jerome
O'Regan