

THE FREEDOM CHARTER AND THE CONSTITUTION

Almost all modern constitutions have certain elements in common. They set out the main institutions of public power (government), define their competence and indicate how the leadership of the country is to be determined (election, hereditary succession, religious position). In addition, many constitutions contain sections dealing with the general principles of the society, while it is even more common to find sections setting out the specific rights of citizens, sometimes in a section called a Bill of Rights.

The Freedom Charter is not a Constitution, in that it does not define the structures of government. But it is a document that has a constitutional character in that it lays down certain fundamental principles about the society that are meant to be legally binding. It is like the general principles and sections on citizens' rights rolled up into one, but without the framework of government within which these principles and rights are to be operative.

Thus, the Freedom Charter says nothing about what kind of legislature or executive the country should have, whether the government should be Presidential or Prime Ministerial in character, the territorial division of the country (for purposes of central, regional and local government), how many Chambers the legislature should have, or (whether elections should be by proportional representation or in single member constituencies. Nor does it deal with questions such as official languages, the flag, where the capital should be, or even with the name of the country, (at the time the Freedom Charter was adopted, South Africa was still a monarchy, the Charter did not require that it become a Republic).

The task of the Constitutional Committee is therefore to enlarge the significance of the Charter by transforming it from being a programme for the future into being the centre-piece of a Constitution. ~~The Freedom Charter will then live on in two ways: its terms will be expressly incorporated into the Constitution, forming the basis of a Constitutional~~

programme and Bill of Rights, and its general principles and spirit will guide and determine the shape of the governmental structure as a whole.

~~Different~~ <sup>Various</sup> possibilities exist on exactly how the principles of the Freedom Charter can be incorporated into the Constitution.

One would be to distill its principles and introduce them <sup>in this way</sup> into the relevant parts of the Constitution.

Another would be to incorporate the full ~~text~~ text of the ten provisions as they stand in a section of the Constitution entitled 'General Principles' (to be followed by structures of government, and individual rights).

A third would be to disperse the actual text of the Charter throughout the Constitution, ~~using such parts as~~ ~~belong~~ locating them where they belong, but not necessarily using the whole text.

The advantage of incorporating the text as a whole (shorn of its preamble and conclusion) is that it is a document that

(3)

~~parts of the evening should not be lost right~~

is well-known and balanced, that came from the people and is already part of the history of the people. It follows the approach adopted by many revolutionary constitutions of incorporating goals of the society as a programme binding on the state, but does so in a language that is acceptable to non-revolutionaries.

On the other hand, <sup>constitutional</sup> programmes are not part of the legal culture to which South Africans (or those interested in legal questions) are used. They are more familiar with constitutions that basically set out structures of government and possibly add a Bill of Rights. A further and perhaps more weighty objection is that to include the entire text is to encourage lawyers of all sizes and shapes to examine the details and create problems for the new government. In a separate report we deal with some of the concrete points that could cause trouble.

# The Freedom Charter and the Constitution

## Constitutional Prototypes

Almost all modern constitutions have certain ~~common~~ <sup>in common,</sup> elements. They set out the main institutions of public <sup>(government),</sup> power, define their competence and indicate how the leadership of the country is to be determined. <sup>(election, hereditary succession, religious position)</sup> In addition, many constitutions contain sections dealing with the general principles of the society, while <sup>it is even more</sup> ~~an even greater number~~ <sup>to find</sup> have sections setting out the specific rights of citizens, sometimes <sup>in a section</sup> called a Bill of Rights.

The Freedom Charter is not a constitution, ~~it is not~~ in that it does not define the structures of government. But it is a document that ~~is~~ has a constitutional ~~its~~ character, in that it lays down certain fundamental principles

about the legal nature of the state, as well as <sup>basic</sup> outlining the rights of citizens. It is not simply a political programme, in the sense that it

about the society that are meant to be legally binding. It is like the general principles and sections on citizens' rights rolled up into one, but without the framework of government within which these principles and rights are ~~to be~~ to be operative.

Our task is to establish such a framework and ~~carry forward~~ <sup>transform</sup> the Freedom Charter from being a programme for the future into being the heart of a Constitution.

Thus, the Freedom Charter says nothing about what kind of legislature or executive the country should have,

whether the ~~country~~ government should be Presidential or Prime Ministerial in character, the territorial division of the country ~~into~~ (for purposes of regional and local government), how many chambers the legislature should have, whether elections should be by proportional representation or in single member constituencies, nor does it deal with questions such as official languages, the flag, where the capital should be, or even with the name of the country. (at the time the Freedom Charter was adopted, South Africa was still a monarchy, and ~~it was theoretically conceivable that~~ the Charter did not require that it become a Republic).

The task of the Constitutional Committee is therefore to ~~interpret~~ ~~the principles of the~~ ~~Charter~~ and to ~~undertake~~ ~~to~~ enlarge the significance of the Charter.

~~progressive evolution of the <sup>meaning of the</sup> Charter by~~

by transforming it from being a programme for the future into being the <sup>centrepiece</sup> heart of a constitution. ~~It is a free South Africa~~

The Freedom Charter will ~~then~~ then live on in two ways: its terms will be expressly incorporated into the Constitution, forming the basis of a Constitutional programme and Bill of Rights, and its general principles and spirit will guide and determine the ~~foundations and~~ shape of the governmental structures as a whole.

only the individual right but collective rights of worship and following one's faith.

~~However~~ The increasing involvement of religious bodies in the fight against apartheid leads us to hope that - subject to the principle of separation of Church and State - a future Constitution could find a role for ~~religious~~ bodies such as religious organisations to ~~play an active part~~ in furthering the realisation of the goals of the Constitution. ?

As far as economic activity is concerned, the ANC ~~presupposes~~ a mixed economy in which, to ensure the rapid elimination of the gap between rich and poor, white and black, the State shall play an important directive role. Four types of productive property would need to be



Recognised : public, ~~cooperative~~, private,  
<sup>cooperative</sup> and family (i.e. peasant farmer families).

Property for personal use and consumption  
would get ~~special~~ explicit constitutional  
protection.

of all discriminatory laws, but it requires far more than that. The institutions and structures built up to maintain apartheid have to be replaced by new and democratic ones, while the gross inequalities in health, education, living conditions and economic opportunities <sup>(produced)</sup> ~~have to be rapidly~~ produced by centuries of <sup>racist</sup> ~~apartheid~~ domination have to be rapidly eliminated.

Guarantees of genuine and active involvement of the people at all levels of government have to be established, as well as guarantees against a restoration of apartheid in old or new forms and against attempts to disintegrate the country by means of the manipulation of racism, tribalism or regionalism.

The ANC believes in a society of genuine

X Multi-party state. /

equals, in which there are no first, second or third class citizens, but only ~~citizens~~ South Africans. Although we strongly support <sup>the</sup> constitutional requirements of equal rights ~~and~~ <sup>for all and of individuals, and of</sup> non-discrimination against minorities (or majorities), we oppose the idea of special constitutional privileges for <sup>any sections of the population.</sup> ~~minorities.~~ <sup>So adopting such proposals would be</sup> ~~This would keep~~ racism and ethnicity alive as constitutional principles, impede the development of a genuine patriotic consciousness amongst all, and perpetuate under the cloak of constitutionality the gross inequalities created by apartheid.

~~Minorities are entitled to protection against discrimination, and all citizens~~

In order to ensure <sup>the achievement of</sup> ~~that~~ the social, economic

and cultural transformations needed to overcome the legacy of apartheid and establish genuine equality of opportunity, ~~that~~

~~that~~ we propose as <sup>a possible</sup> a fundamental feature of any new Constitution the inclusion of

~~a requirement a duty to~~

a requirement to take affirmative action binding both on the public and the private sectors. Affirmative action would involve extensive consultation with all interested parties, the establishment of clear goals for reducing inequalities in areas such as <sup>land ownership,</sup> education, housing, and employment, and the legal requirement that steps be taken to implement those goals. [It will ensure ~~that~~ on the one hand that the ending of apartheid brings real changes to people's lives, and on the other that such changes

are orderly, progressive and governed by law. [The needs of the people]

The ANC has long fought for freedom, and wishes to ~~provide~~ see constitutional guarantees of freedom. Citizens should have the legal right to move freely, to choose their friends, to establish their families. Their homes should be inviolate. Their right to sport, leisure and culture should be protected. Above all, their political rights and the rights of free speech should be guaranteed, since this is the basis of securing all the other rights. The only limitation, and one that is fundamental if apartheid is truly to be abolished, is that racially or ethnically exclusive political organisations, or those dedicated to racist or tribalist goals, would not be permitted, nor

would the ~~the right to~~ preaching of  
racist sentiments be regarded as  
falling within <sup>the scope of</sup> legitimate free speech.

Although fundamentally the rights  
contemplated will be individual rather  
than group rights, there are certain areas  
where group rights could get special  
constitutional protection. Thus the rights to  
use and develop <sup>the diverse languages and popular</sup> ~~the diverse languages and popular~~

~~language and popular culture could be~~  
~~whole people could be~~  
constitutionally recognised. Similarly, the  
rights of workers not only as individuals  
but as workers could be ~~protected~~ given a  
special ~~status~~ constitutional backing.

~~Finally~~ <sup>Also,</sup> the rights of women to participate  
fully and equally, <sup>free of disabilities as domestic</sup> as members of the  
nation <sup>should</sup> ~~also~~ be recognised. Finally,  
~~the~~ freedom of conscience presupposes not

Name: Concom. 5/2.

think tanks? Tony O'David.

Framework. Guidelines. More detailed approach.

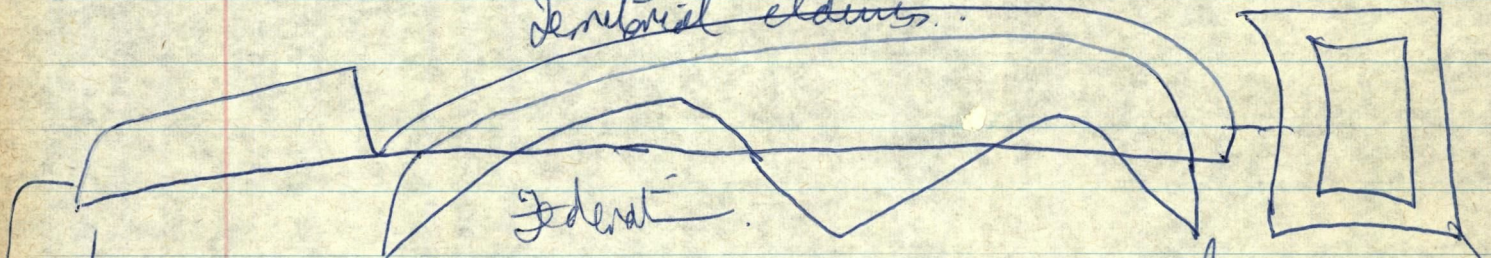
"The end of apartheid is v. near" I hope this is right, because I'm tired of saying it.

Secretarial support.

①. Equality, majority rule, one country one people.

②. Affirmation of respect for identities  
give assurance - will be safeguarded.

~~Territorial claims?~~



Key questions:

Territorial divisions

Soc./People's Power/  
Plural

Bicameral

House - <sup>territ</sup> units  
Deputies -  
elected  
1 - vote

Fed. of Africa South.

Fed. of Southern Africa.

Voting system  
Maj. rule -  
no prop. repr.

board, elected - <sup>units</sup>

Multiple parties.

Exec. responsible to House of Deps.