

Bill of Rights

MCN91-19-2-7

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7th March 1993

Dear Abie Sachs

**ANC Draft Bill of Rights**

I had the privilege of attending the ANC International Solidarity Conference at NASREC recently. I congratulate the ANC for organising an excellent conference and for making us so very welcome.

I admire the ANC's political courage in proposing a government of national unity and reconstruction after all the suffering inflicted on the democratic movement and the non-white peoples of South Africa at the hands of the minority. I pray that the white minority does not use this to continue to defend privileges at the expense of the majority. They do not deserve the humanity which you and the ANC have shown them, yet, because they are still human, they are offered it. In my view that is as heroic as all the struggles which have lead up to this moment.

I am writing to you specifically about the draft Bill of Rights which was distributed at the conference. Since I am neither South African nor a member of the ANC, I have no right to comment, but I offer these thoughts nevertheless.

As Thabo Mbeki said, a Constitution expresses a peoples' vision of their country. In my view, the settlement being negotiated in South Africa is also of global significance, because South Africa is a microcosm of the world in so many ways. The Constitution of South Africa therefore has the potential of becoming a model for the whole world.

I wholly support the aim of combining both individual liberty and social solidarity which runs throughout the draft Bill of Rights. In particular, it is good to see the inclusion of affirmative action and environmental rights.

Constitutionally, it could go further to establish the principle of "common heritage" (Article 12.1) as a basis for laws on both the use of property (traditionally defined as "property rights") and the promotion of social solidarity.

In my view, the concept of property rights is particularly pernicious because it logically leads to slavery (see enclosed argument). Property should be defined as a privilege which is protected under certain conditions, such as those set out in Article 13. The Constitution could go further to create ground-breaking legal principles which provide a basis for ecological and social liberties as well as civil liberties and economic freedom.

Privileges may be tradable but rights should be inviolable. This would create a legal basis for the balance between social solidarity and economic freedom.

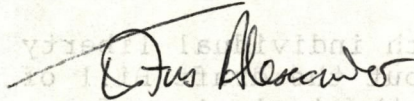
This could be used, for example, to require economic agents to include all external costs of production and distribution within prices, instead of off-loading them onto the environment, society and the state, as happens almost everywhere at present.

I am neither a lawyer nor an historian, but I understand that legal principles underlying some original African societies, and indeed many early European societies, had no concept of private property (as distinct from personal possessions), but granted the use of land as a privilege under certain conditions. A constitution for a new South Africa may be an opportunity for establishing legal principles which re-establish a more harmonious relationship between people and with nature.

Finally in this vein, it may be worth considering whether some global considerations of the common heritage of humanity could be included in section relating to international relations. It may be worth entrenching certain provisions against the force of international agencies, such as the IMF, US and GATT, which have been used to over-ride domestic considerations in many countries.

In solidarity,

Yours sincerely



Titus Alexander