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AFRICAN NATIONAL CONGRESS
CONSTITUTIONAL COMMITTEE



REPORT :
TO THE CONFERENCE OF THE AFRICAN NATIONAL CONGRESS
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**REPORT OF THE CONSTITUTIONAL COMMITTEE
OF THE AFRICAN NATIONAL CONGRESS**

The Constitutional Committee, as a structure of the African National Congress, has tried to involve the people of South Africa in the debate concerning the nature of the democratic society we must build to replace the present apartheid state. Since its formation in 1986, it has drawn on the resources of lawyers and others in the evolution of policies which, in a number of areas, has had a dramatic effect.

Drawing on the historic programme of the Freedom Charter, the Constitutional Committee, following intensive consultation at home, at a time of acute repression under the state of emergency, drafted the constitutional principles for a free South Africa. In 1988, the ANC became the first major force in South Africa to commit itself firmly to the principles of a democratic order based on a multi-party system with the promise that a free South Africa would be a non-racial, non-sexist unitary state. The other major contribution was the commitment to a Bill of Rights, a set of basic and fundamental rights for all South Africans, to be enforced by a non-racial and representative judiciary.

The Constitutional Guidelines were discussed by the mass democratic movement and other structures. These discussions gave rise to fresh thinking about the way governmental power was to be regulated and limited, while responding to the slowly emerging change of tactics among National Party ideologues who were replacing the racial mode of thinking with ethnicity and culture as the indicators of political power.

With the unbanning of the ANC in February 1990, the work of the Constitutional Committee was transferred to South Africa. Since then a number of seminars, workshops and conferences on local government, the land question, gender discrimination, electoral systems and constitutional courts were held. These generated much discussion and debate which led to the development of concrete policy on a range of issues. Out of these discussions, the Constitutional Committee produced, in November 1990, a vision of rights which provided a moral foundation for the struggle and for negotiations. The discussion document, **A Bill of Rights for a New South Africa**, was the first attempt by any South African political organisation to provide a systematic and comprehensive statement on the legal framework of individual rights. Touching not only on the political rights necessary in a democratic society but also on the cultural, religious and language rights so marginalised by apartheid. For orderly change, the document reaffirmed the movement's commitment to a minimum floor of economic and social rights,

regulated by available resources and the need for appropriate action.

Together with the Bill of Rights another document titled, **What is a Constitution ?**, attempted to identify options concerning the nature of parliament, the presidential and electoral systems, individual versus group rights and federation versus the unitary state. There was a diverse and rich response to these documents. On the basis of these responses, the Constitutional Committee published, in April 1991, its discussion document on **Constitutional Principles and Structures for a Democratic South Africa**. These principles are part of our democratic heritage and will form the basis for any discussion at the All-Party Congress, as anticipated by the Harare and UN Declarations.

In August 1990, a most successful seminar on local government drew together participants from the regions, COSATU, civics and international bodies. International participation - drawing on the strength of support which the ANC has enjoyed - has given us access to perspectives which provide important lessons for our future structures. Such international participation has been the hall-mark of all the ANC workshops.

Local government will become the battleground of the future, as democratic forces attempt to establish non-racial interim structures while the regime tries to create, under the guise of local freedom and choice, local areas of privilege and exclusion.

In November 1990, a few days after the publication of the draft Bill of Rights discussion paper, the Constitutional Committee, organised a workshop on the gender question. A number of valuable amendments were proposed which would strengthen the text and the protection of women in a free South Africa. But the most important aspect of such a seminar was not only the way in which our policy was strengthened, but the manner in which the consciousness of all participants were raised.

The most dramatic and therefore the most educational seminars were on two areas which have, up to now, hardly been contested in South Africa. The ANC pioneered the holding of conferences on the electoral system and the constitutional court. The first topic was discussed at great length in Stellenbosch in November 1990 and it quickly became clear that the present first-past-the-post system was neither just nor appropriate for South Africa. The enthusiasm with which support was displayed for the proportional representation system (known as the List System) was a historic departure in the context of South Africa.

Similarly, participants at the conference on the constitutional court in February 1991 were confronted with an issue which was new in South Africa: how best to ensure that respect for a new constitution and an entrenched bill of rights would be attained in a country where all the judges were white - and nearly all white men - and where the courts with rare exception became the handmaidens of the apartheid state and hence has lost all legitimacy in the eyes of the majority of our people. Support for a court which could enjoy a higher status than the Appellate Division and which would draw on the life experiences of all South Africans was virtually unanimous. This is in addition to the need to restructure the existing judiciary.

In May 1991, the Constitutional Committee was able to organise a large conference on the Bill of Rights which was held in Natal, where important issues touching on aspects of human rights were identified and critically assessed arising out of the conference a number of amendments to the original draft Bill were suggested.

The Constitutional Committee has attempted to draw into its work legal bodies from a wide political spectrum and has ensured that its conferences enjoy the support of university structures at a local level. It has thus enlarged the scope of the debate about our constitutional and legal discourse and strengthened those forces in our society for whom freedom and democracy are indivisible.

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