

REPORT
ON THE VISIT BY THE CONSTITUTIONAL COMMITTEE
OF THE AFRICAN NATIONAL CONGRESS
TO THE UNITED STATES OF AMERICA
FROM 15 JUNE TO 3 JULY 1992

1. **INTRODUCTION**

The Constitutional Committee of the African National Congress (ANC) was invited by the American Government to visit the United States on an International Visitor Programme to look at the United States Constitutional System. The visit was sponsored by the United States Information Agency and arranged by the African American Institute. The programme was designed in consultation with the National Democratic Institute for International Affairs.

2. **PARTICIPANTS**

- 2.1 The participants from the ANC Constitutional Committee were Zola Skweyiya, Albie Sachs, Dullah Omar, Linda Zama, Louis Skweyiya, Bulelani Ngcuka, Essa Moosa, Brigitte Mabandla, Nicholas Haysom and Pius Langa.
- 2.2 Other members of the ANC were Thozamile Botha, a member of the Local Government Committee, Jayabakash Joshi, a member of the Macro Economic Research Group of the ANC, Mathole Motshekga, a member of the Local Government of the ANC, Aaron Ndlovu, a political scientist on the national executive committee of the ANC.
- 2.3 Members of the ANC Constitutional Committee unable to participate in the programme were Kader Asmal, George Bizos, Penuell Maduna and Mathew Posa.
- 2.4 Most of the participants managed to stay throughout the programme while others left us earlier and others joined us later.

3. **THE THEME**

- 3.1 The theme was Constitutionalism and the United States. It dealt with the United States Constitutional System focussing on the balance of power between the Federal, State and Local authorities. The programme also dealt with legal, economic and sociological issues in the United States.
- 3.2 The topics of the theme were as follows:
 - 3.2.1 USA GOVERNMENT IN THE 90's.

The presentation was made by Professor Tom Krattenmaker of the Georgetown University Law Centre and Jerry Hagstrom, a journalist. The presentation took place at the National Democratic Institute.

3.2.2 MARKETS, COMPETITION AND REGULATION WHICH WERE DIVIDED INTO:

- 3.2.2.1 Basic philosophic principles of market economy.
- 3.2.2.2 US Anti-Trust Law
- 3.2.2.3 Regulation of business enterprises
- 3.2.2.4 Regulatory procedure

The presenters of these topics were Professor Tom Krattenmaker, Professor Steve Goldberg, Professor Jerry Spann of Georgetown University Law Centre and Professor Steve Salop of Yale University.

3.3 THE POWER TO THWART AFFIRMATIVE ACTION AND CIVIL RIGHTS: THE CHANGING RELATIONSHIP BETWEEN THE FEDERAL AND STATE GOVERNMENTS.

This topic was co-ordinated in the form of a round table discussion with Gay McDougall. There were a number of participants from various organisations such as the Lawyers Committee for Civil Rights, NAACP Legal Defence Fund, Congresswomen, Lawyers in private practice.

3.4 USA FEDERALISM - THEORY AND PRACTICE: WHICH WAS DIVIDED INTO THE FOLLOWING:

- 3.4.1 The historical framework - system of checks and balances - presented by Professor H W Perry of Harvard University.
- 3.4.2 The US Constitution presented by Professor F Chauer from the Kennedy School of Government at Harvard University.
- 3.4.3 Policing in a Democracy presented by Charles Ogletree of the Harvard Law School.
- 3.4.4 The Court System presented by Professor F Michelman of the Harvard Law School.
- 3.4.5 Inter-Governmental Relations - the Federal, the State and Local - presented by Allan Altshuler, Director of the Taubman Centre for State and Local Government and Charles Royer, Director of the Institute of Politics.
- 3.4.6 Ethics presented by Dennis Thompson, Director of Programme in Ethics and in Professions.
- 3.4.7 The Role of the Press in a Democracy presented by L Kovach, Curator of Nieman Foundation.
- 3.4.8 Preparing for the Next Government - Training Programmes for Government Officials presented by Kurt Campbell, Ron David and Herman Leonard of the Kennedy School of Government.
- 3.4.9 Examining the Premises for United States / South African Analogies presented by Randall Kennedy of the Harvard Law School.

3.4.10 The New Deal - Economic Restructuring which was divided into the following:

- 3.4.10.1 The crash - examining the cause and affect of the stock market crash.**
- 3.4.10.2 The great depression - the economic and social conditions of the depression.**

The presenter was Sheldon Stern, a scholar of the John F Kennedy Library.

3.4.11 Women in the New Deal - presentation on gender issues as they were reflected in the New Deal Policy initiatives and the role of Eleanor Roosevelt in the administration. The presenter was Susan Warren, Professor of History at New York University.

3.4.12 The US Approach to the Economics of Governing which was divided into:

- 3.4.12.1 The Economic Framework - budgeting, taxation and revenue sharing.**
- 3.4.12.2 The devolution of Government authority from Federal to the State and Local Level and the tensions in the system.**

The presenters were Larry Diamond, Edwin Meese, former Attorney-General of the United States.

The presentation was done at the Uber Institute at Stanford University.

3.4.13 Regulating Labour - discussion on the law and practice of American labour relations.

The presenter was Bill Gould of the Stanford University Law School.

3.4.14 Federalism and public school funding.

This topic was presented by Professor Jeffrey Sharman of DePaul College of Law in Chicago.

3.4.15 Voting rights and voting districts presented by Raymond Romero of the International Human Rights Institute of DePaul College of Law.

3.4.16 Financing and Delivery of Municipal Services in Chicago - Presented by Attorney Timothy Right also a member of the International Human Rights Law Institute.

3.4.17 Experience of African-American Judges in an Anglo-American Federal Judicial System -

The presenter was former Judge R Eugene Pincham of the Illinois Court of Appeal.

3.4.18 Critical Issues in the 1992 Elections -
The presenter was Bill Schneider of the American Enterprise Institute and Stanley Greenberg, a journalist.

3.4.19 Federal and State Election Laws -
The presenter was F Vertheimer, President of Common Cause and John Simon, Chairman of the Election Committee.

The presentation was done at the offices of National Democratic Institute and Common Cause.

4. INSTITUTIONAL AND ORGANISATIONAL PARTICIPATION.

The institutions in the United States that participated in the programme are as follows:

- 4.1 National Democratic Institute in Washington;
- 4.2 Common Cause of Washington;
- 4.3 Georgetown University Law Centre of Washington;
- 4.4 Lawyers Committee for Civil Rights Under Law;
- 4.5 Institute of Politics of the Kennedy School of Government at Harvard University in Boston, Massachuttes;
- 4.6 John W McCormack Institute of Public Policy of the University of Massachuttes and Boston;
- 4.7 Hoover Institute;
- 4.8 Stanford University in Palo Alto, California;
- 4.9 Stanford University Law School, Palo Alto, California;
- 4.10 DePaul University College of Law, Chicago (Illinois);
- 4.11 Ford Foundation.

5. OFFICIAL VISITS

The following officials visits were organised:

- 5.1 A visit to the Supreme Court of the United States where we were addressed by the Honourable Sandra Dave-O'Conner on the same day when judgment was given in the kidnapping matter where a person was kidnapped from Mexico to stand trial in the United States. The Court ruled that the person could stand trial in the United States, despite the fact that he was forcibly and against his will removed from Mexico.
- 5.2 United States Department of State where we spoke to the South African Desk of the Department of State and the United States Agency for International Development.
- 5.3 The National Committee of the Republican Party.
- 5.4 The National Committee of the Democratic Party.

(Presentations were made on party structure, functions and mandates.)

6. SOCIAL FUNCTIONS

In addition to a number of informal social occasions, we were hosted by the following:

- 6.1 Congressional Black Caucus in Washington;
- 6.2 Congressman Walter E Von
- 6.3 Ms Gay McDougall, Director of the Lawyers Committee for Civil Rights Under Law;
- 6.4 Members of the Minority Bar Association in Chicago;
- 6.5 Ford Foundation.
- 6.6 The ANC Office in Washington, Supporters of the African National Congress in San Fransisco, Chicago and New York, also hosted the ANC delegation to social functions where the ANC delegation gave them a formal briefing on constitutional and political developments in South Africa.

7. RADIO AND TELEVISION INTERVIEWS

Radio and television interviews were conducted with certain members of the group. The focus was on political and constitutional developments in South Africa and the visit of the group to the United States.

8. ASSESSMENT

- 8.1 The theme of the visit was topical and varied. It exposed the delegation to the American system, its strength and weakness and tensions. We were able to share the American experience on a number of issues ranging from Federal, State and Local Government, Seperation of powers between the legislature, executive and judiciary, Economic issues such as market economy, relation of business enterprises, anti-trust laws, financial institutions, taxation, consumer protection, etc., Electoral laws and procedures, Multi-party system, Public school funding and school reforms.
- 8.2 The presenters presented their particular topics in a very clinical manner without wanting to influence the delegation in any way. Most of them made it clear that their systems and experiences might not be suitable for the South African situation, as their system was influenced by their own peculiar history and circumstances. They said, however, that we could learn from their own experiences.
- 8.3 The theme was very instructive, informative and educative. We have however learnt that one cannot transplant the American system to the South African situation. We have different circumstances, different history and different experiences. Nevertheless, there are important features of the American system that could be applied in a future democratic South Africa, such as separation of powers, independent judiciary, Bill of Rights, devolution of power from the States to the local authorities.

9. CONCLUSION

Our visit to the United States has considerably enhanced our knowledge of the American way of life, its political and social institutions, the strength, weaknesses and tensions of the system. In our opinion, the visit, which was long overdue, was a worthwhile experience.

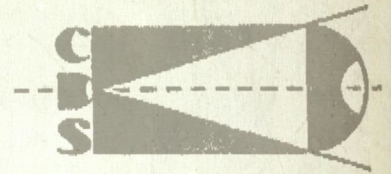
Most of the presenters were well prepared for their presentations and some of them made available materials which were very useful for our purpose.

Our sponsors, hosts and escorts were exceptionally helpful and co-operative and made the visit a moving experience for all of us.

ANC CONSTITUTIONAL COMMITTEE

6 August 1992

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MEMO: Notification of ANC Constitutional Committee Meeting

FROM: Zola Skweyiya

DATE: 28th July 1992

TO: Adv Pius Langa
Adv Louis Skweyiya
Arthur Chaskalson
Prof Fink Haysom
Adv George Bizos
Bulelani Ngwenya
Brigitte Mabandla
Prof Albie Sachs ✓
Prof Kader Asmal
Cde Essa Moosa

*GRANDS...
SEMINAR*

With reference to the last Constitutional Committee meeting, it was decided that a Meeting be scheduled for Friday, 7th August. The meeting will be held at the Johannesburg Sun and will commence at 10h00. Will you please indicate your availability as soon as possible in order for flight arrangements to be made timeously.

Yours sincerely

Randi Erentzen

*Albie away
told for Matsua.*