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TOWARDS A

BILL OF RIGHTS

IN A

DEMOCRATIC SOUTH AFRICA.

BY ALBIE SACHS.

I.N.
Bill of Rights.
see separate
comment by me
in other transcripts.

All revolutions are impossible until they happen; then they become inevitable. South Africa is trembling between the impossible and inevitable, and it is in this tensely unstable situation that the question of human rights in a post-apartheid society clamours analysis.

Like slavery and colonialism, apar heid is regarded as irremediably bad. It is no longer necessary to spend much time investigating schemes to modernise, reform, liberalise, democratise or even private apartheid. It is accepted throughout the world that you cannot have good apartheid or degress of acceptable apartheid. The only questions on the agenda are how to end apartheid rapidly, with as little destruction to the country's infrastructuers as possible, and how to ensure that the new society which replaces it lives up to the ideals of the South African people as a whole and the standards of the international comminity in general. Thus, at the constitutional level, the issue is no longer whether to have democracy and equal rights, but how best to achieve these principles and how to ensure that with within the overall democratic scheme, the cultural diversity of the country is accommodated and the individual rights of all citizens are respected.

It is in this connection that argument about a Bill of Rights inpost-apaprtheid South Africa is beginning to rage. At first sight it might appear that, given the existence of internationally accepted documents on humanrigh rights, the adoption of a Bill of Rights in South africa should be a relatively simple process. Some have even proposed the acceptance of a Bill of Rights as a confidence building measure that could precede the adoption of a new Constitution, the first assumption being that it is possible to separate a Constitution and a Bill of Rights, and the second that, granted a general commitment to end apartheid, the question of formulating a Bill of Rights would be unproblematic. In reality, the issue of a Bill of Rights is proving highlycontroversial not simply because of its relationship to a Constitution, but even in its own terms.

Basically two positions have emerged. Reduced to their essentials, they are, on the one hand, that a Bill of Rights is necessary to protect the interests of the white minority against a future black majority government, and on the other, that a Bill of Rights can be major instrument in guaranteeing to the black majority and the whole population the effective realisation of the rights which for so long they have been denied.

The former and more narrow position is the one that until now has been the most forcefully articulated. In some cases it has required courage on the part of proponents to be associated with even this narrow approach, and one must pay tribute to those who have begun to take serious steps along this road. In other cases, unfortunately, a Bill of Rights is projected cynically as a cloak for covering the most violent abuses against the people. One thinks of the Ciskei, for example, where the existence of a Bill of Rights as part of the so-called Independence Constitution has done nothing to protect the people from a ferocious reign of terror; or one recalls that amongst the signatories to a recently adopted Bill of Rights document in Natal are persons responsible for sending murder squads to butcher students, lawyers, trade unionists and community workers. In between these two extremes are a great number of lawyers and social scientists acting for a variety of professional and personal motives. Whatall these people have in common is that the documents they produce, though purporting to be in universal language, in reality have a very narrow focus and are in fact highly self-serving.

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The wider approach to a Bill of Rights has until now received little direct expression, though indirectly it is projected whenever documents such as a Workers' Charter or an Education Charter are formulated. The main purpose of this booklet is to spellout loudly and clearlyin the language of legal discourse this alternative view of Human Rights. Instead of seeing a Bill of Rights as a means of protecting group privileges under the guise of protecting groups rights, it regards a Bill of Rights as an instrument for enlarging the freedom of the oppressed majority, thereby creating a South Africa in which equal rights becomes a reality and in which the whole population irrespective of colour or orgin, can live in peacd and with dignity.

SOME MISCONCEPTIONS

A Bill of Rights is necessary because if you grant the legitimate rights of the black majority you must also give reasonable protection to the rights of the whiteminority.

A Bill of Rights is a necessary device designed to preserve the interests of the whites and to prevent any effective re-distribution of wealth and power in South Africa.

(Summary of two widely held views on a Bill of Rights)

The most curious featureabout the demand for a Bill of Rights in South Africa is that it comes not from the ranks of the oppressed but from a certain stratum in the ranks of the oppressors. This has the effect of turning the debate on a Bill of Rights inside out. Instead of a Bill of Rights being associated with democratic advance, it is seen as a brake on it; instead of being welcomed by the mass of the population as an instrumentof liberation, it is viewed by the majority with almost total suspicion. Indeed, South Africa must be the only country in the world in which sections of the oppressed people have actually constituted an anti-Bill of Rights Committee.

At first sight, nothing appears simpler than to adopt a Bill of Rights based upon a universally accepted documentsuch as the UN Dwclaration of Human Rights. The fact is that the apartheid divide lies as heavily on the Bill of Rights debate as it does onany other important topic in South Africa. Disagreement relates not only to the specific clauses to be included or excluded, but to the whole thrust of a possible Bill, to the manner in which it should be created, and to the means whereby it should be enforced.

This section will deal with certain misconceptions, which, in the writer's view, block effective discussion of the subject. The next section will then set out proposals relating to the manner in which a Bill of Rights should be created and to what its basic character should be.

Suspicious About the Bill of Rights

It is a sad tribute to the way the law has impinged on the life of the majority of South Africans that a Bill of Rights is seen essentially as a means of using jurdicial techniques to restrict rather than enlarge the area of human freedom. Suspicion is founded on a variety of interconnected factors:

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- The push for a Bill of Rights comes not from the heart of the freedom struggle, but from people on the fringes, many of whom have criticised apartheid, but few of whom have been actively involved in the struggle against it;

- The objective of the Bill of Rights is seen as being primarily to protect the existing and unjustly acquired rights of the racist minority rather than to advance the legitimate claims of the oppressed majority;

- The attack on 'majoritarianism', which underlies many arguments in favour of a Bill of Rights, is manifestly racist, since South Africa has been governed without a Bill of Rights and in accordance with the principles of majority rule (for the minority!) since the Union of South Africa was created in 1910, and the need for checks and balances suddenly become allegedly self-evident when blacks are about to get the vote;

- The key role given to what are called experienced lawyers in controlling the implementation of the proposed Bill of Rights would mean inevitably an interpretation in favour of the existing and unjustly acquired rights and against any meaningfull re-allocation of rights;

- While protection of the individual is necessary, the failure of the proposed Bill of Rights to address the question of grossly disadvantaged communities renders it largely irrelevant to the human rights needsof the country.

Such suspicions might seen shockingly unjust to the proponents of a Bill of Rights, many of whom have genuine hatred of apartheid and a deeply sincere desire to see as rapid and peaceful a transformation of the country as possible. Yet the proponents of a Bill of Rights have rushed ahead with their drafts without paying due attention to questions to which their lawyerly background should have made them more sensitive. Before drafting a Billof Rights for a post-apartheid South Africa, it is necessary to ask certain preliminary questions, the answers to which will decisively affect the final result. More specifically, it is necessary to ask simply:

What Bill of Rights?
By whon, for whom and how?

MISCONCEPTIONS ABOUT THE CONTENTS OF A BILL OF RIGHTS- THE QUESTIONOF THE THREE GENERATION OF RIGHTS.

Most proponentsof a Bill of Rights for South Africa operate within a thematically limited and historically out-of-date perspective. Very few get beyond what has been called the First Generation of Human Rights, namely, civil and political rights and rights of due process, as were declared during the great anti-feudal and anti-colonial revolutions of the Eighteenth Century. The Second Generation of Rights, namely those of a social, economic and cultural nature enunciated in the UN Charter of Human Rights of the 1960's gets scant mention, while the Third Generation of Rights, the rights to development, peace, social identity and a clean enviroment, which have been clearly identified as human and people's rights only in the past decade, get virtually no attention at all. At a time when every possible intellectual input is needed, it is perverse indeed to restrict the scope of the debate to First Generation only, just as it would be grossly anachronistic to start post-apartheid South Africa with a Bill of Rights document as archaic (even if not as vicious) as the system it is designed to replace.

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The great majority of South Africans have in reality never enjoyed either First, Second or third Generation rights. Their franchise rights have been restricted or non-existent, so the extension of the franchise is fundamental to the achievement of democracy and the overcoming of national oppression. But for the vote to have meaning, for the rule of law to have content, the vote must be the instrument for the achievement of Second and Third Generation rights. It would be a hollow victory if the people had the right every five or so years to emerge from their forced-removal hovels and secondrate Group Area homesteads to go to the urns, only thereafter to return to their inferior houses, inferior education and inferior jobs. And it would be a strange panoplyof rights that not only ignored but excluded the rights to peace and development, the rights to enjoy the beauty of and benefit from the natural resources of the country, and above all the right to be a people, to be South Africans in the full sense of the word, to constitute a nation, to overcome the divisions and inferiozation imposed by racism, tribalism and regionalism, to participate as z people in the life of the community of nations.

There aresome persons who would wish to restrict the extension of rights to the First Generation only, granting formal political power, but depriving it of practical content; the peoplecan have the vote, but not homes and jobs. There are others who would see the extension of Second Generation socio-economic rights as an alternative to First Generation political rights- the people can have homes and jobs but not the vote. Very few loook at the Third Generation at all, the rights so important to a people denied peace, security, dignity and identity for centuries.

The fundamental constitutional problem, however, is not to set one generation of rights against another, but to harmonise all three. The possessors of the rights are the same physical human beings, the citizens of a Democratic South Africa. They donot exercise one set of rights in the morning, another in the afternoon and a third at night. The web of rights is unbroken in fabric, simultaneous in operation an all-extensive in character.

In the world at large, the creation of Rights, or rather, of Rights formulations, succeeded each other at different times, but their sphere and object was essentially the same and their line of development has been continuous. It would be absurd for us in South africa to have to recapitulate and live through each stage separately before advancing to the next. We do not need to reinvent each information. Rather, we draw on the acheivements of the struggles of other peoples and benefit from the intellectual creation of the world community in order to find formulae and solutions for our own problems. Thus, when the majority in South Africa look to the complete elimination of apartheid in all its shapes and forms, what they are longing for is the progressive, rapid and simultaneous achievement of all the rights as formulated in all three Generations. The people of South Africa want to be free, to live decent lives, to be a community with their own personality and culture and to live in peace and with dignity with each other and the world; no more, no less

A BILL OF RIGHTS - BY WHOM AND FOR WHOM?

A lokk at the historical contexts in which other Bills of Rights have been adopted shows the back-to-front nature of the proposed Bill of Rights for South Africa.

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The Magna Carta, the Bill of Rights adopted in England in the 17th Century, The US Bill of Rights, the French Declaration of the Rights of Man, were all formulated and adopted by the former victims of arbitrariness and oppression as a means of controlling or excluding the power of the former oppressors and guaranteeing the aggrieved classes against future revival of arbitrary behaviour. It was not Hitleror his former supporterswhodrafted the UN Declaration of Human Rights or the subsequentCharter.

If we take a close look at the great prototype Bill of Rights, namely, that contained in the early Amendments to the US Constitution, we see that it was adopted not before Independence, but afterwards, not by the ousted colonial authorities but by the victorious freedom fighters. We observe too that the objective of the Amendments was not to preserve the rights of the defeated loyalists, but rather to root out once and for all the kinds of oppressive behaviour indulged in by supporters of the Crown. Thus, each of the Amendements was desgned to deal with a specific form of denial of rights: no freedom of speech or assembly, the imposition of an official Church, the use of torture and cruel punishments, the forcing of confessions and so on. The Bill was not an abstractly conceived set of rights designed by lawyers in terms of general pre-conceived notions, but a concrete set of responses to specifically felt forms of domination. The former colonised people, victims of despotism, anxious to guarantee that there be no revival of the suffering to which they had been subjected and to consolidate their new-found freedom, remembered exactly where the shoe had pinched, and designed their Bill of Rights accordingly.

Applied to South Africa, this would mean essentially that the Bill of Rights would be adopted at the behest of the former oppressed, after freedom had been won, and as a means of ensuring that their oppression was not restored in old or new forms. Their Bill of Rights would confront and outlaw all the specific forms of oppression associated with apaprtheid: the whole sysstem of racial domination, the pass laws, the forced removals, the Group Areas legislation, the violence of the troops in the townships and of the security police in the cells. And since the equivalent of Independence in South African conditions is the restoration of the land, of dignity and rights within the existing boundaries of the country, a Bill of Rights would have to address itself directly to the question of equal access to resources. In other words, a genuine document in the classic Bill of Rights tradition would have as its principal objective the total elimination of apartheid and the guaranteeing of rights to those presently oppressed.

In the proposals being made we find almost exactly the opposite being expressed. The principal objective is precisely to give guarantees to the present oppressors, to protect them against the claims of the oppressed; to do so in advance of and as an alterative to rather than as a guarantee of democracy, to act as a bulwark against rather than as a prescription in favour of change. Such a Bill of Rights would be deprived of its true function. Instead of being an instrument designed to protect the future rights of the whole population, it becomes a means of defending the present priveleges of the minority, surpassing the legitimate bounds of legal irony be perpetuating injustice in the name of constitutionally. It is only necessary to refer to a concrete case to see the significance of this.

If one looks at the question of the land, one sees the contradiction immediately.

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In the past three decades more than three million South Africans have been forcibly removed from their homes and farms, on the simple legal basis that they were black. Apartheid law then conferred legal title on owners whose main legal merit was that of having a white skin. Whom would the proposed Bill of Rights protect: the victims of this unjust conduct, which has been condemned by all mankind as a crime against humanity, or the beneficiaries? Although oppression and poverty are not necessarily completely synonimous, they do tend go hand in hand. Where would the people, condemned as squatters after living on land for generations, their homes bulldozed into the ground, get the finance to compensate the new owners with their legal 'titles', when the only collateral the dispossessed would have has no known market value, namely, centuries of suffering and dispossession?

Looking at the surface area of South Africa as a whole, one finds that at present the dominant minority of less than twenty per-cent of the population have reserved to them by law nearly ninety per-cent of the land. It would be a strange Bill of Rights that said in effect that the remaining eighty per-cent of the population had to forego their right to own and farm land because to exercise such a right would be to violate the acquired apartheid rights of the twenty per-cent. Looked at from the perspective of human rights, who has the stronger claim to land; the original owners and workers of the land, expelled by guns, torches and bulldozers from the soil, turned into migrant workers, perpetually on the move withno plot they can call their own, or the present owners, frequently absentee, whose rights are based on titles conferred in terms of the so-called Native Land. Act and the Group Areas Act?

This not to say that there are no white farmers with a deep attachment to love of the land, who in the future would have no role to play in the growing of the food the country needs. Nor is it to argue that the past humiliation of the oppressed can only be assuaged by the future humiliation of the oppressors. One of the main fuctions of a new Constitution would be to guarantee conditions in which all citizens, independently of race, colour or creed, could make their contribution to society and live in dignity and peace. But it is to insist that there be no deep constitutional freezing of the present unjust and racially enforced distribution of land. There might be good arguments for careful study of transitional arrangements, for giving the present owners alternatives to sabotage and fighting to death, for taking care to maintain high levels of food production while new generations of agricultural scientists are being trained, and for creating the conditions in which a common patriotism involving all South Africans is allowed to evolve. But these are essentially pragmagtic factors that belong to the arena of political debate. They are not inalienable human rights principles that can be written in to a Bill of Rights.

The question in relation to the great tracts of land owned by the whites, while millions of black would-be farmers have no right to land whatsoever, is how to create legal interest that eliminate what has been the foundation of the whole system of cheap, migrant labour, of pass laws, compounds and locations, of the denial of citizenship rights, and how to do so in a way that encourages a reduction rather than a intensification of racial antagonism and a minimisation of damage to the country's food supply.

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From a human rights point of view, the starting point of constitutional affirmation in a post-apartheid democratic South Africa is that the country belongs to all who live in it, and not just to a small racial minority. If the development of human rights is the criterion, there must be a constitutional requirement that the land be re-distributed in a fair and just way, and not a requirement that says there can be no re-distribution except on conditions that are clearly unattainable by the black majority.

MISCONCEPTIONS ABOUT ATRUCTURE AND IMPLEMENTATION
- THE QUESTION OF AFFIRMATIVE ACTION

Since most proponents of a Bill of Rights in South Africa see it as instrument designed to block rather than promote any significant social change, they completely omit from their projections any reference to affirmative action. This deprives the Bill of Rights of its true potential as a major instrument of ensuring a rapid, orderly and irreversible elimination of the great inequalities and injustices left behind by apartheid.

Without a Constitutionally structured programme of deep and extensive affirmative or correction, a Bill of Rights in South Africa is meaningless. Affirmative action by its nature involves the disturbance of inherited rights. It is re-distributory rather than conservative in character. It is not a brake on change but rather a regular of change, desined on the one hand to guarantee that change take place, and on the other hand that proceeds in an orderly way according to established criteria, enabling all the interested parties to make an appropriate contribution, or at least to know where they stand. Affirmative action presupposes the concentation of diverse forces in an agreed direction, with the State playing an ultimately decisive though not necessarily exclusive role in the process. A Bill of Rights cannot accordingly, be seen in the Eighteenth Century way simply as a fetter on the State in relation to the citizen (though it should never lose its character as a guarantee against abuse of citizen's rights by the State). On the contrary, through giving constitutional backing to affirmative action, it gives to the State, as well as to other bodies, a duty to use national institutions and resources to promote the rights of the citizens.

In the historical conditions of South Africa, affirmative action is not merely the corrector of certain perceived structural injustices. It becomes the major instrument in the transitional period after a democratic government has been installed, for converting a racist, oppressive society into a democratic and just one. It is the instrument in terms of which agreed national and constitutionally established goals are realised in a fundamental way, attributing appropriate responsibilities to all social-forces- the public sector, the private sector and the individual citizen.

MISCONCEPTION AMONGST THE MASS OF THE PEOPLE ABOUT A BILL OF RIGHTS

The way in which a Bill of Rights has been projected in South Africa as a means of preserving vested interests and of blocking corrective action to bring about genuine equality, has given the whole concept a bad name amongst the mass of people. This is most unfortunate. A Bill of Rights as such is neither a reactionary nor a progressive instrument; everything depends on the context.

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The fact is that there is a true and progressive conceptof a Bill of Rights that merits the support rather than the suspicion of all genuine anti-apartheid fighters, one that situates such a document in its classic context as a true consolidator of the gains of people in struggle. Those of us engaged in the anti-apartheid fight also have our decisions to make. Either we leave the question of a Bill of Rights to others and then criticise the results, or we enter the fray directly and say: These are our positions, this is where we stand, this is what a Bill of Rights should really be like. More concretely, we can transfer the debate from the remote arenas of the Think Tanks and locate it where it belongs: in the midst of the life and strivings of the people. Justice and human rights do matter to us. This is what we are fighting for, and there should be no cynicism in our hearts on the matter, nor lazinessin our minds.

In South Africa we already do have a document that embodies the key elements of a Bill of Rights, a document born out of struggle, one that responds directly to South African conditions, expresses the aspirations of the oppressed people and meets with internationally accepted criteria of a human rights programme - the Freedom Charter adopted at the Congress of the People in 1955.

From a human rights point of view, the Freedom Charter was amongst the most advanced documents of its time, spelling out in clear and coherent language, social and economic rights that were only to become internationally agreed upon in the 1960's, and people's rights that were only to be formulated in the 1970's and 1980's. The Freedom Charter is accordingly a contribution towards human rights literature of which we South Africans can be proud. Similarly, we can look forward in the future not simply to borrowing from the world treasury of human rights documents, but to making our own specific contribution. Just as apartheid attacks human rights at all levels, political, social,economic, the very concept of the person, so the fights against apartheid brings together the themes of human rights at all levels, and makes its contribution to the enrichment of human rights concepts.

SOME PRE-CONDITIONS

A Bill of Rights can be either be an enduring product shaped by lawyers, or a transitory product of lawyers imposed upon history. If in South Africa it is to be the former and not the latter, four basic pre-conditions will have to be met.

1. An appropriate process must be created whereby a Bill of Rights may be adopted.

Bills of Rights can be either copied, defined, negotiated or constructed.

The easiest and least rewarding procedure, simply to <u>copy</u> a Bill of Rights from a model regarded as working well in another country. Apart from the fact this saves on drafting fees, there is little that can be said in its favour. An effective Bill of Rights in any country must relate to the culture, traditions and institutions of that country, and, above all correspond to the specific and felt demands of the people at the historic moment when the Bill is considered necessary. This is not to deny an education and exemplary role for a Bill of Rights, nor to refuse it a capacity to take on new meanings in the course of time.

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But it is to insist that an effective Bill comes from inside the historical process, not outside and that it reflects a set of values gained in the course of struggle and rooted in the consciousness of the people, not one imported from other contexts.

Defining a Bill of Rights has the advantage of being directed towards the specific problems of a specific situation. This is what the burgeoning Think Tank movement on Southern Africa aims to do: select experts who define their way into the problem and define their way out again. The flaw in this approach is that it presupposes that the basic issue is an intellectual one: If only the correct formula can be found, everyone will come to their senses, apartheid will disappear and all will end well. The reality is that the basic problems are ones of power and consciousness, not of formulation. It is not chauvinistic to assert that there is no lack of brains in South Africa. Unfortunately, even the defenders of apartheid have an intelligentsia of considerable brain power, today armed with all the intellectual apparatus of what is called contemporary political science. The truth is that until the social reality and especially the power structure have changed the intellectual reality will remain imprisoned in the categories of apartheid. The context will be that of rearrangement rather than substitution; yet try as the Thinktankers might, there is no way in which apartheid can be adapted or modified to make it consistent with any meaningful Bill of Rights. Similarly, there is no way in which a Bill of Rights that obeys international standards could be adapted to be consistent with apartheid, however rearranged. Any constitutional scheme designed to entrench the rights of the white minority, whether property rights or rights to racially exclusive education or residential areas, violates the principles of equal dignity and equal opportunity which lie at the heart of any Bill of Rights. Yet most of the Think Tanks seem to have set themselves just such an agenda, namely, to propose a constitutional scheme which, under the guise of a Bill of Rights, would guarantee that however many blacks there might be in Parliament, whatever the flag or anthem or even the name of the country might be, none of the privilages presently enjoyed by the whites would be touched in any way.

Negotiating a Bil of Rights, the third method, has two great virtues, namely, it operates from inside the process, and, by definition, its outcome will correspond to the power realities of the moment, giving it a fair chance of becoming operational. But it has serious certain drawbacks. As in the case of a copied or defined Bill of Rights, the people who are to be the holders of the rights, are regarded as mere spectators in the process. Furthermore, the negotiations inevitably result in a document so full of compromises and short-life arrangements that it hardly constitutes a true Bill of Rights at all. The fact is that one cannot negotiate goals, one has to establish them; what one can negotiate is the means whereby agreed goals can be achieved. If there is no agreement on goals, save at the level of banalities - such as that every one shall be happy and none shall feel oppressed - then there is no basis for negotiating a Bill of Rights. In the case of South Africa, it is only when the fundamental goal of a non racial, democratic and united South Africa is accepted that a suitable foundation could exist for negotiating the terms of a Bill of Rights. What could be negotiated then would be the precise configurations both substantive and institutional, as well as the steps to be taken to get there in as speedy and orderly way as possible.

Even granted agreement on goals, however, the major weakness in a negotiated process remains the passivity of the people at large in relation to their fundamental rights. We live in an age in which every form of communication with and involvement of the people is possible. Even in the difficult circumstances of apartheid South Africa in the 1950's, the meetings that pre-

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ceeded the Congress of the People at which the Freedom Charter was adopted, involved hundreds of thousands and possibly millions of people. All the participants felt thereafter that in some way or another the document was theirs, made by them for them and all people of South Africa, something for which they were willing to fight, and, as Nelson Mandela said, something for which, if needs be, they were willing to die.

In my view this is what Bills of Rights are or should really be about, and this is what makes the fourth procedure for adoption of a Bill of Rights for South Africa imperative - namely, constructing such a Bill. A constructed Bill of Rights will ofcourse, copy from other models; it should eventually be a coherent and well-defined document drawing on the advice and experience of all the thinkers - whether in Tanks or outside - of the world; and it will involve important elements of negotiation. But in addition it will have the characteristics of:

- being built up over a period of time rather than drafted at one moment;
- being constructed in sections and layers rather than as a single, unique document;
- being the product of active involvement of the widest strata of the population and not just a few experts.

These three characteristics are inter-related. The time-frame gives the people as a whole and all interest groups, a chance to be involved. A Bill of Rights is built up, stage by stage, starting from agreement on general principles, and moving to specific institutional arrangements. In the meanwhile, all the major social forces that accept the basic goals are specially though not exclusively involved in the evolution of sections that have particular relevance for them. Thus, we already have in South Africa an Education Charter in draft, emerging in the course of struggle against racist education; one could contemplate a Workers' Charter in which trade unions would have a special role; perhaps a Charter of Religious Freedom and the role of the churches, mosques, synagogues and temples, in promoting the goals of the new society. The embryos of important sections of a future Bill of Rights are already emerging in the work of the National Education Crisis Campaign, the programmes of COSATU and SACTU? the Trade Union bodies, the declarations of activist religious leaders, progammes of the women's organisations, and so on. At a future stage, when a democratic government has been formed or is imminent, the process of consultation and involvement could be extended and formalised. The Freedom Charter itself is, ofcourse, the fundamental document already in existence , and on its foundation, a Bill of Rights could be gradually constructed, drawing upon all the inputs of all the different sectors.

In the same way as a constructed Bill of Rights presupposes a building up of the substantive part of the Bill, so it takes account of the need to evolve, step by step, the institutions which are to be invoked to make the Bill operative especially those relating to corrective action (this theme will be dealt with later).

Clearly it would be presumptuous to attempt to lay down or even predict the exact course whereby future constitutional documents will be adopted.But the perspective that needs at least to be considered is that of constitution-making as a process rather than an event. Once this is done, the possibilities

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...The possibilities become greatly ena enlarged of involving the people directly in the shaping and formulation of the rights of which they are to be holders. Rights in the true sense of the world are never conferred - they are seized, shaped, expressed and lived by their bearers. In this way, the Social Contract ceases to be a pure legal fiction and takes on substantive meaning.

2. In TERMS OF ITS CONTENT THE BILL OF RIGHTS MUST BE ASSOCIATED WITH THE EXTENSION RATHER THAN THE RESTRICTION OF DEMOCRACY IN SOUTH AFRICA.

To project a Bill of Rights as being essentially a mechanism to frustrate majority rule is to doom it from the start. The fundamental argument of this paper is that a Bill of Rights should precisely be used to enlarge fa rathe than to freeze the area of human rights, and to eliminate rather than perpetuate racial distinctions and the fruits of such distinctions.

What needs to be done is to turn the Bill of Rights concept from one of a negative, blocking instrument, which would have the effect of perpetuating the divisions and inequalities of apartheid society, into one of a positive, creative mechanism that would encourage orderly, progressive and rapid change in the direction of real equality.

At the level of content, this would take into account the specific features of the South African situation. Thus, while providing for general civil and political rights, including a multi-party system based on freedom of speech, association and organisation, in a word, political pluralism - there would be no freedom to call for the maintenance or restoration of apartheid. If the majority of countries in the world have in one way or another outlawed the plr preaching or practice of apartheid, it would rather be rather ironical for South Africa, where the policy has caused so much misery and death to be one of the few exceptions. At another level, any entrenchment of property rights has to take account of the fact that a reality has been constructed in terms of which 85% of the land and probably 95% of productive capacity is in the hands of the white minority. What is required is a constitutional duty to rectify these percentages, not one to perserve them.

In relation to Second Generation socio-economic rights, attention needs to be given to breaking out of the confines of the Anglo-Sazon legal tradition whereby basically rights are restricted to what is justiciable, that is, to interests that can be protected by recourse to a court of law. While the role of the courts should always be important, it should be complemented by a richer concept in terms of which the Bill of Rights not only operates to defend individual rights, but seeks to guarantee the extension of rights to the community as a whole. To take one example, what would be more important : the right to sue your doctor or the right to health? The former,

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The former,/
...litigationoriented rifht might have significant justification in other countries: in South Africa what is urgently needed is the imposition of a duty of the State and the private sector to ensure that conditions are created t for improving the people's health.

Consideration thus needs to be given to a Bill of Rights as a legal programme and not simply as a set of justiciable interest. A constitutional document that is programatic in character presupposes that certain major social goals are set out in the document, and public and private entities are placed under a legal duty to work towards their realisation. The Second Generation of rights lend themselves more to treatment of this kind than to the justiciable First Generation kind.

Third Generation rights, such as the right to peace, development and a clean envic environment, also necessarily have a strong programmatic character. This might be upsetting to lawyers used to Anglo-American legal conventions who argue that such concepts are political and not legal and as such have no place withina a Bill of Rights. Any serious look at the needs of a post-apartheid society, however, shows that sweeping changes will be needed to ensure that the majority of the people have genuine and not merely token acess to their rights, privileges and benefits of siciety. The problem is not to oppose the law to this process, but to ensure that the process is anchored in the law. The object in a society undergoing major transformation can never be to seperate law and politics, but to find the right relation between them. In some countries this has been done by giving institutional and jurdical form to already existing revolutionary transformations, in others by means of sweeping social welfare legislation. In either event the need for a statutory based programme of change based on extensive public intervention has been recognised and acted upon.

3. The Bill of Rights must be Centered around Affirmative or Corrective Action

The third fundamental feature of a meaningful Bill of Rights for South Africa is that it must be structured around a programme of affirmative action. It is not just individuals who will be looking to the Bill of Rights as a means of enlarging their freedoms and improving the quality of their lives, but whole communities, especially those whose rights have been systematically and relentlessly denied by the apartheid system. If a Bill of Rights is seen as a truly creative c document that requires and facilitates the achievement of the rights so long denied to the great majority of the people, it must have an appropriate corrective strategy. To adapt Anatole France, if the law in its majesty were to give equal protection to a family of ten occupying a two-roomed shanty and a family of two living in a ten-roomed mansion, it would not be enlarging the area of human freedom in South Africa. Whatever attitude is taken to unused or under - used accommodation, the failure to impose a legal duty on the State and the private sector to reduce inequality in living conditions would be to deprive the Bill of true meaning in this important area. The argument here is not whether or not the ten-roomed me mansion should be confiscated, but whether or not there should be an obligation on the State and the construction industry to take measures to reduce the massive imbalance.

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The advantages of corrective action is that clear and irreversible goals with an undeniable social and moral purpose are stated, but considerable flexibility is permitted in terms of how the goals are to be realised. This helps avoid the dangers of backsliding on the one hand, and producing grandiose but highly voluntaristic and unrealisable plans on the other. If the private sector is to play a positive role in reducing inequality in a democratic South Africa, it is difficult to see how any strategy other than that of massive affirmative action could function.

The example of housing has been given. But just as there is no area of South African life that apartheid has left untouched, so it will be necessary to extend affirmative action to every aspect of South African society - health, education, work, leisure, to mension but a few. And the transformations will have to affect not just the social and economic life but the very institutions of government. Even with the best will in the world, structures themselves build on inequality and injustice cannot be expected to be the guardians of equality and justice for others. In the presence of one of the worst wills in the world, the need to apply affirmative action to the Civil Service and the organs of state power beco me even more urgent.

The Mechanism For Applying the Bill of Rights must be Broadly Based and not Restricted to a Small Class of Judges Defending the Interest of a Small Part of the Population

The assumption in most current writing on a Bill of Rights is that its final watchdog should a body of h'g highly trained and elderly judges, applying traditional legal wisdom in what is considered a neutral and objective manner. If the goal is selfishly to guarantee the minimum disturbance of existing property and social "rights" (one has to put the word in inverted commas - the power to ensure that your a child d goes to a whites-only school cannot be dignified by the word "rights") then who better to to fulfil the role than those who not only belong to and share the values of the very group to be protected, but whose professional mode has been shaped in the context of the interests, values and styles of that group? If, on the other hand, the dog is to watch the interests of the former oppressed, it would have to have a totally different pedigree and training. The question of whether the word "and" in a particular context only means "and" or can also mean "or", which has exercised the minds of traditional lawyers for generations, would have little interest for defenders of the rights of the oppressed, who would look overwhelmingly to social rather than semantic factors in making their decisions.

This raises the important and delicate question of the relationship of a Bill of Rights to the legislative power of Parliament. It has already been argued that the objective of a Bill of Rights should be to re-inforce rather than restrict democracy. In South African conditions, it is unthinkable that the power to control the process of affirmative action should be left to those who are basically hostile to it. In later years when the foundations of a stable new nation will have been laid and when its institutions will have gained habitual acceptance, it might be possible to conceive of a new-phase Bill of Rights interpreted and applied by a 'mountain-top' judiciary.

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At present, the great need will be to give people confidence in Parliament and representative institutions, to make them feel that their vote really counts and that Parliamentary democracy serves their interests.

The kind of body that might provide a bridge between popular sovereignty on the one hand, and the application of highly qualified professional and technical criteria on the other, would be one similar to the Public Service Commission. A carefully chosen Public Service Commission with a wide brief, high technical competence and general answerability to Parliament, could well be the body to supervise affirmative action in the Public service itself. Similarly, a Social and Economic Rights Commission could supervise the application of affirmative action to areas of social and economic life. Finally an Army and Security Commission could ensure that the army, police force and prison service were rapidly transformed so as to make these bodies democratic in composition and functioning (perhaps the hardest and most necessary of all the tasks facing those who wish to end apartheid in South Africa).

To sum up: The oppressed and all true democrats in South Africa have a great interest in promoting a Bill of Rights for the country, and in welcoming it as a progressive phenomenon. But such a Bill of Rights has to be located in the heart of the democratic process and not be seen as a foreign object imposed upon it; it has to be structured around a strategy of affirmative action; and its implementation has to be entrusted to institutions that are democratic in their composition, functioning and perspective, and that operate under the overall supervision of the people's representative in Parliament.

Such a Bill of Rights, born out of the struggle for freedom, would live for decades, perhaps Centuries, and enrich the international human rights' patrimony rather than impoverish it.

THE QUESTION OF MAJORITIES AND MINORITIES

Apartheid has the capacity of turning the banal into the marvellous. The principle of equal rights, which in other countries is regarded as so ordinary as not to merit any explanation or require any defence, is projected as something quite wonderous in South Africa, indeed so astonighing as to be constitutionally illusory and practically unattainable. Yet, essentially this is what the anti-apartheid struggle is directed towards, the achievement of full equality between all South Africans independently of race, colour, ethnic origin, sex or creed; the measure of the success of any new constitutional order will thus be the degree to which it enshrines and helps materialise the principle of full, genuine and ineradicable equal rights.

Equal rights means rights for each and every individual South African. As far as the basics of citizenship are concerned there will be no distinction whatsoever between persons on the grounds of race or ethnicity. Just as race classification and group areas will disappear from legislation, so they will vanish from citizenship and the electoral system. There will...

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There will.../

...be a common voters roll made up of all adupt South Africans to elect a Parliament representative of and speaking in the name of the whole nation. The Constitution in this sense will be completely colour blind and totally racefree. There will be no special privileges for racial or ethnic groups, no vetoes, no areas of special competence or 'own affairs'. Race will only enter the Constitution as a negative principle, that is, to the extent that the Constitution is not only non-racial but anti-racist. The anti-racist character will be guaranteed by provisions expressly referring to race, which:

- outlaw racial discrimination;
- prevent the dissemination of racist ideas and the organisation of racist parties; and
- ensure that measures are taken to overcome the effects of past racial discrimination.

The question may be asked as to what guarantee would exist in such a constitutional order, especially one based on majority rule, against persecution of minorities by the majority. It may be argued that, while recognising the evils of apartheid, it would be unjust to inflict on future generations of whites the very kinds of discrimination which their fathers have been and are inflicting on blacks. At the pragmatic level it may be contended that if one wishes to persuade whites to relinquish power now, they must be given reasonable guarantees against persecution in the future.

In fact the general scheme already outlined presupposes guarantee against the persecution both of individuals and of groups, but accomplishes this without introducing racist concepts dressed up as group vetoes, own affairs or seperate voter's rolls.

Three sets of constitutional s devices may be distinguished, each different in character and operating at a different level, but all having the common objective of preventing arbitrary of unjust treatment or harassment on the basis of race, appearence or ethnic origin. These devices supplement the general rights of citizenship and complement each other and will have to be located in the context of affirmative or corrective action.

In the first place there will be a Bill of Rights which entrenches basic individual rights for all citizens. Any individual discriminated against on the grounds of belonging to any minority (or majority) group, will have appropriate legal recourse. This is the guarantee of equal individual rights

Secondly there will be a general non-discrimination provision which will outlaw any discrimination against any group on the grounds of race, colour or ethnicity. Any member of a group discriminated against, would have a legal remedy even if he or she was not directly affected by the discrimination. This is the guarantee of non-discrimination.

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Thirdly the cultural diversity of the country will get a degree of constitutional recognition that will permit groups to develop certain aspects of what they might call their own way of life with a view to enriching the texture of society as a whole. This is the guarantee of equal rights for all national groups.

Here it is necessary to seperate out from a group's way of life, what are presently objectionable features requiring abolition, what are a really universally or widely accepted modes of behaviour not restricted to that group, and what are truly characteristics that justify protection and even promotion.

The right to behave as a member of a master race, to insult blacks and use violence gratuitously, for example, might be regarded as a marked feature of the way of life of a certain groups today but would clearly be denounced in any democratic constitution.

Similarly, there are many social habits which in reality belong to or are open to all people, such as matters of dress, cuisine and etiquette. One does not need a constitutional right to eat curry or have a braaivleis (barbecue) or wear trousers. What will be guaranteed will be the inviolability of the home, freedom to pursue family life and general freedom of the personality. None of these freedoms attach to any particular racial or ethnic group. Next, there are certain activities which historically and culturally have been associated with certain groups, usually based on linguistic association. Thus, there are many communities historically created with a distinctive sociocultural personality which possesses considerable subjective significance for its members. Shorn of their association with oppression and domination, these socio-cultural features will continue and even have a measure of constitutuional protection and support, What will not be permitted is the basing of political rights on socio-cultural formations, nor attempts to restore apartheid by political mobilisation based on setting group against group.

Thus, from a general juridical and citizenship o point of view the whites as whites will disappear from South Africa, as will the blacks. As far as the law is concerned (outside the special area of corrective action already dealt with), there will no longer be whites or blacks, only South Africans. But within the framework of an equal and undivided citizenship, there will be full recognition of linguistic diversity (that is there will be one South African citizenship with a single suffrage but many South African languages). There will be extensive recognition of the right to constitute religious organisations, many of which may have their holy literature in a particular language. Thus Afrikaansspeakers who feel comfortable worshipping in the Dutch Reformed Church will be able to continue their prayers and hymns in the way to which they are accustomed, as well as to choose their spiritual leaders and to develop their doctrine according to the internal teachings of the Church. In this sense there will be unfettered freedom of religious-cultural association (one can think of many other groups - Jews, Cape Moslems, Hindus, Greek Orthodox, as well as the many African independent sects that might have a similar basis).

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What would not be permited would be to deny membership on grounds of race etc, nor would these socio-religious organisations be allowed to function as a cover for political mobilisation on a divisive or racist or ethnic basis. One hopes, in fact, that the religious organisations will play an active role in helping to build a united South Africa and in overcoming the inequalities and divisions left behind by apartheid, for without their involvement, the task will be difficult indeed.

Another sector where the Constitution could manifest a special tolerance could be in relation to certain areas of traditional law and custom. This is a question wwhere extensive discussion with the people is required, so that all that is rich and meaningful to the people can be retained and progressively developed, while that which is divisive, exploitative and out of keeping with the times - especially that which has been distorted by colonialism and apartheid - can be eliminated.

Finally, it should be mentioned that there will be other constitutionally protected group rights which by their nature will necessarily cut across linguistic and ethnic divides. Thus the workers of South Africa, who today are playing a key role in the fight to destroy apartheid and build a new South Africa, will receive extensive constitutional recognition in the form both of individual and of collective rights. Similarly, South African women, also active in combat, and the victims of special social and legal disabilities, should have the right not only to be free from discrimination but to call upon special resources so as to overcome the legacy of past discrimination. Other groups that could merit special constitutional recognition could be children, the aged, handicapped persons and victims of apartheid persecution. In none of these cases would the question of race or ethnicity enter. Group rights will exist, but they will be the right of workers, women and so on, not of racial groups.

TRANSITIONAL ARRANGEMENTS

The only value of predictions into the future is that they enable their makers later to determine how wide of the mark they originally were. The eventual defeat of the forces of apartheid can be predicted with certainty, but the precise time that this will take and the nature of the intermediate or transitional phases, is still quite open.

Thus, if apartheid is destroyed by insurrection and a revolutionary seizure of power, the so correlation of forces will be such that the classes of society represented by the victorious revolutionaries can impose their terms on society as a whole. A Constitution is necessary to institutionalise the new power and not to bring it into being. It will include a Bill of Rights, restoration of land, wealth and dignity to the people, would inevitably be far less cumbersome and protracted than those contemplated in this paper.

On the other hand, the increasing precariousness of the base of the apartheid regime inside South Africa and its growing isolation internationally, could lead it to go along with attempts to bring about a managed solution on the lines,...

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...of the Lancaster House agreement arrived at in relation to Zimbabwe . That is, there could be an attempt to negotiate a Constitution and a Bill of Rights along the lines that have been criticised in, because they keep racist principles alive and guarantee privileges, not rights, for the whites, but which nevertheless permit some kind of majority rule.

The position of the anti-apartheid forces has long been that of the making of a Constitution for a democratic South Africa belongs to the people as a whole, acting through a democratically elected Constituent or National Assembly. What should be negotiated is not a Constitution, but the Constitution. By their nature such arrangements which might or might not include political and legal guarantees of a firm though transitory kind, will fall short of the democratic ideal. For their reduced life-span, they could well include certain features which still bear lingering imprints of apartheid society, and violated the general principles of a democratic Bill of Rights.

The crucial thing is the destruction of white supremacy as a system and the guaranteeing to the oppressed majority of their just rights. Once this is accomplished, the conditions will be created for embarking on the process of encouraging the people of South Africa as a whole progressively to identify with and voluntarily regard as their own the principles contained in the Freedom Charter. The experience of the democratic movement in this respect is instructive: it has not pushed the Freedom Charter down the throats of the people, but, rather, patiently and successfully worked for a real understanding and appreciation of its principles.

Any transitional arrangements must be clearly distinguished from attempts to create a so-called internal settlement, like the Turnhalle Agreement in Namibia. In the first place, these internal settlements are arrived at by means of an alliance between the apartheid rulers and a black collaborator class. Since the majority of the people are excluded from the agreements, nothing is settled, the war continues, and the only difference is that blacks play a bigger role in the oppression of their fellow blacks. Furthermore, internal settlements are meant to be permanent, whereas transitional arrangements are intended to be self-eliminating. What it comes down to is that internal settlements are a means of postponing democracy, while transitional arrangements are a means of hastening it.

The negotiations for a transitional arrangement could in fact pace the way for a relatively peaceful dismantling of the structures of apartheid and the establishment of a democratic South African state. The goal of a race-free democratic society would not be negotiable, but the means of getting there, and in particular, the timetable and method of transferring power from a racial minority to the people as a whole, would be.

In this context, it becomes more important than ever that opponents of apartheid the world over keep their eyes fixed on the goal of genuine democracy in South Africa. To suspend sanctions because apartheid managed to don attractive new clothes would be to betray generations of South Africans who have struggled to liberate their country from...

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...liberate their country from../

...racial oppression and exploitation,

It would be to negate the principles of equality and democracy which the world community claims to live by. It would also to postpone the peace which our country so sorely needs, and delay the reconstruction necessary to ensure that South Africa truly becomes a country that belongs to all who live in it and a proud member of the community of nations.

A look Into the Future: THE AFRIKANER BUSINESSMAN AND THE AFRICAN PEASANT

For the purpose of making a clear projection into the future, it is proposed to imagine how the adoption of a democratic Bill of Rights would affect two prototypical persons, an Afrikaner businessman and an African peasant, and then to see what significance the Bill of Rights would have in the relationship between the two.

Simply to say that in a post-apartheid South Africa the Afrikaner businessman and the African peasant will enjoy equal rights is not enough. At present, their relationship is one of profound inequality, and the question arises as to how the Constitution would promote real and not simply formal equality between them. Furthermore, it is necessary to reflect on the cultural-linguistic dimension, which, while disappearing as a basis for the exercise of political rights, nevertheless continues to be relevant in relation to cultural and national rights.

Looking first at the position of the Afrikaner businessmen in relation to the new constitutional order we see that:

As citizens, he will
As a citizen, he will enjoy all the civil and political rights which he presently exercises in his privileged capacity as a member of the dominant racial minority, but will do so on the new basis of being an equal citizen in a non-racial democratic South Africa exercising normal constitutional rights. Thus, he will have the right to elect and be elected, to join the political party of his choice, to criticise or defend the government; he will also have the right not be deprived of his liberty except in terms of the law and after a fair trial. He will enjoy freedom of speech and information, but will lose the right to propagade division and hatred on grounds of race.

With regard to personal rights, he will continue to have security in his home, the right to live a family life if he so chooses, to enjoy his hobbies and pastimes, to move freely around the country, to have his holidays and to visit other countries.

As a businessman he will continue to have the right to exercise his professional and entrepreneurial skills and to be appropriately e renumerated thereof. His rights to personal property (a home, a motor car, a bank deposit, etc.) will be protected while his rights in relation to productive property will be subjected to the principles of public interest and affirmative action.

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As an Afrikaner he will have a guaranteed right to use and develop his language, and to belong to the Dutch Reformed Church (non-segregated) or to any other religious body of his choice. If he wishes as part of his private life to mix with and marry only Afrikaners, that will be his choice; similarly, there will be no interference with habits and customs of daily life, most of which will in fact be practised by many non-Afrikaners. What he will have to learn to live with, however, is that in relation to anything outside the immediate private or family sphere, there will be constitutional norms of non-discrimination. Thus, there will certainly continue to be schools and Universities in which Afrikaans is the medium of instruction and in which special attention is given to the study, development and enrichment of the Afrikaans language and literature. But these schools would not be able to restrict their entry on the basis of race.

Similarly Afrikaners might wish to occupy certain neighbourhoods as a matter of social practice. What they would not be able to do would be to create racially exclusive areas to which non-Afrikaners or non-whites were not admitted. The new Constitution thus would not only authomatically declare null and repeal such divisive legislation as the Group Areas Act, but would also prohibit the use of condominiums as a means of continuing apartheid, this time in a privatised form.

Looking next at the position of the <u>African peasant</u>, we find that for the first time he will be able to enjoy full and normal rights of citizenship, and specially those of suffrage, in the land of his birth. He will no longer be subject to arbitrary arrest, removal or banishment. All the apartheid laws which presently dominate his life will be anulled.

As a person, he will for the first time be free to move and reside anywhere in the country. His home will be inviolate and his dignity as a person and his right to a stable family life will receive full constitutional protection.

As a farmer he will have a claim on the State for access to land and technical, educational and financial support. As a property owner, what possessions he has will be protected. His house will be safe from the bulldozers, his plot of land and livestock guaranteed against confiscation. He will have a claim on the State to assist him to build, buy or rent a decent home and to enable him to acquire an interest in land for farming that will be legally protected.

As an African he will for the first time enjoy equal rights with all his fellow South Africans and be free from any de discrimination or deprivation. His language will be recognised as one of the national languages of the country and his culture and the history of the forebears will be respected. Place names, national monuments and national holidays will record the struggle of his and previous generations for liberty and national freedom. As a victim of past discrimination and domination, he will have a claim on the State for invoking the procedures of affirmative or corrective action.

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The above analysis have proceeded on the basis that the personalities are male. If they are female, an extra constitutional right will enter, namely the Equal Rights clause, which will bar any discrimination on the grounds, inter alia, of gender. In addition, women will have a claim for affirmative action in respect of removing disabilities or disadvantages associated with past discrimination, and will also have constitutionally recognised benefits in relation to maternity and mother and child care.

Carrying the constitutional projection one step forward, and positing that the African peasant is a tenant farmer on land owned by the Afrikaner businessman, what bearing would the future Constitution, and specially the Bill of Rights, have on their relationship?

In broad terms, the Constitution will require that the immense injustice whereby 87% of the land belongs to a 15% minority, be corrected as rapidly as possible.

Exactly how this will be achieved, and how this will affect the specific relationship between the businessman and the farmer, will be conditioned by two factors, one historical and the other institutional.

The historical factor relates principally to the behaviour of the businessman. If he and his class prefer to fight to the death, if they threaten to destroy and massacre the workers as a protest against the installation of a democratic government, then they should not be surprised if appropriate countermeasures, including confiscation of land and goods, are taken. If on the other hand, they accept a new patriotism, adhere to the new Constitution and continue to use their productive skills for the growing of food and for the benefit of the country as a whole, the process of land- re-distribution will necessarily have a less drastic character.

Affirmative action presupposes orderly, significant and irreversible progress to eliminate the inequalities produced by centuries of colonialism and apartheid. As has been stated, constitutionally determined criteria are used to establish clear goals, and then the parties most directly interested negotiate the means whereby these goals can effectively be achieved. If disputes arise on the modalities of change, appropriate conflict resolution machinery exists.

In the case of land, it is of course not the soil itself that is redistributed, but title to or interest in it. Here the possible legal forms are infinite, ranging from State confiscation on the one hand, to outright State purchase, to joint ventures with the State (or local public authorities), to cooperatives, to non-racial private or public companies or cooperatives, to partnerships, to parcelling off the land to individual farmers. Regional particularities and the existence or otherwise of abandoned or unused land will be relevant, as will, to a considerable extent, the economic importance to the country of maintaining high levels of food production. Similarly, the time needed for new owners or shareholders or partners or cooperative members to acquire appropriate technical and management skills, will enter the picture. Legally enforceable...

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Legally enforceable.../

phased arrangements could be worked out and the particular wishes and family situations of the interested persons could be taken into account.

What is certain is that the present deformed and unjust relationship between the Afrikaner businessman and the Afrikaner farm tenant, structured on legally protected arrogance and domination, will have to go.

The new Bill of Rights, democratic in its mode of adoption and democratic in its content, will provide the legal framework whereby the injustices of the past can be redressed and each and every person, whatever his or her background, will be able to act as free persons and to enjoy the benefits of freedom in the land of her or his birth.

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