

MEMORANDUM TO THE NEC BY THE CONSTITUTION COMMITTEE.

SEPTEMBER 20, 1986.

Since its first meeting in January this year, the Constitution Committee has produced a considerable number of papers on a variety of topics related to the production of a new constitution for a democratic South Africa. Some of these papers represented a consensus of opinion of the Committee, others were presented for circulation and discussion. We present a list of titles and one full set for consultation by the NEC. In view of the response of the NWC sub-committee - which we received in full form only on September 16, 1986 - we do not feel it necessary to refer to all these documents, nor to the discussion they contain. The NWC sub-committee, in response to our original set of documents, and after discussion with the NWC, presented us with a crisp set of guidelines, which we now take as our starting point.

Our proposal is that at this stage the NEC consider the adoption and publication of the guidelines in the form of a document that will be entitled 'Proposed Foundations of Government in a Democratic South Africa'. The document could then be presented to our people as a whole inviting their active participation and contribution towards preparing a final document. We concur with the NWC sub-committee that it would be unwise to draw up a constitution at this point in time. However, we feel that, apart from the proposed basic guidelines referred to above, a selection could be made of other documents prepared or to be prepared by our Committee, either for publication in Sechaba or other organs of the ANC, or as an autonomous pamphlet for discussion by ANC units. Finally, we feel that once the basic guidelines have been agreed upon, the debate be opened up to involve lawyers and others at home, and friendly lawyers in the international community.

We annex hereto a proposed text for the document on the Foundations of Government in a Democratic South Africa.

## FOUNDATIONS OF GOVERNMENT IN A DEMOCRATIC SOUTH AFRICA

### 1. Objectives of a New Constitution

The New Constitution shall have the following objectives:

- a) The granting to the oppressed majority of their just national rights;
- b) The outlawing of racial discrimination in all its forms;
- c) The ensuring of the complete dismantling of apartheid structures and their replacement by democratic ones;
- d) The prevention of the resurgence of racist policies, programmes and practices, whether in old form or new;
- e) The overcoming of the effects of centuries of racial domination and inequality by ensuring substantial redistribution of wealth and the complete opening up of facilities for all;
- f) The encouragement of the active involvement of all sectors of the population in government and economic and cultural life;
- g) The promotion of the habits of non-racial thinking, the practice of anti-racist behaviour and the acquisition of genuinely shared patriotic consciousness;
- h) The creating of the conditions for the speediest achievement of these goals with the least possible disruption to the tranquility of the country and to the production of the goods and services necessary to enable all members of the community to live a decent life;
- i) The guaranteeing of the security necessary for the achievement of these goals.

### 2. The New Constitution shall be based on the following principles:

- a) South Africa shall be an independent, unitary, democratic and non-racial state;
- b) Sovereignty shall belong to the people as a whole and shall be exercised through one central legislature, administration and executive;
- c) In the exercise of their sovereignty, the people shall have the right to vote under a system of universal suffrage based on the principles of one person, one vote;
- d) Every voter shall have the right to stand for election and be elected to all legislative bodies;
- e) The system of universal and equal franchise will apply also to the election of all regional and local bodies;

- f) It shall be state policy to promote the growth of a single national identity and loyalty binding on all South Africans; at the same time, the state will recognise the linguistic and cultural diversity of the South African people, and provide facilities for free linguistic and cultural development;
- g) Hereditary forms of political power shall be abolished and the chiefs encouraged to participate in normal democratic life;
- h) The Constitution will include a Bill of Rights based on the Freedom Charter guaranteeing the fundamental human rights of all citizens and providing appropriate mechanisms for their enforcement;
- i) The State and all social institutions shall be under a duty to eradicate apartheid in all its forms, as well as to take measures to overcome its consequences;
- j) The advocacy or practice of racism, fascism, nazism, tribalism or regionalism shall be outlawed;
- k) Subject to the above, freedom of association and expression will be guaranteed by the adoption of a multi-party system and an open press;
- l) Religious freedom shall receive special constitutional guarantee;
- m) Participatory democracy shall be encouraged by means of involving the community, and community and workers organisations, directly in public and economic administration;
- n) The State and all social institutions shall take active steps to redress as speedily as possible the economic and social inequalities produced by apartheid. In particular, the unjust division of land shall be corrected;
- o) The economy shall be a mixed one with a public sector, a cooperative sector, a private sector and a family sector.  
The public sector shall be subjected to democratic control.  
Cooperative forms of economic enterprise and the family sector shall be supported by the State.  
Property for personal use and consumption shall be constitutionally protected.
- p) The State shall have the right to determine the general context in which economic life takes place and to define and limit the rights and obligations attaching to the ownership and use of private productive capacity;
- p) The State will promote the acquisition of managerial and entrepreneurial

skills, and provide facilities to encourage commercial and industrial activities amongst all sections of the population;

- q) Workers and trade union rights shall receive special constitutional protection;
- r) All organs of government, justice and security shall be transformed so as to make them representative of the people as a whole, democratic in their structure and functioning, and dedicated to defending the principles of the Constitution.

Notes

1. We do not feel it necessary or advisable at this stage to publish anything on questions such as the electoral system or whether to have a Prime Ministerial or Presidential form of government. We do feel, however, that further research in these areas is vital, and that in particular a full demographic/political survey be undertaken as soon as possible.
2. We have not included a clause on the right to voters to recall their representatives, since we feel this is a 'paper right' difficult to define in practice and never, as far as we are aware, actually used in countries where theoretically it exists.
3. In the absence of any guidelines from the Economics Committee, and on the basis of skeleton ideas from the NWC sub-committee, we have on our own outlined a tentative series of propositions on the question of economic activity and property rights, which we are sure will be looked at with special attention by the NEC.
4. We feel that consideration should be given to spelling out more fully the paragraph<sup>(n)</sup>, namely that dealing with transforming the organs of government, justice and security. In particular, attention should be paid to the character and composition of the army, police force and prison service, as well as to the civil service and judiciary.
5. We have not received guidelines on the future constitutional position of the chiefs. Our proposal is a tentative one.
6. We recommend that the Education Committee give urgent attention to the future status of private and church schools in case attempts are made to secure them special constitutional protection.
7. We further recommend that special investigations be made of:
  - i) The demographic/political situation in South Africa;
  - ii) The constitutional evolution in Eastern Europe after World War II;
  - iii) The land question;

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- iv) The problem of positive discrimination or affirmative action to close the gap between rich and poor, white and black in South Africa;
- v) The electoral system and the Presidential/Prime Ministerial debate.