

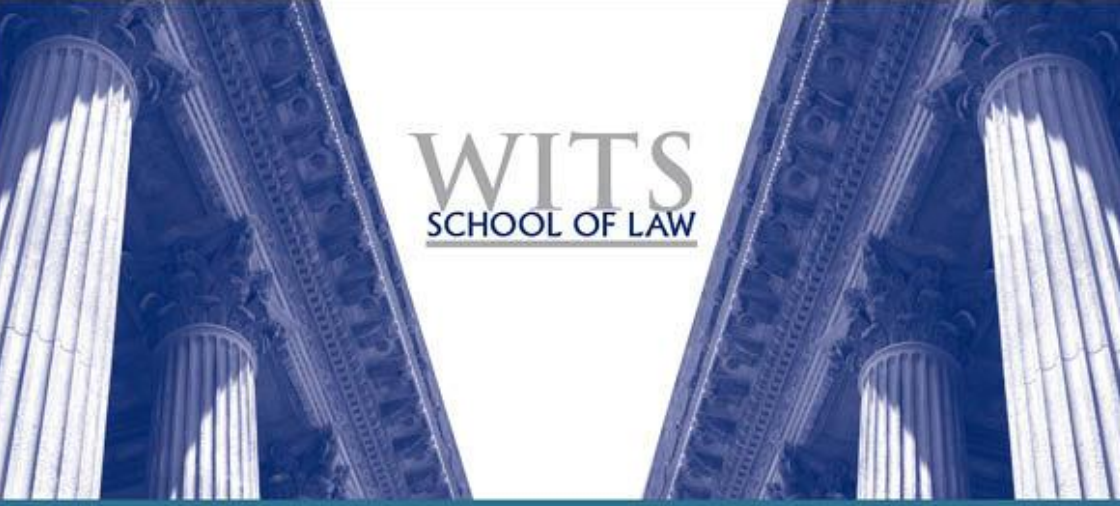
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The Freedom Charter: a Blueprint for a democratic South Africa

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THE FREEDOM CHARTER:
A BLUEPRINT FOR A DEMOCRATIC SOUTH AFRICA

by

GILBERT MARCUS

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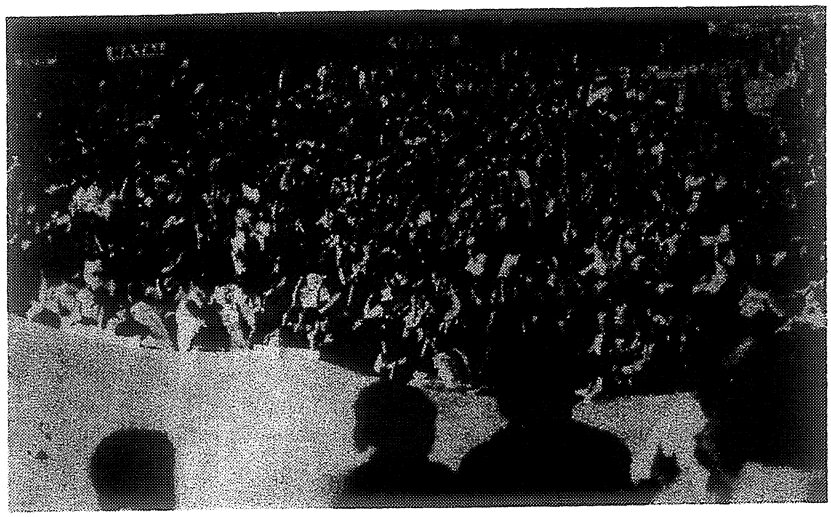
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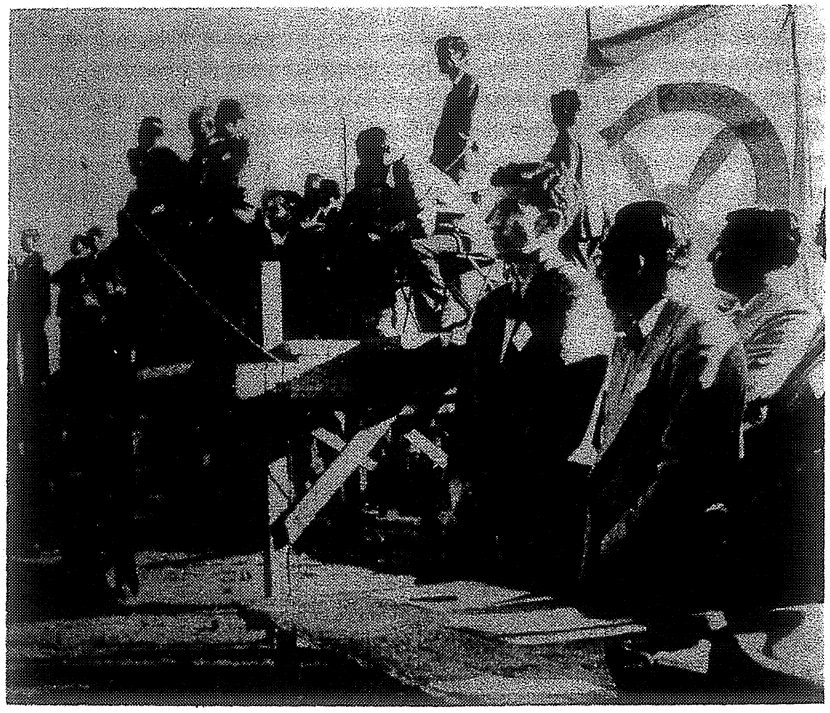
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THE FREEDOM CHARTER: A BLUEPRINT FOR A DEMOCRATIC SOUTH AFRICA

GILBERT MARCUS
BA LLB (Witwatersrand), LLB (Cantab)
Advocate of the Supreme Court
and Research Officer with the
Centre for Applied Legal Studies
University of the Witwatersrand, Johannesburg



The Congress of the People



A view of the platform

THE FREEDOM CHARTER: A BLUEPRINT FOR A DEMOCRATIC SOUTH AFRICA

Introduction

The Freedom Charter was adopted at Kliptown on 25 and 26 June 1955, at a gathering known as the Congress of the People, attended by approximately 3,000 delegates from a wide spectrum of lawful organizations in South Africa. It was a unique event in South African history representing the first occasion on which people of all sections of the population assembled together to adopt a charter of basic human rights. The Congress of the People was sponsored and co-ordinated by the African National Congress (ANC), the South African Indian Congress (SAIC), the South African Coloured Peoples Organization (SACPO) and the Congress of Democrats (COD), collectively known as the Congress Alliance. The Congress of the People was not an isolated event but was the product of extensive preparation and organization. The Freedom Charter was also not simply a collection of random demands but reflected the political, social and economic realities of South Africa at the time.

When the National Party came to power in 1948, South Africa was already a country beset by racial oppression and characterized by vast inequalities in wealth. Although the Nationalist Government inherited from its predecessors many discriminatory laws, from 1948 onwards these laws were consolidated, refined and extended. In the space of a decade, there were a myriad of statutory enactments designed to control every conceivable aspect of the lives of black people. This process has been described in the following way:

> 'The implementation of apartheid which dominated political action and race relations after 1948 was in the nature of a counter-revolution by whites. This does not imply that Africans attempted a revolution, though it was threatened, or that the counter-revolution was a reaction to the threatened revolution: on the contrary, it was planned in advance. The

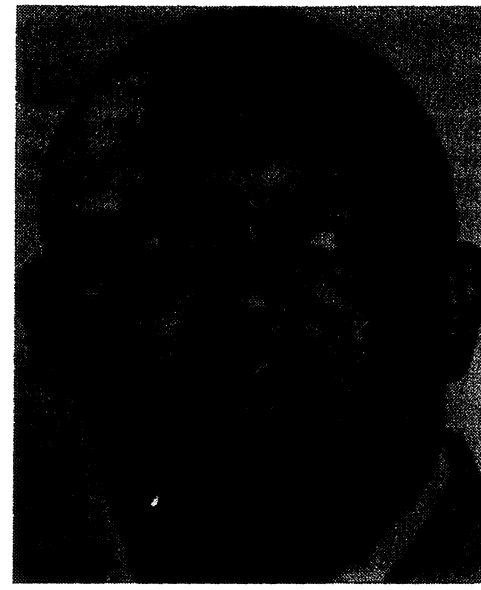
term refers rather to the increasing mobilisation and use of force against opposition, the continuous erosion of the rule of law and the assumption of extraordinary powers, justified as the defence of the traditional way of life against international communism; and it refers also to attempts to reverse, by legislation and penal sanctions, those processes which were drawing the peoples of South Africa away from plural division toward a common society.'[1]

The ANC, like the National Party, was formed in 1912. In its early years, the ANC contented itself with holding conferences, passing resolutions and presenting petitions to the South African Government — petitions which had no effect on legislation.[2] The conservative path followed by the ANC continued until the end of the Second World War when the younger element in the movement began to press for more active measures. The initiative came from the Youth League, an adjunct of the ANC, founded in 1943 and led by Anton Lembede. A 'Programme of Action' was formulated by the Youth League and was adopted by the ANC in 1949. The aim of the Programme of Action was to attain 'national freedom' defined as 'freedom from white domination and the attainment of political independence. This implies the rejection of the conception of segregation, apartheid, trusteeship or white leadership which are all in one way or another, motivated by the idea of white domination or the domination of white over black.'[3] ANC strategy at the time of the adoption of the Programme of Action, and indeed up until the early sixties, was based on non-violence. Non-violence was seen as a pre-requisite for the implementation of the Programme of Action:

'Faced with European strength, and the frailty of their own movement, Congress leaders realised that violence would be fatal to their cause. Hope of success lay only in non-violent militancy, based on the country's need for unskilled African labour. Non-violence, although not specifically mentioned in the Programme of Action was an essential condition to its implementation. Any other condition would have been suicidal.'[4]

The adoption of the Programme of Action was a significant development in ANC strategy and approach. It set out in broad terms the goals to be pursued and the conditions which required change. In order to do this, it was considered necessary to maintain the unity of existing groups. In addition it was thought advisable that future campaigning should arise from the concrete conditions under which

1. M Wilson and L Thompson (eds.) *The Oxford History of South Africa* XI (1975) 459.
2. Edward Feit *South Africa: The Dynamics of the African National Congress* (1962) 1-2.
3. *Programme of Action* Bloemfontein, 17 December 1949, cited in Feit op cit 3.
4. Feit op cit 4-5.



Professor Z K Matthews

people lived. On 15 August 1953 Professor Z K Matthews, President of the ANC in the Cape, addressed the Cape Provincial Conference of the ANC. It was here that he mooted the idea of a congress of the people. In his address, he stated:

> 'Various groups in the country ... are considering the idea of a national convention in which all groups might be represented to consider our national problems on an all-inclusive basis. The sponsors of these conventions are hoping to invite various groups to send delegates to such meetings. I wonder whether the time has not come for the African National Congress to consider the question of convening a National Convention, a Congress of the People, representing all the people of this country irrespective of race or colour to draw up a Freedom Charter for the democratic South Africa of the future.'[5]

In the same address, Professor Matthews drew attention to the fact that already in 1945 the ANC had drawn up a Bill of Rights which embodied its principal demands including 'the abolition of political discrimination based on race ... and the extension to all voters, regardless of race, of the right to vote and be elected to parliament, provincial councils and other representative institutions'.[6] Professor Matthews' proposal for a Congress of the People was adopted by the Cape Provin-

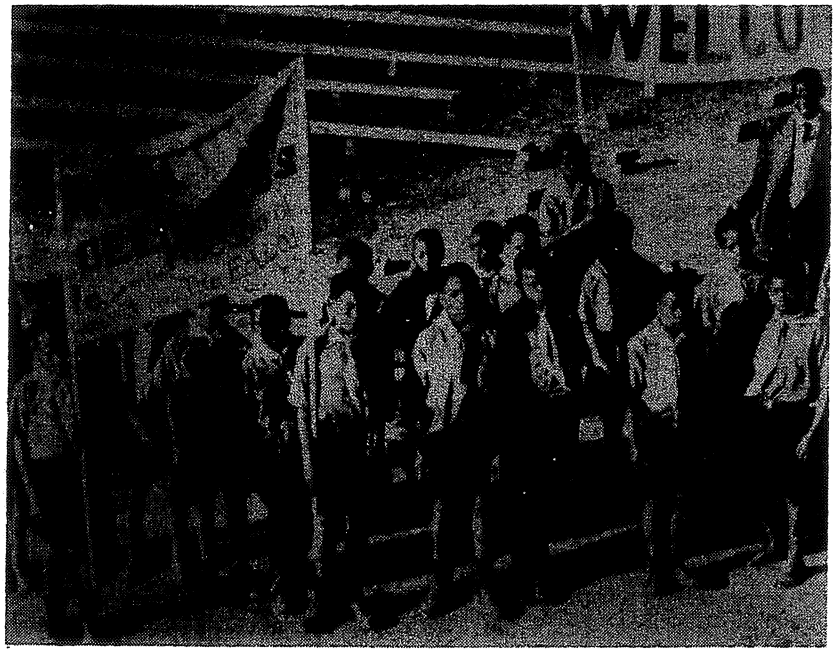
5. Z K Matthews *Freedom for my People* (1983) 173.
6. Ibid 172.

cial Conference and accepted at the National Conference of the ANC in December 1953.

Shortly after Professor Matthews' address, two new national organizations were formed; the South African Coloured Peoples Organization (SACPO) and the South African Congress of Democrats (COD). Both organizations were to become members of the Congress Alliance and were involved in the planning of the Congress of the People.

SACPO was formed in Cape Town on 12 September 1953 with trade unionist Edgar Deane elected as its first chairman. Other founders included Dr Richard Van der Ross, S Rahim, Reginald September and John Gomas. SACPO was principally founded in order to oppose the removal of coloured voters from the common voters roll. Although membership of SACPO was open to all, it was intended primarily to be a mouthpiece for coloured people. The inaugural meeting of SACPO was preceded by a 'peoples convention' in August 1953 which was attended by delegates from thirty three organizations.

The Congress of Democrats was formed in Johannesburg on 10 October 1953 and although membership was not restricted, it was intended for white radicals. The Congress of Democrats was an



A welcoming committee for the delegates

amalgamation of the Johannesburg Congress of Democrats, the Springbok Legion and the Democratic League. The first president of the Congress of Democrats was Pieter Beyleveld with Leonard Lee-Warden as vice-president.

Although the Congress Alliance consisted of the ANC, SAIC, SACPO and COD, two other non-racial organizations which emerged during this period were, in effect, adjuncts of the Alliance. These were the South African Peace Council, formed in Johannesburg in August 1953 and the South African Congress of Trade Unions, formed in 1955.

The Cape Provincial Conference of the ANC adopted Professor Matthews' suggestion for convening a Congress of the People and this suggestion was accepted by the National Conference of the ANC in December 1953. A resolution passed by the National Conference of the ANC set in motion the preparations for an event of unprecedented significance:

> 'Conference instructs the National Executive Committee to make immediate preparations for the organization of a "Congress of the People of South Africa", whose task shall be to work out a "Freedom Charter" for all peoples and groups in this country. To this end, conference urges the African National Congress National Executive to call a meeting of the National Executives of the South African Indian Congress, the Coloured Peoples Organization, the South African Congress of Democrats, and any other democratic organization for the purpose of placing before them the plan of Congress and obtaining their co-operation and creating a truly representative "Convention of the People of South Africa".'[7]

Planning the Congress of the People

The four organizations which comprised the Congress Alliance were representative of Africans, Indians, coloureds and whites and, in this sense, represented a broadly based grouping opposed to discrimination and committed to the attainment of a democratic South Africa. The symbol of this alliance was a wheel with four spokes, each representing a constituent organization.

A special conference was held at Tongaat on 21 March 1954 for the purposes of planning the Congress of the People. Some 200 organizations were invited to send representatives to this conference. Invitations were even sent out to the white parliamentary parties, including the National Party and the United Party. Representatives from the Liberal Party did, in fact, attend the conference. A National Action

7. Resolution adopted by the ANC at its annual conference held from 18-20 December 1953, reproduced in Thomas Karis and Gwendolen Carter (eds) *From Protest to Challenge: A Documentary History of African Politics in South Africa*. 1882-1966 III (1977) 126.

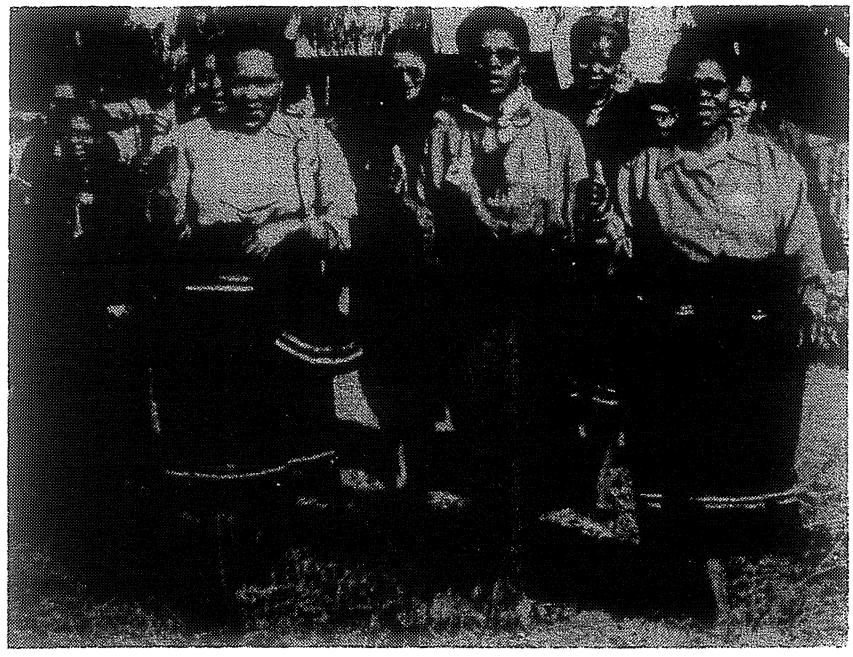
Council, composed of eight members of each of the four sponsoring organizations was created at the Tongaat conference in order to run the campaign. The chairman was Chief Albert Luthuli, and its secretariat consisted of Walter Sisulu, Yusuf Cachalia of the SAIC, Lionel Bernstein of COD and Stanley Lollan of SACPO. The National Action Council had no policy-making powers. The meetings of the joint executives of the four sponsoring organizations, rather than those of the National Action Council, served as a forum for co-ordinated policy-making.[8] The joint executives of the sponsoring bodies adopted a plan for the Congress of the People, details of which were set out in an annexure to a report of the National Executive Committee of the ANC. In this document[9] details of the proposed organization of the campaign were examined:

> 'THE CONGRESS OF THE PEOPLE
>
> As a result of the historical call made by the African National Congress at its conference in Queenstown, the National Executives of the African National Congress, South African Indian Congress, Congress of Democrats and the South African Coloured Peoples Organization have decided to call on the people of South Africa to come together in a great assembly — the Congress of the People. The South African peoples' movement can be proud of its long record of unbroken struggle for rights and liberty, but never before have the mass of South African citizens been summoned together to proclaim their desire and aspirations in a single declaration — a Charter of Freedom. The drawing up and adopting of such a charter of freedom is the purpose for which the Congress of the People as been called. Never in South African history have the ordinary people of this country been enabled to take part in deciding their own fate and future. Elections have been restricted to a small minority of the population; franchise rights, particularly in recent times have been threatened and curtailed. There is a need to hear the voice of the ordinary citizen of this land proclaiming to the world his demand for freedom.
>
> WHAT IS THE CONGRESS OF THE PEOPLE?
>
> The Congress of the People will not be just another meeting or another conference. It will be a mass assembly of delegates elected by the people of all races in every town, village, farm, factory, mine and kraal. It will be the biggest single gathering of spokesmen ever known in this country. The representatives of the people who come to the Congress will consider the detailed demands of the people, which have been sent in for incorporation in the Freedom Charter, and will embody them into a declaration. This Freedom Charter will be the South African peoples' declaration of human rights, which every civilised South African will work to uphold and carry into practice....

8. Karis and Carter op cit 20.
9. *The Congress of the People*, Annexure A to the Report of the National Executive Committee of the ANC presented at the annual conference of the ANC held from 16-19 December 1954, reproduced in Karis and Carter op cit 161-6.



Early arrivals at the Congress of the People



A delegation from a women's organization

HOW WILL THE CONGRESS OF THE PEOPLE BE ORGANIZED?

The first task will be to make the whole country conscious of the Congress of the People, and to imbue them with the feeling of the tremendous importance of such a gathering. This can only be done through the greatest possible campaign of printed propaganda material side by side with a string of hundreds of meetings, house to house canvasses and group discussions. The central aim of all these activities will be to get citizens of the country to speak for themselves, and to state what changes must be made in their way of life if they are to enjoy freedom. Every demand made by the people at these gatherings, however small the matter, must be recorded and collected for consideration by the Congress of the People for inclusion in the Freedom Charter. In this way, it will become the Charter of the People, the content of which has its source in their own homes, factories, mines and reserves....

CAN WE SUCCEED ON SUCH A SCALE?

... If the campaign is to succeed the message of the Congress of the People and the news of the Freedom Charter must be carried to every corner of the country.... We will create a corps of Freedom Volunteers, who will be the core of the campaign and make themselves available to the organizers of the campaign for whatever work in whatever place they are required.

HOW TO SET ABOUT IT

... The aim is to establish Congress of the People Committees on a provincial basis, and on a town, suburb, factory or street basis. At all these levels, attempts will be made to draw in the participation of every local organization and group....

HOW TO MOBILISE FOR THE CONGRESS OF THE PEOPLE

The message of the coming Congress of the People cannot inspire people unless everywhere it is linked in peoples' minds with their own burning problems, and the vital issues of the day. When speaking to farm squatters the Congress of the People must be linked in their minds with their own struggle against ejectment from their homes; to town workers, for the fight for trade union rights and better wages; to the people on the trust farms, with the culling of cattle. Every vital issue, whether it be eviction of the people from the Western Areas, the introduction of apartheid at the Universities, expropriation of property under the Group Areas Act, or the removal of voting rights under the Separate Representation of Voters' Act must be linked with all the propaganda for the Congress of the People.

WHO WILL VOTE?

Because of the long history of indirect and sham representation in which the Non-European people have suffered, it has been decided that the basis of election to the Congress of the People should be direct. This means that representatives elected by the people in any area or unit will go directly to the Congress of the People.

Every person over the age of eighteen, without distinction of race, colour or sex will be entitled to vote for his representative....'



Delegations parade with their demands

In June 1954 at an ANC meeting in Uitenhage, Chief Luthuli called for 50,000 'Freedom Volunteers' to assist with the organization and planning of the Congress of the People. It was to be the task of the Freedom Volunteers to publicize the forthcoming Congress of the People and to collect demands for inclusion into a charter.The National Action Committee distributed large quantities of a leaflet entitled *Call to the Congress of the People.* This leaflet[10] was issued in English, Zulu, Sotho, Xhosa and Gujerati. The 'Call' was a stirring document calling upon the people of South Africa to voice their demands for inclusion into the Freedom Charter. In addressing the people it pointedly focussed on the oppressive nature of the day to day existence of the majority of the population:

10. *Call to the Congress of the People* issued by the National Action Council of the Congress of the People, reproduced in Karis and Carter op cit 180-4.

'WE CALL THE PEOPLE OF SOUTH AFRICA BLACK AND WHITE - LET US SPEAK OF FREEDOM!

WE CALL THE FARMERS OF THE RESERVES AND TRUST LANDS.
Let us speak of the wide land, and the narrow strips on which we toil.
Let us speak of brothers without land, and of children without schooling.
Let us speak of taxes and of cattle, and of famine.
LET US SPEAK OF FREEDOM.

WE CALL THE MINERS OF COAL, GOLD AND DIAMONDS.
Let us speak of the dark shafts, and the cold compounds far from our families.
Let us speak of heavy labour and long hours, and of men sent home to die.
Let us speak of rich masters and poor wages.
LET US SPEAK OF FREEDOM.

WE CALL THE WORKERS OF FARMS AND FORESTS.
Let us speak of the rich foods we grow, and the laws that keep us poor.
Let us speak of harsh treatment and of children and women forced to work.
Let us speak of private prisons, and beatings and of passes.
LET US SPEAK OF FREEDOM.

WE CALL THE WORKERS OF FACTORIES AND SHOPS.
Let us speak of the good things we make, and the bad conditions of our work.
Let us speak of the many passes and the few jobs.
Let us speak of foremen and of transport and of trade unions; of holidays and of houses.
LET US SPEAK OF FREEDOM.

WE CALL THE TEACHERS, STUDENTS AND THE PREACHERS.
Let us speak of the light that comes with learning, and the ways we are kept in darkness.
Let us speak of great services we can render, and of the narrow ways that are open to us.
Let us speak of laws, and government, and rights.
LET US SPEAK OF FREEDOM.

WE CALL THE HOUSEWIVES AND THE MOTHERS.
Let us speak of the fine children that we bear, and of their stunted lives.
Let us speak of the many illnesses and deaths, and of the few clinics and schools.
Let us speak of high prices and of shanty towns.
LET US SPEAK OF FREEDOM.'

The main objective of the preparations leading to the Congress of the People was to collect the demands for incorporation into the Freedom Charter. On the eve of the Congress it was reported that 'for months now the demands have been flooding in to COP [Congress of the People] headquarters, on sheets torn from school exercise books, on little dog-eared scraps of paper, on slips torn from COP leaflets'.[11]

Not many of the demands that formed the basis of the Freedom Charter remain in existence.[12] Of those that do remain, most are characterised by a moving simplicity:

> 'Admittance of non-Europeans to concerts....'
>
> 'I would like every individual to buy and sell his cattle and sleep everywhere he likes.'
>
> 'Let us speak of the lovely children that we bear but die of starvation before they reach the age of 12 months.'
>
> 'Abolition of pass system.'
>
> 'Abolition of colour bar.'
>
> 'Let us speak of the high rents that we pay and the low wages that we get.'
>
> 'Let us speak of the shanty towns and the many people that die of TB in them.'

Preparations for the Congress of the People were set back by action taken by the authorities in terms of the Suppression of Communism Act of 44 of 1950. This Act enabled the Government 'to remove layer after layer of Congress leaders.... The President General of Congress, Albert John Luthuli was banned in 1952, and the ban was renewed in 1954 and 1959. The Secretary General of Congress, Walter Sisulu, was banned in 1952 and again in 1955. Oliver Tambo who took his place as Acting Secretary General was banned in 1954 and 1959. The year of 1954 also saw the banning of the Acting Provincial President of the Cape, J L Z Njongwe, the Provincial Secretaries of the Cape, Transvaal and Natal and the President of the African National Congress Youth League. Soon practically the entire personnel of the national and provincial congress executives were proscribed until the final prohibition of the African National Congress itself in March 1960.'[13] By the end of November 1954 nearly the entire Natal Indian Congress elected at the end of the previous year had been banned.

During this period, the ANC was engaged in two large scale campaigns to resist removals from the Western Areas of Johannesburg and against Bantu education.

The Western Areas, which consisted of Sophiatown, Martindale

11. *New Age* 23 June 1955 cited in Karis and Carter op cit 59.
12. About 20 pages of demands can be found in the Karis and Carter Microfilm collection 2:DC15:44/2-21.
13. Feit op cit 8-9.

and Newclare had been established in the early part of the century as townships where Africans were permitted to own land. Dr A B Xuma, former President General of the ANC described these areas as ones 'where there are nine registered schools and old established missions, where our churches stand, where we have cinemas and shops and the only swimming bath for African children in the whole of Johannesburg'.[14]

In 1953 the Government purchased a tract of land called Meadowlands for the purpose of resettling Africans from the Western Areas. The Native Resettlement Act facilitated the move. Removals began in 1955 and were accompanied by the ANC campaign to resist the move. The implications of these forced removals were clear:

> 'The basic issues at stake were African rights to the ownership of land, not only in the Western Areas but also in all of South Africa, and the right to be consulted and to influence a governmental process that could deprive individuals of existing property rights and human rights.'[15]

The campaign against Bantu education arose out of the passing of the Bantu Education Act in 1953. The belief that the Act heralded a new era of inferior education for blacks was both widespread and justified by official pronouncements at the time. The Act was preceded by the Report of the Commission on Native Education which recommended, amongst other things, that both official languages should be taught to Africans from the earliest school days 'in such a way that the Bantu child will be able to find his way in European communities; to follow oral or written instructions; and to carry on a simple conversation with Europeans about his work and other subjects of common interest'.[16] Dr Verwoerd, then Minister of Native Affairs, reminded Parliament that 'if the Native in South Africa today in any kind of school in existence is being taught to expect that he will live his adult life under a policy of equal rights, he is making a big mistake'.[17]

Inequalities in education were reflected in the comparatively low expenditure on black education. The average expenditure on education in 1953 was R127,84 for each white student, R40,43 for Asian and coloured students and only R17,08 for each African student.[18] The campaign against inferior education was perceived to be of critical significance:

14. *The Western Areas Removal Scheme: Facts and Viewpoints* South African Institute of Race Relations (1953) cited in Karis and Carter op cit 86.
15. Karis and Carter op cit 25.
16. Cited in Wilson and Thompson op cit 225.
17. *House of Assembly Debates* col 3586 17 September 1953.
18. Muriel Horrel *Bantu Education to 1968* (1968) 39.



A delegation from one of the rural areas

> 'Africans were virtually united in their opposition to control of African education by the Department of Native Affairs.... The stakes were seen to be of profound importance: the mental outlook of generations of children.'[19]

The ANC campaign against Bantu education took the form of widespread school boycotts. At the same time 'Cultural Clubs' were set up as substitute schools because, in terms of the Act, operating an unregistered school was illegal.

The sponsoring organizations were fearful that the Congress of the People might be prevented from taking place altogether as a result of

19. Karis and Carter op cit 30.

a banning. In order to minimize this possibility it was suggested that the date and venue of the gathering only be disclosed as late as possible. It was also suggested that alternative venues be arranged.[20]

Preparations for the Congress of the People gave rise to an unexpected legal development. On 25 July 1954, the Congress of Democrats held a conference at the Trades Hall, Johannesburg, for the purpose of discussing the forthcoming Congress of the People. The conference was a private one, by invitation only. Notwithstanding the private nature of the gathering, certain members of the security police forced their way into the hall. They declined to furnish their credentials and refused to leave even when told that it was a private meeting. An application was immediately launched in the Supreme Court for an order compelling the police to leave. An interim order was granted and the meeting was allowed to proceed without the uninvited guests.

At a later hearing, it was alleged in an affidavit by Major Spengler that the meeting bore the hallmarks of a politically inflammatory event. He maintained that there was good reason to believe that the purpose of the meeting was to take action against existing laws either by violence or by a resistance campaign which could lead to violence. He also said that the police were investigating a charge of high treason and that persons present at the gathering were under suspicion. Furthermore, according to the agenda, 'listed' communists were due to address the gathering.

In his judgement,[21] Mr Justice Rumpff held that the police were not entitled to encroach upon the rights of the individual unless this was made necessary by the nature and gravity of the apprehended crime and then only to an extent which is reasonable in the circumstances. He stated further that on the scanty allegations concerning the possible advocacy of communism without indications as to what form it would take, and the references to investigations in connection with high treason, the police were not justified in attending the meeting. The courts, he said, will protect with the greatest care the rights of the individual against arbitrary action by the police.

The decision was not a popular one with an authoritarian regime intent upon bolstering already excessive police powers. The following year, increased powers were conferred upon the police to enter any premises for the purposes of carrying out investigations and taking any steps considered necessary for the preservation of the internal

20. Document entitled 'Draft Plan of Campaign for the Congress of the People' Karis and Carter Microfilm collection 2:DC15;45/3.
21. The case is reported under the title *Wolpe v Officer Commanding South African Police, Johannesburg* 1955 (2) SA 87 (W).

security of the state.[22]

Available historical sources do not provide a complete account of the actual drafting of the Freedom Charter. In early 1955, sub-committees of the National Action Committee began sorting the various demands and suggestions into different categories. A small drafting committee was eventually to produce the Charter drawing on the material prepared by the sub-committee. In one published description, the Freedom Charter was described as 'a vague, haphazard document assembled from all kinds of contradictory suggestions from congress branches'.[23] It has been suggested that the distinctive style of the Freedom Charter was most likely the contribution of Lionel Bernstein.[24] Apparently, a few days before the Congress, the ANC's working committee met to discuss the Charter. Amongst those present were Sisulu and Mandela.[25]

The Congress of the People

The Congress of the People finally took place on 25 and 26 June 1955 at Kliptown. It was attended by 2,884 delegates representing a diversity of organizations from throughout South Africa. The purpose for which the Congress of the People had been assembled was to debate and ratify the Freedom Charter and this task was finally accomplished. The outdoor gathering at Kliptown was, by all accounts, a momentous occasion:

> 'There were several wonderful things about the Congress of the People. The first was the fact that it was held at all. Here for the first time in the history of the country was a Congress which brought together people drawn from all sections of the population to consider and give expression to their vision of the South Africa of the future. The second significant thing was that it was able to produce the Freedom Charter which set forth the desires and aspirations of the people. But the most significant, both to those who were direct observers and those who heard about it afterwards, was the dignified behaviour of the people in the face of what any less disciplined group might have regarded as extreme provocation.... What any undiscerning person might have thought was just a rabble, proved to be a group imbued with singleness of purpose and devotion to a cause from which they could not be diverted by intimidation. That was the people's finest hour.'[26]

Proceedings opened on Saturday 25 June with the singing of *Nkosi*

22. These powers were conferred by s 7 of the Criminal Procedure and Evidence Amendment Act 29 of 1955.
23. Anthony Sampson *The Treason Cage: The Opposition on Trial in South Africa* (1958) 108.
24. Karis and Carter op cit 93.
25. Ibid 60.
26. Z K Matthews op cit 181-2.

Sikelele Afrika. This was followed by the reading of messages to the Congress of the People. Amongst those who sent messages were Chou En Lai, Prime Minister of the People's Republic of China and Ismail El Azhar, Prime Minister of the Sudan. After the opening messages and announcements, the Xhosa title *Isitwalandwe* (an honour reserved for those who have distinguished themselves in service to society) was conferred upon Albert Luthuli, Yusuf Dadoo and Father Trevor Huddleston. Neither Luthuli nor Dadoo were present to receive their awards personally.

After the Freedom Charter was read out in English, Zulu and Sotho, each clause was discussed by various speakers. On the afternoon of the second day of the Congress there was a dramatic interruption by a large contingent of police. The police presented a search warrant to Pieter Beyleveld stating that a charge of treason was being investigated. The press reported the incident as follows:

> 'About 3.45 pm Major H C T Muller, the area commandant, marched through the fringe of the delegates to the platform, escorted by about 25 armed European policemen and a squad of Special Branch men. Other European and Native police formed a cordon around the area. When the police marched to the platform all the delegates and onlookers stood to attention and sang the anthem, "Mayibuye Afrika" and shouted "Afrika". Mr Beyleveld called for order and silence. He read out the contents of the warrant which was given to him by Major Muller, and said that in spite of the presence of the police in force, the meeting would continue. The meeting would not be intimidated, he added. While Special Branch members made parcels of the notes of speakers and other papers on the platform, and 25 police stood guard below, the delegates continued to deliberate on the clauses of the "Democratic Freedom Charter" they had come to draw up.'[27]

Every person on the platform was searched, documents were removed and confiscated and it was announced that treason was suspected. The names and addresses of every delegate were taken.

These events were later to lead to the notorious 'Treason Trial', one of the longest in South African history and culminating in the acquittal of all the accused. The Freedom Charter was to be one of the central issues in the Treason Trial. It was argued by the prosecution that the central aims of the Charter, namely the abolition of racial discrimination and the granting of equal rights to all was unrealizable in South Africa without violence. This contention failed. In his opening address for the defence, Advocate Vernon Berrange accurately conveyed the spirit underlying the formulation of the Freedom Charter:

> 'The defence will strenuously repudiate that the terms of the Freedom Charter are treasonable or criminal. On the contrary, the defence will con-

27. *Rand Daily Mail* 27 June 1955.

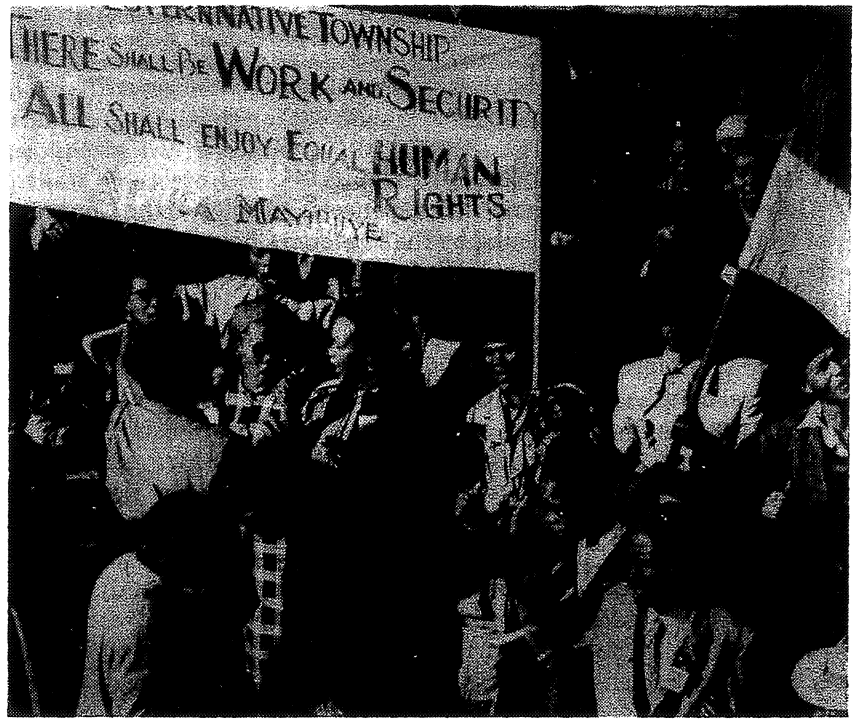
tend that the ideas and beliefs which are expressed in this charter although repugnant to the policy of the present government, are such as are shared by the overwhelming majority of mankind of all races and colours, and also by the overwhelming majority of citizens of this country.'[28]

The Freedom Charter and the ANC

Although the ANC was one of the sponsoring bodies of the Congress of the People it was not bound by the Freedom Charter or its adoption by the Congress of the People. Before the Freedom Charter could be adopted by the ANC as the basis of its policy, it required official ratification by its highest body, the National Conference.[29] The National Conference of the ANC did not meet until December 1955. In the five months after the Congress of the People, a fight for the acceptance or the rejection of the Freedom Charter ensued and the ANC became deeply divided on this issue. The 'Africanists' who rejected co-operation with whites, coloureds and Indians were not at all in favour of adopting the Charter as official ANC policy. The Africanists ranged themselves against the 'Charterists' who were in favour of adopting the Charter as official policy. The Africanists rejected the Freedom Charter entirely, insisting that it contained 'foreign ideas' of no use to Africans. To them, the Charter was merely a device by which the other Congresses could lead Africans by the nose. They objected to equality being accorded to other ethnic groups, opposed the economic clauses and impugned the motives of the Charterists who, they said, were diluting African nationalism.[30]

The National Conference of the ANC held in December 1955 postponed a decision on the Freedom Charter for a later occasion. A special conference was held in Orlando on the Easter weekend of 31 March - 1 April 1956 which was empowered to decide whether or not the Charter should be adopted as official ANC policy. The actual adoption of the Freedom Charter at the special conference is itself the subject of great controversy. The Africanists have alleged that the Charterists, by a stratagem, were able to secure ratification of the Charter by packing the conference hall with supporters whose credentials were not checked before the meeting. It was later reported that only sixteen Africanists were present among the 224 delegates, whereas Leballo claimed that he had the support of nearly half the delegates.[31] The Freedom Charter 'thus became part of the policy of the African National Congress, serving not to unite the leadership but

28. Anthony Sampson op cit 16-19.
29. Feit op cit 14-15.
30. Ibid 16.
31. *New Age* 5 April 1956 cited in Karis and Carter op cit 71.



More delegations

to divide it further'.[32] The divisions between the Africanists and Charterists came to a head with a deep division of opinion on the 'stay-at-home' strike of 1958 which was opposed from the outset by the Africanists. As a result of their non-co-operation in this campaign, the Africanist leaders, Potlako Leballo and J M Madzunya, were expelled from the ANC. This group formed the Pan African Congress in 1959 led by both Leballo and Robert Sobukwe.

The Content of the Freedom Charter

The Freedom Charter was ultimately an expression of the demand for those basic human rights which had systematically been denied to the majority of South Africans. The Freedom Charter should accordingly be viewed in the light of the political, social and economic disabilities which affected the majority of the population. The following are some of the more important legislative enactments which existed at the

32. Feit op cit 17.

THE FREEDOM CHARTER

as adopted at the Congress of the People on 26 June 1955

PREAMBLE

We, the people of South Africa, declare for all our country and the world to know:

That South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of the people;

That our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality;

That our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities;

That only a democratic state, based on the will of the people can secure to all their birthright without distinction of colour, race, sex or belief;

And therefore, we the people of South Africa, black and white, together equals, countrymen and brothers adopt this FREEDOM CHARTER. And we pledge ourselves to strive together, sparing nothing of our strength and courage, until the democratic changes here set out have been won.

THE PEOPLE SHALL GOVERN!

Every man and woman shall have the right to vote for and stand as a candidate for all bodies which make laws;

All the people shall be entitled to take part in the administration of the country;

The rights of the people shall be the same regardless of race, colour or sex;

All bodies of minority rule, advisory boards, councils and authorities shall be replaced by democratic organs of self-government.

ALL NATIONAL GROUPS SHALL HAVE EQUAL RIGHTS!

There shall be equal status in the bodies of state, in the courts and in the schools for all national groups and races;

All national groups shall be protected by law against insults to their race and national pride;

All people shall have equal rights to use their own language and to develop their own folk culture and customs;
The preaching and practice of national, race or colour discrimination and contempt shall be a punishable crime;
All apartheid laws and practices shall be set aside.

THE PEOPLE SHALL SHARE IN THE COUNTRY'S WEALTH!

The national wealth of our country, the heritage of all South Africans, shall be restored to the people;
The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole;
All other industries and trade shall be controlled to assist the well-being of the people;
All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions.

THE LAND SHALL BE SHARED AMONG THOSE WHO WORK IT!

Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger;
The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers;
Freedom of movement shall be guaranteed to all who work on the land;
All shall have the right to occupy land wherever they choose;
People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.

ALL SHALL BE EQUAL BEFORE THE LAW!

No one shall be imprisoned, deported or restricted without fair trial;
No one shall be condemned by the order of any Government official;
The courts shall be representative of all the people;
Imprisonment shall be only for serious crimes against the people, and shall aim at re-education, not vengeance;
The police force and army shall be open to all on an equal basis and shall be the helpers and protectors of the people;
All laws which discriminate on the grounds of race, colour or belief shall be repealed.

ALL SHALL ENJOY HUMAN RIGHTS!

The law shall guarantee to all their right to speak, to organise, to meet together, to publish, to preach, to worship and to educate their children;

The privacy of the house from police raids shall be protected by law;

All shall be free to travel without restriction from countryside to town, from province to province, and from South Africa abroad. Pass laws, permits and all other laws restricting these freedoms shall be abolished.

THERE SHALL BE WORK AND SECURITY!

All who work shall be free to form trade unions, to elect their officers and to make wage agreements with their employers;

The state shall recognise the right and duty of all to work, and to draw full unemployment benefits;

Men and women of all races shall receive equal pay for equal work;

There shall be a forty-hour working week, a national minimum wage, paid annual leave, and sick leave for all workers, and maternity leave on full pay for all working mothers;

Miners, domestic workers, farm workers and civil servants shall have the same rights as all others who work;

Child labour, compound labour, the tot system and contract labour shall be abolished.

THE DOORS OF LEARNING AND CULTURE SHALL BE OPENED!

The government shall discover, develop and encourage national talent for the enhancement of our cultural life;

All the cultural treasures of mankind shall be open to all, by free exchange of books, ideas and contact with other lands;

The aim of education shall be to teach the youth to love their people and their culture, to honour human brotherhood, liberty and peace;

Education shall be free, compulsory, universal and equal for all children;

Higher education and technical training shall be opened to all by means of state allowances and scholarships awarded on the basis of merit;

Adult illiteracy shall be ended by a mass state education plan;

Teachers shall have all the rights of other citizens;

The colour bar in cultural life, in sport and in education shall be abolished.

THERE SHALL BE HOUSES, SECURITY AND COMFORT!

All people shall have the right to live where they choose, to be decently housed, and to bring up their families in comfort and security;
Unused housing space to be made available to the people;
Rent and prices shall be lowered, food plentiful and no one shall go hungry;
A preventive health scheme shall be run by the state;
Free medical care and hospitalisation shall be provided for all, with special care for mothers and young children;
Slums shall be demolished and new suburbs built where all shall have transport, roads, lighting, playing fields, creches and social centres;
The aged, the orphans, the disabled and the sick shall be cared for by the state;
Rest, leisure and recreation shall be the right of all;
Fenced locations and ghettoes shall be abolished and laws which break up families shall be repealed.

THERE SHALL BE PEACE AND FRIENDSHIP!

South Africa shall be a fully independent state, which respects the rights and sovereignty of all nations;
South Africa shall strive to maintain world peace and the settlement of all international disputes by negotiation not war;
Peace and friendship amongst all our people shall be secured by upholding the equal rights, opportunities and status of all;
The people of the protectorates Basutoland, Bechuanaland and Swaziland shall be free to decide for themselves their own future;
The right of all the peoples of Africa to independence and self-government shall be recognised, and shall be the basis of close cooperation.

Let all who love their people and their country now say, as we say here:
THESE FREEDOMS WE WILL FIGHT FOR, SIDE BY SIDE, THROUGHOUT OUR LIVES UNTIL WE HAVE WON OUR LIBERTY.

time of the Congress of the People and which formed the target of wide-spread opposition. Many of these statutes still remain in force. The laws in the form in which they existed at the time of the Congress of the People will be referred to. The racial terminology is that actually used in the statutes.

The Population Registration Act 30 of 1950

This statute provided that every person shall be classified by the Director of Census as a 'white' person, 'coloured' person or a 'native', as the case may be, and in addition, every 'coloured' person and 'native' shall be classified according to the ethnic or other sub-group to which he belongs. Since no scientific criteria exist for the classification of people into ethnic goups, the Act of necessity resorted to artificial criteria such as 'general acceptance' and 'obvious appearance' in order to classify people into the various groups. A 'coloured person' was defined as a 'person who is not a white person or a native'. A 'native person' was defined as one who 'in fact is generally accepted as a member of any aboriginal race or tribe of Africa'. Finally, a 'white person' was defined as one 'who in appearance obviously is, or who is generally accepted as, a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person'. A person's classification in terms of the Population Registration Act is determinant of all political, social and economic rights.

This Act has been amended several times to fill loopholes and to make the system more 'efficient'. The racial definitions, however, remain virtually unchanged. The implementation of the Act has created untold misery and suffering. The Act remains the cornerstone of apartheid.

The Group Areas Act 41 of 1950

The Group Areas Act was seen as a necessary adjunct to the Population Registration Act. In the parliamentary debates, the Prime Minister said that the measure was necessary to bring an end to conditions where Europeans and non-Europeans live alongside each other, and associate with each other, where the children play together in the streets and where the colour feelings of the Europeans are becoming dulled, and where the colour sense, which is the white man's protection disappears completely'.[33] The provisions of the Act are many and

33. *House of Assembly Debates* col 7724 31 May 1950.



The people voice their demands

complicated but its central feature is the restriction of the ownership and occupation of property on the grounds of race only. Removals under the Group Areas Act were, and continue to be, one of the most hated features of legislation in South Africa.

The Group Areas Act was consolidated in 1957[34] and again in 1966.[35] The removals from District Six in Cape Town and Pageview in Johannesburg are two of the more notorious manifestations of the Act.

34. Act 77 of 1957.
35. Act 36 of 1966.

The Natives (Urban Areas) Consolidation Act 25 of 1945

This statute contained the most far-reaching and sweeping provisions relating to the control of the lives of blacks. Its central features were concerned with the controlling of the movement and influx of blacks in urban areas. The Act remains the cornerstone of the system of influx control.

Section 9 empowered the Governor-General to declare by proclamation, whenever he deemed it expedient, that all natives, within the limits of any urban area shall 'reside in a location, native village or native hostel'. Subject to certain specified exceptions, any 'native' who resided outside such location, after having been served with a notice calling upon him to take up such residence, was guilty of an offence.

Section 28 provided that if any urban area was an area in respect of which the Minister was satisfied that 'the number of natives within that area is in excess of the reasonable labour requirements of that area', the Governor-General was empowered to require the urban local authority 'to lodge with him a list of the names of the natives who, in its opinion, ought to be removed from the urban area' and to determine 'which of the natives specified in that list shall be removed from the urban area'.

Section 29 set out the manner of dealing with 'idle, dissolute or disorderly natives in urban areas'. It provided that:

> 'Whenever in any urban area ... any police officer has reason to believe or suspect that any native ...
>
> (a) is habitually unemployed; or
> (b) has no sufficient honest means of livelihood; or
> (c) is leading an idle, dissolute or disorderly life; or
> (d) ...
> (e) has been convicted of selling or supplying intoxicating liquor other than kaffir beer to a native ...
> (f) ...
> (g) ...
>
> he may without warrant arrest and bring that native before a magistrate or native commissioner, who shall require the native to give a good and satisfactory account of himself.'

If found to be idle or disorderly, such a person could be removed from the urban area or 'sent to and detained for a period not exceeding two years in a farm colony, work colony, refuge, rescue home or similar institution established ... under ... the Prisons and Reformatories Act ... and perform thereat such labour as may be prescribed under that Act...'. Section 29 was

amended in 1952,[36] this time defining the manner of dealing with 'idle or undesirable' natives. All the obnoxious provisions of the original section were retained but with the addition of new and more drastic measures.

Section 31 empowered the Governor-General to impose curfews in urban areas.

This Act has been widely extended and viciously enforced. It remains the cornerstone of the system of influx control. An estimated 18 million people, equivalent to almost the entire black population of South Africa, have been arrested for pass offences in the past 60 years. In 1984, police arrested some 163,000 people for influx control offences, an average of one arrest every three minutes of every night and day.[37] In the same year 11,688 people were arrested for curfew violations.[38]

The Natives (Abolition of Passes and Co-ordination of Documents) Act 67 of 1952

This Act made it compulsory for all 'natives' over the age of 16 years to carry reference books which were required to be produced on demand. Failure to do so constituted a criminal offence punishable by a fine not exceeding ten pounds or imprisonment not exceeding one month. In 1953, 110,427 Africans were convicted for offences against curfew regulations or regulations for registration and production of documents, and 43,951 for offences against the pass laws.[39]

Pass raids continue to be a daily feature of South African life. Few Africans would dare venture into the streets without a reference book. The failure to produce a pass on demand inevitably results in immediate imprisonment prior to an appearance in court.

The Native Administration Act 38 of 1927

Section 5 of the Native Administration Act contained one of the harshest provisions known to South African law. It empowered the Governor-General to order 'the removal of any tribe or portion thereof or any native from any place to any other place within the Union', if he deemed it expedient 'in the general public interest'.

36. Section 36 of the Native Laws Amendment Act 54 of 1952 substituted a new s 20 of the Natives (Urban Areas) Consolidation Act 25 of 1945.
37. *The Star* 16 March 1985.
38. *The Star* 10 April 1985.
39. *Survey of Race Relations in South Africa 1953-4* South African Institute of Race Relations 150.



A delegation from Natal

The power of forced removal was, amongst other things, a response to the growing organization of the black working class and particularly the activities of Clements Kadalie's Industrial and Commercial Union. The ability to get rid of dissident elements was regarded as a useful device to stem the tide of opposition.[40]

In 1952, the Governor-General's powers were bolstered further by an amendment to s 5 of the Act.[41] The amendment prohibited a person subject to a removal order from seeking an interdict to stay the execution of the order. Dr Verwoerd, in proposing the amendment, at least had the merit of candour:

> 'We all admit ... that when disturbances occur or when there is a threat of rioting in a certain area ... it may become necessary to

40. See Gilbert Marcus 'The Forced Removal of Tribes' paper delivered at the Conference on Resettlement, Johannesbrug 29 October 1984.
41. A new s 5 was introduced by s 20 of the Native Laws Amendment Act 54 of 1952.

> deport instigators, mischiefmakers or agitators from the place where they are causing disturbances. That is a general principle of Native administration regarding which, I think, there is no difference of opinion. ...When it is urgently necessary to remove immediately such a source of evil ... it must be possible without delaying procedure.'[42]

An estimated 3,500,000 blacks have been forcibly removed in terms of various statutes, between 1960 and 1983.[43] In 1984, the Bakwena ba Magopa were forcibly removed at gun-point by the South African Defence Force. They had been in peaceful occupation of their ancestral lands since the beginning of the century.

The Suppression of Communism Act 44 of 1950

The Suppression of Communism Act was enacted primarily to outlaw the South African Communist Party and to subject 'communists' to various disabilities. The Act gave the Minister of Justice the power to banish from a stated area any person whom he was satisfied advocated, advised, defended or encouraged the achievement of any of the objects of communism or who was likely to advocate, advise, defend or encourage the achievement of any such object. Communism was defined in s 1 in the following terms:

> '"Communism" means the doctrine of Marxian socialism as expounded by Lenin or Trotsky ... or any related form of that doctrine ... and includes, in particular, any doctrine or scheme -
> (a) which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat under which one political organization only is recognized ...; or
> (b) which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions ...; or
> (c) which aims at bringing about any political, industrial, social or economic change within the Union in accordance with the directions or under the guidance of or in co-operation with any foreign government or any foreign or international institution whose purpose or one of whose purposes (professed or otherwise) is to promote the establishment of any ... system identical with or similar to any system in operation in any country which has adopted a system of government such as is described in paragraph (a) ; or
> (d) which aims at the encouragement of feelings of hostility between the European and non-European races of the Union the consequences of which are calculated to further the achievement of any object referred to in paragraph (a) or (b).'

42. *House of Assembly Debates* col 552 4 February 1952.
43. *Forced Removals in South Africa* Surplus Peoples Project (1983)



Banners display demands

The statute was used extensively to ban opponents of the Government. It also contained provisions enabling the Governor-General to prohibit the printing, publishing or dissemination of publications, which in his opinion propagated or promoted 'the spread of communism'. The newspaper *The Guardian* was banned in terms of these powers in 1952.

The Suppression of Communism Act was only the portent of things to come. In 1963, the '90-day detention law'[44] was passed introducing for the first time the system of detention for the purposes of interrogation. What was originally intended to be a temporary measure only, soon became a permanent feature of South African law. The 90-day law was replaced by the 180 day law[45] and then by the notorious Terrorism Act 83 of 1967 which provided for indefinite detention in conditions of solitary confinement. Today, South Africa's security legislation is contained in the Internal Security Act 74 of 1982, a statute of inordinate breadth and severity. It goes far beyond the control of genuine threats to internal security and renders unlawful forms

44. Section 17 of the General Law Amendment Act 37 of 1963.
45. Section 215 bis of the Criminal Procedure Act 56 of 1955.

of political opposition which are considered perfectly legitimate in democratic countries. Since 1963, some 60 political detainees are known to have died in detention.

The Reservation of Separate Amenities Act 49 of 1953

Prior to the enactment of this statute, the doctrine of equality was, to some extent, recognized in South African law by the 'separate but equal' formula. However, with the passing of the Reservation of Separate Amenities Act, it was laid down that separate amenities need not be 'substantially similar to or of the same character, standard, extent or quality' as 'those set aside for the other race'.

This statute has remained virtually unchanged. Separate facilities remain the order of the day with offensive 'whites only' signs adorning the portals of many public buildings.

The Criminal Law Amendment Act 8 of 1953

In the early fifties the ANC conducted a major passive resistance campaign against discriminatory laws based on race. The Government responded to the 'Defiance Campaign' with the enactment of the Criminal Law Amendment Act which prescribed increased penalties for contravention of the country's laws when these infringements occurred by way of protest or in support of any campaign against or for the repeal, modification, or variation or limitation of the application or administration of any law. Section 2(b) of the Act provided that:

> 'Any person who ... uses any language or does any act or thing calculated to cause any person or persons in general to commit an offence by way of protest against a law or in support of any campaign for the repeal or modification of any law or the variation or limitation of the application or administration of any law shall be guilty of an offence and liable upon conviction to
>
> (i) a fine not exceeding 500 pounds;
> (ii) imprisonment for a period not exceeding 5 years;
> (iii) a whipping not exceeding ten strokes; or
> (iv) both such fine or imprisonment; or
> (v) both such fine or whipping; or
> (vi) both such imprisonment and such whipping.
>
> Provided that in the case of a second or subsequent conviction it shall not be competent to impose a fine except in conjunction with whipping or imprisonment.'

The right of peaceful protest is virtually non-existent in South Africa today. The provisions of the Criminal Law Amendment Act have been transferred, with minor modifications, to the

Internal Security Act.[46] In addition, since 1976 there has been a nationwide prohibition on outdoor 'gatherings', a gathering being constituted by two or more people.

The Bantu Education Act 47 of 1953

The fundamental provision of this statute was set out in s 9 which prescribed that all Bantu schools, existing or still to be brought into being, were to be registered, and that registration could be refused in the absolute discretion of the Minister of Native Affairs. It further provided that the maintenance of any unregistered Bantu school was an offence punishable by a fine or imprisonment.

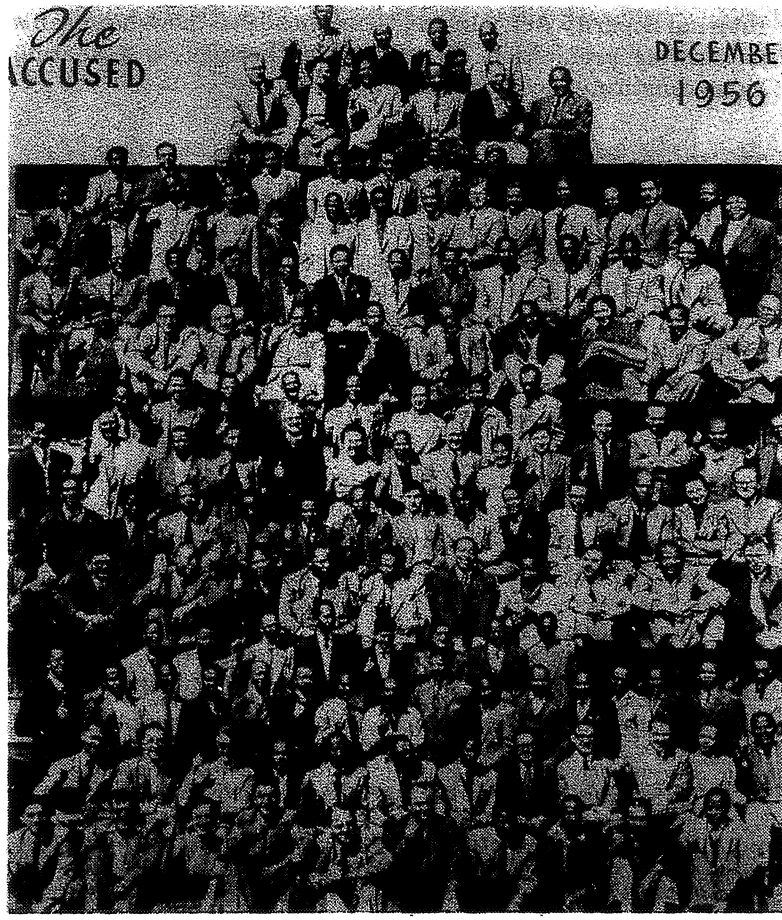
The central philosophy behind the Bantu education system was that blacks should be divided on ethnic lines and that black schools should be taken away from the control of church institutions and provincial departments and turned over to the national government. Speaking in Parliament on behalf of the proposed system in 1953, Dr Verwoerd said the following:

> 'Racial relations cannot improve if the wrong type of education is given to Natives. They cannot improve if the result of Native education is the creation of frustrated people who, as a result of the education they receive, have expectations in life which circumstances in South Africa do not allow to be fulfilled immediately.... Above all, good racial relations cannot exist when the education is given under the control of people who create wrong expectations on the part of the Native himself, if such people believe in a policy of equality, if, let me say for example, a Communist gives this training to the Natives. Such a person will by the very nature of the education he gives, both as regards the content of that education and as regards its spirit, create expectations in the mind of the Bantu which clash with the possibilities in this country.'[47]

The campaign against Bantu education was one of the major campaigns conducted by the ANC in the early fifties.

The principle of segregated school education was extended to universities with the passing of the Extension of University Education Act 45 of 1959. The Bantu Education Act has been replaced by the Education and Training Act 90 of 1979. The new act retains all the obnoxious provisions of its predecessor. The creation of separate educational institutions has been the source of extreme bitterness amongst the black community resulting in a major revolt in 1976.

46. Sections 58 and 59 of Act 74 of 1982.
47. *House of Assembly Debates* col 3576 17 September 1953.



A group photograph of all the accused in the 1956 Treason Trial

The Separate Representation of Voters Act 46 of 1951

The constitutional crisis of the early fifties was precipitated by this statute which was the first step in the removal of the coloureds from the voters roll. The Act was finally validated in 1956.

The passing of the Republic of South Africa Constitution Act 110 of 1983 provided coloureds and Indians with a form of token parliamentary representation. The Act was passed at a time when the Nationalist Government was beset by increasing opposition, both domestically and internationally. The new Constitution has been held out by its supporters as an important

reform initiative, but many remain unconvinced. The black majority are entirely excluded from participation in the tri-cameral Parliament and even coloureds and Indians are numerically incapable of out-voting whites and thereby effecting meaningful change. The new Constitution operates in accordance with the offensive racial categories contained in the Population Registration Act.

The elections for coloured and Indian parliamentary representatives were characterized by low percentage polls, extreme violence and repression.[48]

The Prohibition of Mixed Marriages Act 55 of 1949

All marriages between 'Europeans' and 'Non-Europeans' were prohibited in terms of this statute. Such marriages were, according to the statute, void and any marriage officer who knowingly performed such a marriage committed a criminal offence. The object of the Act, in the words of the Minister of the Interior, Dr T E Donges, was 'to check blood mixture and as far as possible to promote racial purity'. Notwithstanding the historical urge for the preservation of racial purity 'that is born in the Afrikaner', the Minister expressed the view that 'amongst our people there are weaker brothers and weaker sisters and a measure of support must be extended to them. They must be protected against their own frailty.'[49]

This Act will be repealed in the course of 1985.

The Immorality Amendment Act 21 of 1950

This law prohibited consensual 'carnal intercourse', between a 'European' and a 'Non-European'. The principle of non-racial intercourse had already been laid down by Act 5 of 1927 which prohibited illicit carnal intercourse between Europeans and Africans. The amending Act extended the prohibition to all 'Non- Europeans'.

The Immorality Act was consolidated in 1957.[50] Apart from retaining the prohibition on inter-racial sex, the Act made it an offence, inter alia, for a white person to commit any 'immoral or

48. Official statistics indicate that 20.2% of the registered Indian voters and 30.9% of the registered coloured voters went to the polls. However, it has been estimated that only 16.2% of the eligible Indian voters and 17.6% of the eligible coloured voters actually voted. See Ebrahim Patel 'Legitimacy and Statistics: A Critical Analysis of the first Tri-cameral Parliamentary Elections *SALDRU Working Paper No 61* (1984) University of Cape Town.
49. *House of Assembly Debates* cols 6164-6167 19 May 1949.
50. Act 23 of 1957.

indecent' act with a black person. Methods of police surveillance and investigation of offences under this Act constitute one of the most sordid sagas of recent history. In 1984, there were 160 prosecutions for inter-racial sex under the Act.[51]

Both the Prohibition of Mixed Marriages Act and s 16 of the Immorality Act will be repealed following the recommendation of a parliamentary select committee. Their passing will be mourned by few, the suffering and misery they have caused will be remembered by many.

The Native Labour (Settlement of Disputes) Act 48 of 1953

In terms of this statute, strikes and lockouts were absolutely prohibited under penalty of a fine not exceeding 500 pounds or imprisonment for a period not exceeding 3 years or such imprisonment without the option of a fine or both such fine and imprisonment. A similar penalty was imposed on any person who incited, or expressed sympathy with, or lent support to, a strike or lockout.

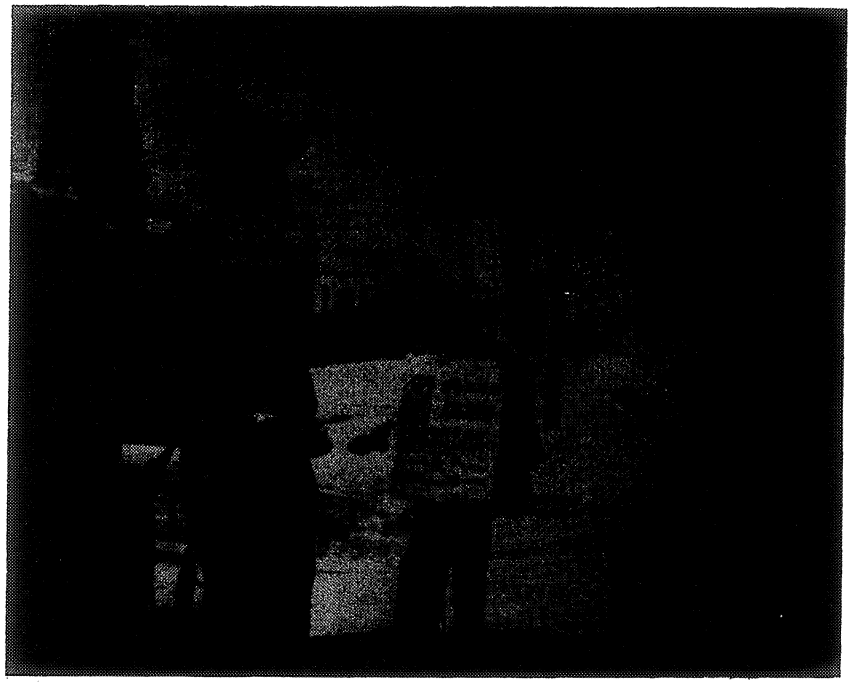
This Act has been repealed. Industrial action is now regulated by the Labour Relations Act 28 of 1956. This Act was substantially revised in 1979[52] leading to the official recognition of black trade unions for the first time. Trade unionists have been the targets of security police attention and several unionists have died in detention.[53] Influx control, the migratory labour system and the prohibition on gatherings are some of the many factors which conspire to inhibit effective trade unionism in South Africa.

The Native Land Act 27 of 1913

This statute together with the Native Trust and Land Act 18 of 1936 set aside some 13% of the total area of South Africa for the exclusive occupation of Africans. The 1913 Act demarcated certain areas known as 'reserves' for Africans and forbade the transfer to or lease of land by other races within these reserves. Simultaneously, Africans were prohibited from acquiring land elsewhere.

Both these statutes remain in force today. The issue of the dispossession of land continues to be the source of the deepest bitterness.

51. *The Star* 12 April 1985.
52. The Industrial Conciliation Amendment Act 96 of 1979.
53. See Gilbert Marcus 'Freedom of Association and the Labour Movement in South Africa' paper delivered to the Labour Law Conference, Durban, July 1984.



Canvassing for the Congress of the People

The above is a brief synopsis of some of the main statutes affecting the civil liberties of Africans which were in force at the time of the Congress of the People in 1955. The list is by no means complete. There was a vast and complicated network of labour legislation which reserved many classes of jobs for whites only. In addition there were laws which allowed the authorities to prevent the assembly of persons and which empowered the police to arrest without warrant. In a major work of the time, the following observation aptly describes the state of civil liberties in South Africa:

> 'As restriction is piled upon restriction, one is deeply moved at the picture which is disclosed. Even to those used to these conditions, the effect of marshalling them in order is devastating: the heart seeks almost desperately for some ray of hope, some dawn of freedom.'[54]

The Freedom Charter, like all other declarations of human rights, was sufficiently broad in its terms to allow for varying interpretations. The Charter was subjected to close scrutiny by H J Simons of the

54. E H Brooks and J B Macaulay *Civil Liberty in South Africa* (1958) 167.

University of Cape Town, a Marxist scholar and former member of the Central Committee of the South African Communist Party. In a memorandum prepared for the defence in the Treason Trial, he demonstrated that the formulations of the Charter were not Marxist. In this connection he stressed the omission of any reference to the abolition of class distinction and the establishment of public ownership of the means of production. The nationalization that was proposed was, in the context of the Charter, characteristic of state capitalism. For a Marxist, he said, the failure to specify terms of transfer was inexcusable. Furthermore, although a liberal capitalist democracy could be a stepping-stone to a classless and socialist society, the Charter contained no suggestion of this kind.[55]

In an article entitled 'In Our Lifetime' published in *Liberation*, June 1956, Nelson Mandela made the following statement about the Freedom Charter:

> 'Whilst the Charter proclaims democratic changes of a far reaching nature, it is by no means a blueprint for a socialist state, but a programme for the unification of various classes and groupings amongst the people on a democratic basis. Under socialism the workers hold state power. They and the peasants own the means of production, land, the factories and the mills. All production is for use and not for profit. The Charter does not contemplate such profound economic and political changes. Its declaration "The people shall govern!" visualizes the transfer of power not to any single social class but to all the people of this country be they workers, peasant, professional men or petty-bourgeoisie.
>
> It is true that in demanding the nationalisation of the banks, the gold mines and the land the Charter strikes a fatal blow at the financial and gold-mining monopolies and farming interests that have for centuries plundered the country and condemned its people to servitude. But such a step is absolutely imperative and necessary because the realisation of the Charter is inconceivable, in fact impossible, unless and until these monopolies are first smashed up and the national wealth of the country turned over to the people. The breaking up and democratisation of these monopolies will open up fresh fields for the development of a prosperous Non-European bourgeois class. For the first time in the history of the country the Non-European bourgeoisie will have the opportunity to own in their own name and right mills and factories, and trade and private enterprise will boom and flourish as never before. To destroy these monopolies means the termination of the exploitation of vast sections of the populace by mining kings and land barons and there will be a general rise in living standards of the people. It is precisely because the Charter offers immense opportunities for an overall movement in the material conditions of all classes and groups that it attracts such wide support.'

More recently, Raymond Suttner has suggested that the terms 'bourgeois' and 'socialist' are inappropriate in describing the Freedom Charter:

55. Karis and Carter op cit 64.



The Congress of the People in session

'The demand for the nationalization of key monopolies and the transfer of land to those who work it were found necessary, not so much because of socialist motivations on the part of those who made and supported the Charter, though many may have been socialists. These demands derive from the historical basis of the South African state, where nearly all the country's land and other assets have been seized from the blacks and are still held by a small minority of the white population. It was felt that there could be no overall improvement in conditions without such changes.

The struggle for the Charter is therefore an anti-capitalist programme, because any programme to end racial oppression in South Africa has to be anti-capitalist. This is because racism in South Africa cannot be eradicated without attacking the key power-centres of capitalism, with which it is so closely interlocked.

So when people describe the Charter as a bourgeois document they are abstracting specific demands from the South African context. What may be a bourgeois demand elsewhere, goes beyond that in the context of a national democratic struggle.'[56]

In 1960 both the African National Congress and the Pan African

56. Raymond Suttner *The Freedom Charter — The People's Charter in the Nineteen-Eighties* (1984) 15.

Congress were declared unlawful organizations in terms of the Unlawful Organizations Act 34 of 1960. Originally the ban was to be for one year only, but after it had been renewed on an annual basis, the prohibition was made permanent in 1963.[57] The banning of the ANC and the PAC was a direct consequence of the shootings at Sharpeville on 21 March 1960. At the famous 'Rivonia Trial' in 1964, Nelson Mandela stated in his speech to the court that at the beginning of 1961 some colleagues had decided to abandon the ANC's policy of non-violence. He said that 'fifty years of non-violence have brought the African people nothing but more and more repressive legislation'. By 1961, he said, 'all channels for peaceful protest had been barred to us.' So it was that the ANC abandoned its policy of non-violence and the military wing of the ANC, *Umkhonto we Sizwe* (Spear of the Nation) was formed.

Apartheid and International Law

In 1945 South Africa became a signatory to the Charter of the United Nations. General Smuts played a major role in the formulation of this Charter, the preamble to which reads as follows:

> 'We the Peoples of the United Nations determined to save succeeding generations from the scourge of war ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ... have resolved to combine our efforts to accomplish these aims.'

Article 55 of the Charter provides that:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.'

On 10 December 1948, South Africa and other member states of the United Nations were called upon to give concrete expression to their commitment to the protection of human rights by approving the Universal Declaration of Human Rights. The voting in the General Assembly was 48 for and none against. South Africa was one of the eight states which abstained. The others were the Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, the Ukranian SSR, the USSR and Yugoslavia. Given the legislative enactments in force at the time,

57. Procs 91-94, *GGE* 499 of 10 May 1963 and Procs 183-185, *GGE* 556 of 12 July 1963.

South Africa could not possibly have endorsed the Universal Declaration of Human Rights.[58]

In certain respects there is a simililarity between the Freedom Charter and the provisions of the Universal Declaration of Human Rights. The policy of the Congress of Democrats was apparently one of adherence to the Universal Declaration of Human Rights.[59] In his Nobel Peace Prize address on 11 December 1961 Albert Luthuli made the following observation:

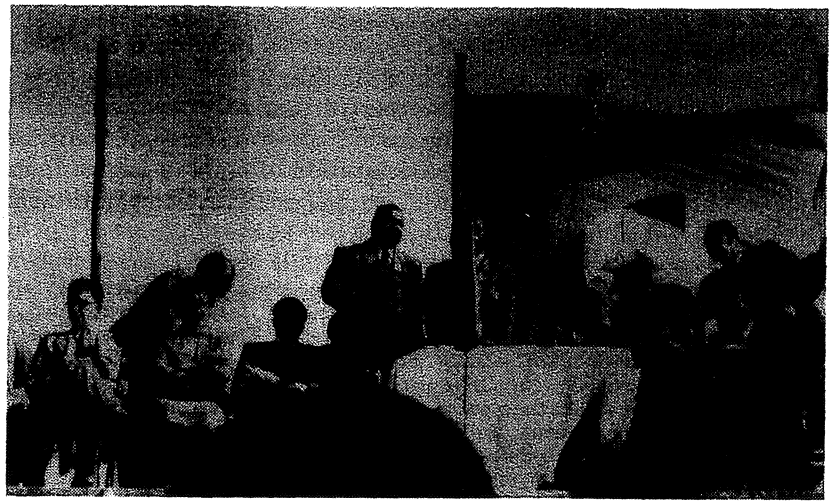
> 'Many spurious slogans have been invented in our country in an effort to redeem uneasy race relations — "trusteeship", "separate devlopment", "race federation" and elsewhere "partnership". These are efforts to side-track us from the democratic road, mean delaying tactics that fool no-one but the unwary. No euphemistic naming will ever hide their hideous nature. We reject these policies because they do not measure up to the best mankind has striven for throughout the ages; they do great offence to man's sublime aspirations that have remained true in a sea of flux and change down the ages, aspirations of which the United Nations Declaration of Human Rights is a culmination. This is what we stand for. This is what we fight for.'[60]

At the time of the Congress of the People, there were two major declarations on human rights in existence, namely, the Universal Declaration of Human Rights and the European Convention on Human Rights. Since 1955, there have been several other international conventions on human rights none of which have been subscribed to by South Africa. The most important of these conventions is the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted in 1973, which in Article 1 provides:

> 'The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid ... are crimes violating the principles of international law ... and constituting a serious threat to international peace and security.'

Thus, nearly twenty years after the Congress of the People, the international community echoed the demands of the Freedom Charter by declaring apartheid a crime against humanity.

58. In 1970, in his maiden parliamentary speech, the present Minister of Foreign Affairs, Mr R F Botha, was however to regret the failure of the South African Government to commit itself to the goals enunciated in the Universal Declaration. See *House of Assembly Debates* cols 2164-6 21 August 1970.
59. Karis and Carter op cit 13.
60. Nobel Peace Prize address by Albert Luthuli, 11 December 1961 reproduced in Karis and Carter op cit 705-717.



On the platform during one of the sessions

The Suppression of the Freedom Charter

The Freedom Charter was the central document of the 1956 treason trial. The accused were alleged to have participated in a conspiracy to overthrow the state by violence. The object of this conspiracy was to be attained, inter alia, by organizing the Congress of the People and adopting the Freedom Charter. In pursuance of the conspiracy the accused were said to have published and distributed pamphlets calculated to induce readers to support the aims of the Charter. The accused were alleged to have pledged themselves to campaign for the achievement, in their lifetime, of the aims set forth in the Freedom Charter.[61]

The prosecutor, former Minister of Justice, Oswald Pirow QC, described the Charter as a communist document embodying aims to be achieved only by smashing the entire state apparatus. In answering a request for further particulars, the prosecution at one stage stated that 'in their lifetime' meant five years from the date of the adoption of the Charter. This allegation was later withdrawn.

In his judgment acquitting the accused,[62] Mr Justice Rumpff found

61. Details of the indictment are set out in the case of *R v Adams and others* 1959 (1) SA 646 (SCC). The case concerned an application to compel the prosecution to furnish certain further particulars to the indictment.
62. The judgment of the court has not been reported in the South African Law Reports. A full transcript of the record of the trial is housed at the William Cullen Library of the University of the Witwatersrand, Johannesburg.

that the prosecution had failed to prove that the form of state envisaged by the Freedom Charter, was a communist state, or that the African National Congress had become a communist organization. He expressed the view, however, that the form of state proposed in the Freedom Charter was radically and fundamentally different from that existing in South Africa in regard to its political, social and economic structure.

Notwithstanding the acquittal of all the accused, it was clear that the state regarded the Freedom Charter as a treasonous document. Perhaps because of its association with the ANC, the Charter was never freely available in South Africa. Many editions of the Charter were prohibited under various censorship statutes[63] and in most cases, the mere possession of the Charter constituted a criminal offence. Even quoting from the Charter gave rise to the banning of publications.

In 1984, the Publications Appeal Board delivered an extensive judgment on the legality of the Charter.[64] Although the decision was concerned only with the question of prohibition of the possession of the Charter, it is clear that the Board did not regard the Charter as an undesirable document. In its judgment, the Board observed that the fact that the ANC had adopted the Charter as part of its constitution was legally irrelevant. Many legal organizations have adopted or subscribed to the aims of the Charter. Since the decision, several organizations have openly distributed copies of the Charter at public meetings and have reaffirmed their support for the achievement of the ideals embodied in the document.

The Freedom Charter Today

The dominant feature of the Freedom Charter is its call for a democratic South Africa. The preamble states the general principle that 'no government can justly claim authority unless it is based on the will of the people'. The governing philosophy of the democratic state envisaged by the Freedom Charter is one based 'on the will of the people' and without distinction based on colour, race, sex or belief.

Those who drafted the Freedom Charter saw in it a blueprint for a democratic and peaceful South Africa. This is an ideal which has yet to be achieved. After repeated attempts to suppress the Charter, it has emerged in the eighties as the document articulating the basic

63. The principal vehicle for prohibiting publications was the Publications and Entertainments Act 26 of 1963, now replaced by the Publications Act 42 of 1974.
64. The decision is reported under the title 'The Land Shall Be Shared Among Those Who Work It' in the *Digest of Decisions of the Publications Appeal Board*.

demands of the majority of the people. Today its significance is perhaps greater than it was in 1955. The systematic denial of rights to the majority of South Africans has continued unabated. Opponents of the Government continue to be detained and silenced on an unprecedented scale while a vast system of censorship and restrictions on the press ensure that the expression of opposition is stifled. Influx control has reached terrifying proportions through the new device of deprivation of citizenship. The Group Areas Act is still enforced, punishing those whose only crime is to seek a home for themselves and their families in the 'wrong' area. The blight of inferior education afflicts the majority of the population notwithstanding the uprisings and boycotts of the seventies and eighties. Despite a facade of reform, the ugliest manifestations of old-style apartheid remain. For these and many other reasons, the Freedom Charter remains as relevant today as it was in 1955. The significance of the Charter is best described by Chief Albert Luthuli:

> 'The Charter produced at Kliptown is, line by line, the direct outcome of conditions which obtain — harsh, oppressive and unjust conditions. It is thus a practical and relevant document. It attempted to give a flesh and blood meaning, in the South African setting, to such words as democracy, freedom, liberty. If the Charter is examined it will be seen that freedom means the opening up of the opportunity to all South Africans to live full and abundant lives in terms of country, community and individual. It means the end of legalised bullying, the removal of a sub-human outlook.'[65]

65. Albert Luthuli *Let My People Go* (1962) 142.

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