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**THE SIGNIFICANCE OF THE FREEDOM CHARTER FOR THE FUTURE OF SOUTH
AFRICA**

**AN ATTEMPT TO MAKE A CONSTITUTIONAL AND THEOLOGICAL
ASSESSMENT**

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INTRODUCTION

The Freedom Charter of 1955 is, politically speaking, the most important basic document of the South African opposition.¹ It includes the main features of a reorganization of a system which would replace the present system of apartheid. The Freedom Charter lists the inalienable rights and freedoms, which should be guaranteed every human being in a liberated South Africa. In this respect, it is comparable to the basic declaration of human and civil rights in the constitutions of modern states. During the last few years, thirty years after it was published, it has again become a topic for discussion in South Africa. Mainly the African National Congress (ANC), but also other organizations and resistance groups, quote this basic Charter in support and in elucidation of their aims in the struggle for freedom, although it also meets with sharp criticism, as has been the case since its very beginning. The Charter closes with the call:

"These freedoms we shall fight for, side by side, throughout our lives, until we have won our liberty."

Inquiring about the political plans and conceptions of the future of the present opposition within and outside the borders of the Republic of South Africa, one is time and again referred to the Freedom Charter. If one wants to understand the convictions and intentions of the freedom movements, one has to look at the authentic content of this document. Like any basic document or declaration, of course, it needs to be interpreted. It has developed through a long, controversial process of deliberation and accommodates opposing theoretical and practical conclusions. Totally differing groups appeal to the Freedom Charter, when they want to give binding information about themselves, and even when they offer criticism they still use the same document. It is, therefore, a decisive basis for all talks, negotiations and agreements with the opposition groups who take a stand against apartheid in South Africa. It is also the point of departure of every attempt to form an opinion about the legitimacy of the order aspired to by the opposition in South Africa.

The impulse for a legal and socio-ethical appraisal of the Freedom Charter goes back to the repeated request of representatives of the ANC to members

1 . The text of the Freedom Charter is printed in an incalculable number of places. The German translation is found, amongst others, in "Südafrika-Reader", edited by Evangelisches Missionswerk, Hamburg 1986, 40 f. The authentic English text is printed, amongst others, in the important book on the Freedom Charter by *Sutner/Cronin* (1986), 262-266. Concerning the development and assessment, compare especially *Karis/Carter*, vol. 3; the English text on 205-208.

of the Council of the EKD (Evangelical Church of Germany) and the Board of the EMW (Evangelical Mission Centre) to comment on the Freedom Charter. This request obviously does not aim at abstract, totally context-free criteria about political legitimacy, but looks for an examination of the message and the demands of the Freedom Charter in the light of such criteria of legitimacy which, as a result of European social philosophy and social ethics, are (and can be) recognized as true amongst us. In other words: How must one judge the Freedom Charter, when the same criteria of political legitimacy, which we use with regard to our Basic Law, are applied to it? It is clear that this is not the only possible perspective, yet, if the present public order in South Africa is criticized in view of the minimal standards of human rights and constitutional law, it is only fair to apply the same standards also to the political and legal concepts of the present opposition.

This intention can easily lead to misunderstandings. Doubtless, the question about theological criteria of political legitimacy, raised by whites in Western Germany, rouses the suspicion of being an expression of neo-colonial ignorance and patronage. To this, only three remarks: firstly, it is by no means a foregone conclusion that practical solidarity results in a form of partiality which precludes any critical questions from being asked. Secondly, in our formulation of the question, an attempt has been made to accommodate different impulses from South Africa itself, which rightly led to a more intense discussion of the Freedom Charter. And thirdly, I am of the opinion, without being able to explain this here in detail and without a direct reintroduction of concepts of natural right, that criteria of political legitimacy can indeed be developed, without falling in an ethnopluralistic value relativism.²

With that, the motive and the context for the following deliberation is defined: it is a presentation and analysis of the Freedom Charter with the aim of providing church bodies with viewpoints necessary, for an adequate understanding of this document and, therefore, also to develop a basis for more binding talks with the liberation movements in southern Africa.

This interest needs to be specified in view of the incalculable problems encountered within the hitherto prevailing church discussions about the liberation movements. Against the background of German history, within which resistance and liberation attempts can only rarely be connected with positive experiences, many official church statements have been oriented towards the problem of violence and, because of the necessity of the so-called 'peaceful change' in South Africa (and Namibia!), kept their distance from the libera-

2 Concerning the criticism of pluralistic-relativistic concepts, compare recently Böckenförde (1987).

tion movements who no longer exclude violence from their strategies and actions.³

Contrary to this, the possibility of a self-defence - right of resistance has been recognized and specified in the theses on 'Gewalt und Gewaltanwendung in der Gesellschaft' (1973) formulated by the Commission of the EKD for Public Responsibility. In particular in the 10th thesis, the conditions for a legitimate right of resistance were formulated which apply to the liberation movements of South Africa with a rare clarity.⁴ As ultima ratio in view of a grave and long lasting tyranny or inhuman living conditions a violent liberation struggle can be considered, in so far as the concept of a new, functional order exists, that for its part guarantees the standards of human rights for all.

With reference to the Freedom Charter and these theses it was established in October 1982 in the memorandum "South Africa: Christian Faith and Resistance"⁵ that the exceptional use of counter-violence on the part of the ANC must be affirmed and accepted also for the reason that the Freedom Charter contains "clear principles that fully agree with the Charter of Human Rights and also grant the hitherto oppressors room to live".⁶ The memorandum has further comprehensively documented that all attempts in South Africa (and Namibia) to achieve a non-violent removal of the structural conditions of injustice were answered with more severe oppression by the state.⁷

This situation has deteriorated in a frightening manner in past years. With the declaration of the State of Emergency in June 1986, at the latest, the white Government of South Africa showed not only its unwillingness but also its incapability to bring about reforms. The question about the significance of the Freedom Charter for a future South Africa can therefore only be asked with credibility if it is recognized at the same time that the white Government has not only lost its political legitimacy, but has given up every chance of 'peaceful change' with its 'declaration of war' against the black population.

The consequences of these developments for church conduct within the Federal Republic of Germany therefore must be formulated clearly in an assessment of the Freedom Charter. First of all, it should be noted that a

3 Compare, as an example, the 'Memorandum zum Verhältnis der Evangelischen Kirche in Deutschland (EKD) zum Ökumenischen Rat der Kirchen (ÖRK)' (1979).

4 Gewalt und Gewaltanwendung in der Gesellschaft (1978), 81.

5 Printed again in the appendix of this volume.

6 This volume, p. 236.

7 Loc.cit., p. 217 ff.

responsible attitude towards violence in South Africa can no longer be determined only by the wish for 'peaceful change'. In the face of the escalation in the direction of civil war, caused by the incapability of reform on the part of the whites, only a strategy of limiting damage will now make possible the unavoidable transfer of power to the black majority of the population.⁸ In this connection it is also important to analyse carefully and to reject the obvious attempts of the white South African propaganda to criminalise the liberation movements. The question about the significance of the Freedom Charter as a base for a liberated and legal South Africa is therefore also linked to the wish to undermine the attempts in the Federal Republic of Germany, to portray the present resistance in South Africa as illegitimate.

After short remarks about the development of the Freedom Charter (Part I) it will first of all be compared to the relevant corresponding provisions of the Basic Law of the Federal Republic of Germany (Part II). Then a few examples of current appeals to the Freedom Charter will be described (Part III); after which the question of the scope of controversial concretizations of the principles of the Charter will be examined (Part IV). Finally, theological criteria of political legitimacy with regard to this document and its potential interpretations will be discussed (Part V).

1. THE DEVELOPMENT OF THE FREEDOM CHARTER

The Freedom Charter was passed by a Congress of the People, attended by 2 884 delegates on 25/26 June 1955 in Kliptown, a suburb of Johannesburg reserved for 'coloureds'. Of these, 320 were Indians, 230 coloureds and 112 whites.⁹ The significance of this event can only be understood if one briefly recalls the background; at the same time the reasons for the controversial opinions about the Charter, which existed then, and still exist today, can be explained.

8 Concerning this, compare in detail the 'Denkschrift der Vereinigung von Afrikanisten in Deutschland e.V.' (1986).

9 Lodge (1985), 71. *Suttner* presents basic information about the Freedom Charter. *Suttner/Cronin* (1985) present informative reports by contemporaries on the origin. (R. Suttner is at present in custody under the conditions of the state of emergency; compare Weekly Mail of 12.06.87, 1, and of 26.06.1987, 16f. I have a letter from the Directorate of Publications, Cape Town, dated 26.06.1987 in which the book by *Suttner/Cronin* is banned as "undesirable". It was however, at the same time displayed in shop windows in Johannesburg in full view of the police and for sale in book shops.) In a two page advertisement of the United Democratic Front (UDF) the Weekly Mail of 26.06.1987 (South African Freedom Day) printed the text of the Charter (16f).

1. Black resistance has marked the history of South Africa for more than two centuries. The ancestors of the present-day 'Boers' and 'English' did not come across uninhabited land, but in the process of their taking possession of the land, they drove away and subjugated the indigenous population. The Zulu Wars during the 19th century brought the whites to the verge of defeat, before the British could overcome the resistance by military means.¹⁰

It is not necessary to expound the most important political developments here. After the so-called Boer War (1899 -1902) a constituent assembly of delegates of the four colonies (the Cape Colony, Natal, Transvaal, Orange Free State) was convened in 1908 to outline an Act of Union. Both chambers of the British parliament accepted the law proposing the formation of the Union of South Africa, which was enforced by royal decree on 31.05.1910. South Africa remained a dominion of the British Empire, or was a member of the Commonwealth, until 1961.

The constitution of the Union of 1910 retained (qualified) franchise for blacks only in the former British Cape Colony.¹¹ In 1913 the Land Act ordered that blacks could only acquire and own land in reserves which covered only about 9 million hectares (=7,3 %; later 13 % of the surface of South Africa). As from 1920 racial legislation in the narrower sense began, which have increasingly isolated and taken away the rights of the black majority¹² and still determine the political, economic and cultural structures of the country up to the present day.

2. Black resistance was first formed in the Cape Colony and in Natal.¹³ A petition submitted to the British Parliament not to pass the Act of Union was disregarded. Then on 08.01.1912 the South African Native National Congress (SANNC) was founded in Bloemfontein, renamed the African National Council (ANC) in 1923. The spokespeople belonged predominantly to the small professional middle class and maintained close contact with the tradi-

10 Compare the first chapter in *de Klerk* (1975), 3-122. A concise summary is given by *Kühne/Braun* (1986), 22-30.

11 In 1909 for 5 %, in 1936 for 2,6 % of the voters. I am indebted for this information to Fr. Ansprenger whom I would moreover like to thank for critical remarks and suggestions on a first version of this contribution.

12 A concise outline of the legislation in the appendix to the original German Version of the memorandum "Südafrika: Bekenntnis und Widerstand", epd-Dokumentation 46 a/1982, 16f; more comprehensive in *Sodemann* (1986).

13 Sources: *Karis/Carter* (1972), vol.1.

tional elite of their peoples, especially to the rural chieftainship.¹⁴ The first chairman of the Congress was the theologian Dr. J.L.Dube who had been trained in the USA and who founded and was in charge of the Ohlange Institute, a boarding-school.¹⁵ The Congress committed itself in a moderate way to peaceful and equal co-existence with whites. Until 1960 it was strongly influenced in its actions by the example of Ghandi.

After World War I the effects of the wartime economy and the accompanying increase in industrial jobs led to a growing class-consciousness amongst black workers.¹⁶ Immediately after the end of the war a unified trade union that was only poorly structured - moreover, soon with an anti-communist tendency - the Industrial and Commercial Worker's Union (ICU) was founded. This union was again dissolved at the end of the twenties, while the Communist Party of South Africa (CPSA) which emerged from the Labour Party survived the gruelling tests of the communist movement through the 'purges' of the Stalin era.¹⁷

During the twenties a first clear disillusionment regarding the hitherto existing course of the ANC came about, because peaceful protest was not able to offer any resistance to white racial legislation under the Prime Ministers Smuts and Hertzog. A reaction to this was the abandonment of the concept of equal status and integration and the turn towards separatist concepts of Black authenticity; the demand for a native republic was a slogan of the Comintern at the end of the twenties and, as Lodge thinks, influenced by the ideas of Garveyism¹⁸, an early form of exclusive Black Consciousness.

3. During the forties the black section of the population increased enormously; the overpopulation of the reserves and the living conditions on the white farms forced more and more blacks to go and work in white industrial areas. Of considerable importance for the organization of black resistance

14 *Lodge* (1985), 3.

15 Concerning Dube (1871-1946), compare *Ansprenger* (1987). Also enrolled at the school was A. Luthuli (1898-1967), later president of the ANC (1952) and Nobel prize-winner for peace; compare *Luthuli* (1963), 32 and 72.

16 *Lodge* (1985), 4 f. - For a case study from the sphere of the iron-foundries compare *Webster* (1985), esp. 23-44.

17 According to *Lodge* (1985), 7, the party that included whites and blacks was indeed small, but thoroughly organized according to the Leninist model.

18 According to *Ansprenger* the (white) CPSA-leadership was opposed to the slogan of 'native republic', but in vain. Concerning 'Garveyism' compare *Lodge* (1985), 8 f. - M.A.Garvey (1887-1940) propagated a 'back to Africa'-campaign in the USA since 1920 and founded the Universal Negro Improvement Association (UNIA).

were, amongst others, the first bus boycotts of 1940 and 1942 which started in Alexandra, which was, like Sophiatown, one of the "freehold suburbs" of Johannesburg, in which Blacks still retained property rights.¹⁹

During these years two issues stood at the centre of the conflict within the black opposition²⁰: the effectiveness of a militant resistance and the option of an African nationalism. The latter, indirectly preceded by Garveyism, led in 1959 to the split of the Pan African Congress (PAC) under R. Sobukwe²¹ from the ANC and in the sixties to the founding of black trade unions and the Black Consciousness Movement (BCM) whose most noted spokesperson, Steve Biko, died in detention in 1977.²²

Especially the younger members of the ANC demanded increased militancy as well as the rejection of the white leaders. In 1943 the Youth League of the ANC came into being, from which emerged the later dominant figures of the Congress such as A. M. Lembede, O. Tambo, W. Sisulu, R. Sobukwe and N. Mandela.²³ Here it is not possible to go into detail about the connections to the trade unions, especially with regard to the African Mineworker's Union (AMU), or connections abroad, especially with regard to the Communist Party of South Africa. However, the outcome of the first Parliamentary elections after the war (1948) must be mentioned, which brought the still ruling National Party (NP) to power and gave the country a further swing to the right, resulting in the extensive apartheid legislation of the fifties and sixties. A reaction to this was the Defiance Campaign through which the ANC in 1952 called for the violation of the new laws.

4. The convocation of the People's Congress which passed the Freedom Charter must be seen against this background. The origin of this meeting is gen-

19 *Lodge* (1985) paradigmatically deals with the destruction of Sophiatown in chapter 4 (91-113). Compare also the report by eyewitness *Huddleston* (1960), who still knew Sophiatown "as if I would see an Italian village somewhere in Umbria" (117).

20 *Kühnel/Braun* (1986), 24.

21 The African Nationalists such as Sobukwe, criticized especially the formulations of the Freedom Charter which could be interpreted as a protection of the rights of (national) groups; in addition, there were differences in opinion over the question of the relationship of mass movements and (cadre-)organisations; compare in detail *Lodge* (1985), 83 ff.

22 Concerning Biko, compare the not uncontroversial book by *Woods* (1978).

23 Compare *Lodge* (1985), 21-23. For detailed information on persons with regard to the opposition as well as the white establishment compare *Gastrow* (1985; second edition 1986). Brief comments on important figures of the ANC in *Karis/Carter*, vol. 4 (1977).

erally ascribed to Z. K. Matthews, Professor at the University of Fort Hare.²⁴ After Matthews had launched the plan in August 1953, subsequent to a trip to the USA²⁵, the preparations entered into a decisive stage during 1954. The body responsible for the Congress was the Congress Alliance to which there belonged, apart from the ANC, the South African Indian Congress (SAIC), the South African Congress of Trade Unions (SACTU), the South African Coloured People's Organization (SACPO) and the (white) Congress of Democrats (COD).²⁶ After the National Party had secured its position by an election victory in 1953, the most important arrangements for the People's Congress had to be made under the eyes of the security police²⁷ in a climate of intensified repression. A National Action Council acted as liaison committee, to which two representatives of each responsible body were delegated. Admittedly, Luthuli was, as chairman, hardly able to act, as he had, besides being banned, suffered a stroke at the beginning of 1955.

There are two explanations for the creation of the Freedom Charter, which only appear to exclude one another. Accounts of the ANC, amongst others, emphasize that the congress in Kliptown was preceded by the most extensive mobilization campaign that South Africa had up to then experienced: thousands of "freedom volunteers" were sent onto the streets, into markets and factories and onto farms, into the houses and huts in order to receive the complaints and suggestions of the black population. In a circular of January 1955 the task of these volunteers is explained as follows:

"The Freedom Charter will be the Charter of the demands of all the South African people for the things that they want to make their lives happy and free. It will be a document to guide all

24 *Luthuli* (1963), 187; *Lodge* (1985), 71. - The University of Fort Hare near King Williamstown/Port Elizabeth is, since the introduction of Bantu education, reserved for Xhosa speaking blacks; N. Mandela and O. Tambo amongst others studied here before they were expelled after student riots (*Lodge*, 27).

25 *Lodge* (1985), 69. - Matthews and Luthuli were, for a while, colleagues (*Luthuli*, 46). From 1961 to 1966 Matthews was, as staff-member of the World Council of Churches, the Secretary for Africa in the Department for Interchurch Aid, Refugee and World Service (ICARWS)), thereafter ambassador of Botswana in the USA. He published the second preparatory volume for the Geneva conference on Church and Society under the title 'Responsible Government in a Revolutionary Age' (New York - London 1966). In his old age Matthews sacrificed his pension rather than subjugate himself to the provisions of the Separate Universities Act; so *Luthuli* (1963), 46 f.

26 Over and above that, SACPO gained no further significance and COD did not operate in exile.

27 Compare *Luthuli* (1963), 197; *Lodge* (1985), 67-90. Extracts from police reports from Kliptown can be found in *Karis/Carter*, vol. 3 (1977), 184-204.

our future work, but it will be written by the ordinary people themselves, through the demands that they themselves send in."²⁸

On the other hand, the text of the Charter was outlined by a drafting committee which was supposed to sort out and evaluate the petitions of the volunteers. On the basis of the information in the most important relevant source,²⁹ L. Bernstein is generally considered to be the most important co-author.³⁰ The draft copy was introduced paragraph by paragraph at the congress in Kliptown, commented on by improvised statements and then approved by acclamation (by show of hands - Lodge). Yet the basic democratic development³¹ and the acclamation of a completed text do not have to exclude one another as the result was evidently regarded as representative and authentic by most participants.

5. Already soon after the congress the text of the Freedom Charter met with two criticisms which have accompanied the reception of the document up to the present day. The first criticism came from the quarters of the Liberal Party which feared that the Congress of Democrats (COD) had manipulated the results in the basis - meetings; the critics considered the COD to be a communist front-organization. The point here was, amongst others, the question of the socialist implications of the Freedom Charter - a controversial aspect up to the present day.

The other criticism was sparked off by those phrases that speak of national groups and races, because this was regarded as conforming to 'white' ideas and, in addition, a clear 'black' option was missed. This criticism also determined the detaching of the Black Consciousness Movement from the Freedom Charter which could later be observed. But before I explain the reception problems and thereby the current significance of the Charter, the contents must be outlined.

28 The wording of the circular in *Sutner/Cronin* (1986), 17-20 (here 17). The book also contains interviews and (some) documents about the preparatory phase of the Peoples Congress.

29 *Carter/Gerhart/Karis* (1977), 93.

30 Concerning Bernstein, about whom obviously very little is known, compare the short biography in *Ansprenger* (1987), 156. *Lodge* (1985) mentions that neither Luthuli nor Matthews saw the wording of the Charter before its presentation (71). According to another version, Joe Slovo should be considered as the author of the Charter; thus B. Hlapane according to *Ansprenger* (1987), foot-note 57.

31 This aspect is affirmed by the documents in *Sutner/Cronin* (1986).

2. THE FREEDOM CHARTER AND THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY - A COMPARISON

Frank Chikane, the new Secretary General of the South African Council of Churches, has praised the Freedom Charter because it sums up the complaints of the people and the basis of the aspired new order in simple language, and A. Nolan, previously Provincial of the Order of Dominicans in the Cape Province is of the opinion that no contradiction can be detected between the Freedom Charter and the Catholic social doctrine.³² For some, however, the wording of the Freedom Charter is too vague, for others it is too pinned down to socialist options; the government has banned it as being too subversive, or at least as being "undesirable".³³

Possibly one can come to a differentiated assessment if one compares the content to the relevant provisions of the Basic Law of the Federal Republic of Germany by means of a synopsis (the presentation follows the structure of the Freedom Charter):

Freedom Charter

WE THE PEOPLE OF SOUTH AFRICA
DECLARE FOR ALL OUR COUNTRY
AND THE WORLD TO KNOW

Basic Law of the Federal Republic of Germany

*Preamble: The German People (...)
Conscious of their responsibility before God
and men,
Animated by the resolve to preserve their
national and political unity and to serve the
peace of the world as an equal partner in a
united Europe,
Desiring to give new order to political life for
a transitional period,
Have enacted, by virtue of their constituent
power, this Basic Law for the Federal Republic
of Germany.
They have also enacted on behalf of those
Germans to whom participation was denied.
The entire German people are called upon to
achieve in free self-determination the unity
and freedom of Germany.*

32 Both statements in *Suttner/Cronin* (1986), 235-237 and 227-29 respectively. Chikane and Nolan substantially contributed to the Kairos document, probably the most important witness of the Confessing Church in South Africa.

33 Compare foot-note 9 above.

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 equal, 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 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 right of the people shall be the same, regardless of race, colour or sex;

Art. 20 I: The Federal Republic of Germany is a democratic and social federal state.

Art. 20 II 1: All state authority emanates from the people.

Art. 3 I: All persons shall be equal before the law.

Art. 3 III: No one may be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.

Art. 20 II 1: All state authority emanates from the people.

Art. 38 I: The deputies of the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders and instructions, and shall be subject only to their conscience.

Art. 38 II: Anyone who has attained the age of eighteen years shall be entitled to vote; anyone who has attained full legal age shall be eligible for election.

Art. 33 I: Every German shall have in every Land the same political (staatsbürgerlich) rights and duties.

Art. 33 II: Every German shall be equally eligible for any public office according to his aptitude, qualifications, and professional achievements.

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

ALL 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 the 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 on land ownership on a racial basis shall be ended, and all the land redivided 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 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 prison farms shall be abolished.

Art. 33 III: Enjoyment of civil and political rights, eligibility for public office, and rights acquired in the public service shall be independent of religious denomination. No one may suffer any disadvantage by reason of his adherence to or non-adherence to a denomination or ideology.

Art. 20 I: The Federal Republic of Germany is a democratic and social federal state.

Art. 3 III: No one may be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.

Art. 12 I: All Germans shall have the right freely to choose their trade, occupation, or profession, their place of work and their place of training. The practice of trades, occupations, and professions may be regulated by or pursuant to a law.

Art. 14 I: Property and the right of inheritance are guaranteed. Their content and limits shall be determined by laws.

Art. 15: Land, natural resources and means of production may for the purpose of socialization be transferred to public ownership or other forms of publicly controlled economy by a law which shall provide for the nature and extent of compensation. In respect of such compensation the third and fourth sentences of paragraph III of Article 14 shall apply mutatis mutandis.

Art. 11 I: All Germans shall enjoy freedom of movement throughout the federal territory.

Art. 12 II: No specific occupation may be imposed upon any person except within the framework of a traditional compulsory public service that applies generally and equally to all.

Art. 12 III: Forced labour may be imposed only on persons deprived of their liberty by court sentence.

ALL SHALL BE EQUAL BEFORE THE LAW!

No-one shall be imprisoned, deported or restricted without a fair trial;

Art. 103: In the courts everyone shall be entitled to a hearing in accordance with the law.

Art. 104 I: The liberty of the individual may be restricted only by virtue of a formal law and only with regard to the forms prescribed therein. Detained persons may not be subjected to mental nor to physical ill-treatment.

Art. 104 II: Only judges may decide on the admissibility or continuation of any deprivation of liberty. Where such deprivation is not based on the order of a judge, a judicial decision must be obtained without delay. The police may hold no one on their own authority in their own custody longer than the end of the day after the day of apprehension. Details shall be regulated by legislation.

Art. 104 III: Any person provisionally detained on the suspicion of having committed an offence must be brought before a judge not later than the day following the day of apprehension; the judge shall inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. The judge must, without delay, either issue a warrant of arrest setting forth the reasons therefor or order his release from detention.

Art. 104 IV: A relative or a person enjoying the confidence of the person detained must be notified without delay of any judicial decision ordering or continuing his deprivation of liberty.

No-one shall be condemned by the order of any government official;

Art. 97 I: The judges shall be independent and subject only to the law.

Art. 101 I: Extraordinary courts shall be inadmissible. No one may be removed from the jurisdiction of his lawful judge.

The courts shall be representative of all the people;

Art. 92: Judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Laender.

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 against on the grounds of race, colour or belief shall be repealed.

ALL SHALL ENJOY HUMAN RIGHTS!

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

Art. 103 II: An act can be punished only if it was an offence against the law before the act was committed.

Art. 103 III: No one may be punished for the same act more than once under general penal legislation.

Art. 12 a I: Men who have attained the age of eighteen may be required to serve in the Armed Forces, in the Federal Border Guard, or in the Civil Defence organization.

Art. 3 III: No one may be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.

Art. 5 I: Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship.

Art. 8 I: All Germans shall have the right to assemble peaceably and unarmed without prior notification or permission.

Art. 9 I: All Germans shall have the right to form associations and societies.

Art. 4 I: Freedom of faith, of conscience, and freedom of creed, religious or ideological (weltanschaulich), shall be inviolable.

Art. 4 II: The undisturbed practice of religion is guaranteed.

Art. 7 IV: The right to establish private schools is guaranteed. Private schools, as a substitute for state or municipal schools, shall require the approval of the state and shall be subject to the laws of the Laender. Such approval must be given if private schools are not inferior to the state or municipal schools in their educational aims, their facilities and the professional training of their teaching staff, and if segregation of pupils according to the means of the parent is not promoted thereby. Approval must be withheld if the economic and legal position of the teaching staff is not sufficiently assured.

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 officials and to make wage agreements with their employers; The state shall recognise the right and duty of all who work and to draw full unemployment benefits;

Men and women of all races shall receive equal pay for equal work; There shall be a 40-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.

Art. 13 I: The home shall be inviolable.

Art. 13 II: Searches may be ordered only by a judge or, in event of danger in delay, by other organs as provided by law and may be carried out only in the form prescribed by the law.

Art. 11 I: All Germans shall enjoy freedom of movement throughout the federal territory.

Art. 16 I: No one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the will of the person affected only if such a person does not thereby become stateless.

Art. 16 II: No German may be extradited to a foreign country. Persons persecuted on political grounds shall enjoy the right of asylum.

Art. 73 III: (The Federation shall have exclusive power to legislate in the following matters:) (...)3. freedom of movement, passport matters, immigration, emigration, and extradition;

Art. 9 III 1: The right to form associations to safeguard and improve working conditions is guaranteed to everyone and to all trades, occupations and professions.

Art. 3 I: All persons shall be equal before the law.

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 contacts 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 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;

Art. 91 b: The Federation and the Laender may pursuant to agreements co-operate in educational planning and in the promotion of institutions and projects of scientific research of supraregional importance. The appointment of costs shall be regulated in the pertinent agreements.

Art. 7 I: The entire educational system shall be under the supervision of the state.

Art. 7 IV: The right to establish private schools is guaranteed. Private schools, as a substitute for state or municipal schools, shall require the approval of the state and shall be subject to the laws of the Laender. (...)

Art. 11 I: All Germans shall enjoy freedom of movement throughout the federal territory.

Art. 6 IV: Every mother shall be entitled to the protection care of the community.

Slums shall be demolished and new suburbs built where all shall have transport, roads, lighting, playing fields, creches and social centres;
Rest, leisure and recreation shall be the right of all;
Fenced locations and ghettos 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 among all our people shall be secured by upholding the equal rights, opportunities and status of all;

The people of the protectorates of Basutoland, Bechuanaland and Swaziland (Lesotho, Botswana and Swaziland) shall be free to decide for themselves their own future;

The rights of all the peoples of Africa to independence and self-government shall be recognised and shall be the basis of close co-operation.

Let all who love their people and their country now say, as we say here:

THESE FREEDOMS WE SHALL FIGHT FOR, SIDE BY SIDE, THROUGHOUT OUR LIVES, UNTIL WE HAVE WON OUR LIBERTY.

Art. 6 I: Marriage and family shall enjoy the special protection of the state.

Art. 6 II: The care and upbringing of children is a natural right of, and a duty primarily incumbent on, the parents. The national community shall watch over their endeavours in this respect.

Art. 25: The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.

Art. 25 I: Acts tending to and undertaken with the intent to disturb the peaceful relations between nations, especially to prepare for aggressive war, shall be unconstitutional. They shall be made a punishable offence.

Art. 1 I: The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.

Art. 1 II: The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

Art. 146: This Basic Law shall cease to be in force on the day on which a constitution adopted by free decision of the German people comes into force.

The short synopsis shows quite clearly, I believe, the following characteristics of the Freedom Charter:

1. The Freedom Charter is not at all a mere political declaration which can be more or less arbitrarily interpreted, but contains - though in an unusual order - important elements of a modern constitution which determine the structure of a democratic and social constitutional state:
 - fundamental principles of human rights and basic judicial rights
 - principles of a state under the rule of law
 - social state guarantees.
2. In comparison to the provisions of liberal constitutions the social state guarantees are definitely emphasized more in the Freedom Charter (education, health, work, land reform, housing). But nowhere is it stated that the guarantees of individual basic rights may be limited in favour of social state services, more than it is also possible within the frame-works for legal opportunities of socialization.
3. The Freedom Charter contains basic elements of in the independence of the political institutions; it presupposes legislative bodies, a judiciary that is separate from the executive and the classic basic judicial rights.
4. The Freedom Charter acknowledges the modern standards of human rights as well as (although rudimentary) that of international law (prohibition of violence, sovereignty, self-determination).
5. Contrary to the constitutions of socialist states, the Freedom Charter contains no general clauses which make possible the restriction or abolition of their principles in accordance with the options of the ruling party.

Apart from the question of how a constitutional outline can hold good in the political reality, which can hardly be answered anyway, the wording of the Freedom Charter gives rise to different critical queries:

1. The Charter contains almost all essential principles of human rights, but it does not see these as being an absolute limit to all state power so that all state actions would be legally verifiably bound to them.
2. The Charter does not suggest, even in outlines, the important organizational part of a constitution which would have to regulate the relationship between the authorities and institutions of the state.
3. The Charter acknowledges human rights, but no Supreme Court in which they would be actionable.
4. As a result of the missing framework for the organizational part of a constitution, important functional principles of the aspired order remain strangely undefined:
 - the relationship of government and parliament, government and opposition;
 - the status of parties;
 - the relationship of the central power, provinces and communes;
 - the demarcation of the legislative authority;

- the organization of the jurisdiction (especially the constitutional, financial and administrative jurisdiction)

These queries³⁴ of course refer throughout to problems which do not arise at the level of a basic Charter, but will only become relevant when a constitutional assembly considers recommendations on this foundation. Nevertheless, it should already be clear here, that the Freedom Charter cannot be arbitrarily interpreted and manipulated for political aims, but marks a clear progression with regard to its content, pointing unmistakably to the necessity for reconciling democratic, legal and social state principles with one another. This means that one cannot maintain the common assertion that the Freedom Charter is only a matter of vague programme points to which nobody in a post-apartheid society would have to commit themselves. The opposite is probably true: the Charter contains surprisingly far-reaching commitments, especially in those questions essential to the European sense of justice. Over and above this, it contains, without doubt, a strong symbolic power, making consensus possible, as its origin and embedment in the political consciousness of the black majority of the population of South Africa make it hardly conceivable that the government of a future liberated South Africa could shed and deny its commitment to the Freedom Charter.

3. THE FREEDOM CHARTER AND THE OPPOSITION IN SOUTHERN AFRICA

The wording of the Freedom Charter, the appeals made to this document and its future significance, impact and application are of course quite different issues. If the Charter is today the most important political basis document for the largest part of the population, this does not mean that it could, as it stands today, define the policy of state and society after apartheid, although Manas Buthelezi, a Lutheran Bishop and President of the South African Council of Churches (SACC) says:

"The Charter is a blueprint on the basis of which healthy political, economical and social structures will be built."³⁵

Yet even if one shares this view of the Charter, it is by no means certain what importance will in future be ascribed to the different principles of the Charter,

³⁴ Admittedly the Charter is silent about some issues which are important for a democratic constitutional state, but their incorporation into the Charter would not only not contradict anything, but could easily be included (secrecy of mail and post, the right of citizenship and of emigration). These issues were simply not of interest in 1955.

³⁵ Interview in : *Sutner/Cronin* (1986), 239.

how they will be associated with one another and in which perspective they will stand in regard to other principles. Laws with the same wording can of course gain totally different functions in different contexts. This is all the more so, if the extraordinary problems of a free and constitutional reorganization of South Africa are brought to mind.

There are highly controversial opinions on the question as to which conclusions one can and should draw from the documented statements of the liberation movements and opposition groups about their future political strategy. According to their conviction and propaganda the government and white majority in South Africa are of the opinion that especially the ANC is decisively controlled by communists who tend to follow Moscow's line (before Gorbachev) and are neither orientated to the tendencies of 'Eurocommunism' nor to the objectives of a democratic socialism. It is very clear that each judgement about the future significance of the Freedom Charter must presuppose well-founded assumptions about the tendencies and balance of power within the ANC - in South Africa as well as in exile. These assumptions and their presuppositions are however controversial even amongst the experts. Ansprenger states that "ANC (SA) and SACP must be seen as closely interwoven and allied organizations.."³⁶, and the fact that the Soviet Union at present has only a limited interest in these South African liberation movements with a class conflict objective, by no means contradicts this.³⁷

Outsiders can also not appreciate the significance of talks between ANC representatives in exile and those of the South African and German Federal businessmen and politicians.³⁸ Furthermore, the organizations and forces which determine black resistance are forced to go underground by the conditions of the state of emergency, and hitherto well-known key figures and representatives of the lower level of leadership are detained in large numbers without charge or judgement.³⁹ Finally, press censorship restricts access to important information, although in this regard it is often surprising what publicly accessible sources still reveal. But this information is largely limited to white sources,

36 *Ansprenger* (1978), 24.

37 The Weekly Mail of 12.06.1987 quotes the Soviet expert on South Africa, V. Gontcharov, with the words: "The Soviet Union has no so-called 'vital' interests in Southern Africa. Our country has at its disposal a big amount of mineral resources ... and the Soviet Union is not interested in the undermining of world economic relations." (13) Compare also Weekly Mail of 26.06.1987, 2; as well as the contribution by Kühne in this volume.

38 Concerning the meeting in Lusaka on 13/14.09.1985 compare Weekly Mail of 27.02.1987, 13 f. Concerning the meeting in Dakar, compare Neue Zürcher Zeitung of 12./13.07.1987 (Fernaussgabe)

39 Numerous arrested UDF representatives were named by Weekly Mail of 21.8.87.

while authentic voices of the black community are virtually condemned to silence.

Under these circumstances it is difficult to evaluate of the relevance of explicit references to the Freedom Charter and consequently to estimate its current and future political significance. The following passages should be read under this reservation.

1. Nobody denies that the Freedom Charter is *the* basic document for the ANC. At the same time, one urgently needs clarification as to precisely which institutional, strategic and operative consequences can and will be deduced from it. It is an incontrovertible fact that the ANC cites this document whenever it is asked about its programme, and the repeated assertion is undoubtedly wrong that the Charter "only contains a few guiding principles and outlines vague ideal conceptions".⁴⁰ The opposite is true, if one examines the text in an unprejudiced way.

The ANC confirmed this in 1969 at Morogoro/Tanzania in the document "Revolutionary Programme of the ANC"⁴¹ where the following is said about the Charter:

"The Charter was not a declaration of this or that population group. It was a simple, honest, modest document which reflected the hopes and ideas of millions of people. The power of its revolutionary message lay in this. And it should never be forgotten that the wording and intention of the Charter was supposed to project a picture of South Africa, not as it is today, but as the country should be and will be after the victory of the revolution."⁴²

As a whole this programme of 1969 can be seen as an attempt to reaffirm the validity of the Charter under changed conditions. Examination of this commentary shows that no part of the text of 1955 was withdrawn or qualified, but was instead confirmed in the light of the 'constitution' of the Republic of South Africa of 1961 which had come into being since 1955. It is noteworthy that even demands such as those for equal rights for 'all national groups' were once again included, although they are most controversial amongst the black population. Indeed, this 'revolutionary programme', passed 14 years after the

40 Such is the tendency of the coverage of the NZZ; besides the report from 12./13.07.1987, 13f. compare also the article: "Der ANC und der Kampf gegen Apartheid", NZZ(Fernausgabe) of 30.01.1987.

41 German translation in : Dokumente der südafrikanischen Befreiungsbewegung, Bonn 1977, 60-70. Comprehensive bibliographical data about the ANC in *Ansprenger* (1987) and especially in: A Current Bibliography on African Affairs vol. 15, no.1, 1982/1983, 2-35.

42 Loc.cit., 61

Charter, comes as a complete surprise in that it accommodates the whites when it states:

"The white population which at present monopolizes the country has made South Africa to its homeland, and in the course of time has become part of the history of the South African population and as such has a right to land."⁴³

Much can be said for the fact that the ANC has since then not undergone a fundamental change of policy. At the time of the 75th anniversary of the founding of the ANC, the *Weekly Mail* summarized - under the conditions of the state of emergency - the aims of the liberation movement as follows⁴⁴:

- parliamentary democracy with the majority principle in a unitary state structure
- 'one man, one vote' franchise
- guarantee of individual human rights which are legally actionable
- official redistribution of the national resources in favour of the blacks
- non-aligned foreign policy and membership of the Organization of African Unity (OAU).

In Lusaka in January 1987, Tom Sebina, an ANC spokesman, described the ideas of the ANC regarding a constitution as "an elaboration of the Freedom Charter which lays down the guidelines for a post-apartheid South Africa". Sebina wanted "a South African variant of social democracy" to be understood by this. The ANC obviously has no reservations against the constitutional protection of individual human rights, in so far as this principle is not misused to benefit ethnic or racial groups. It pleads for a unitary state because federalist concepts may be conducive to entrenching white superiority in another form. (A unitary state structure of course does not necessarily exclude a territorial differentiation corresponding to provinces, for example. The concept of the unitary state in regard to its communal and regional sub-structures would be clearer, if it were pointed out in which areas a legal prerogative of the central power is inalienable.)

Finally, the ANC has, in accordance with the Freedom Charter, always voted for a mixed economy which will combine the guarantee of ownership, freedom of trade and choice of profession with a still to be specified nationalization of the raw material industry, the banks and large monopolies. This demand, which is seldom more precisely specified, naturally makes differing interpretations possible. A lively, though hitherto rather academic debate, is held in

43 Loc.cit., 65 - Ansprenger thinks that Joe Slovo wrote this text.

44 *Weekly Mail* of 16.01.1987, 14 f.

South Africa about the possibilities of a mixed economy⁴⁵, but it should be noted that the degree of concentration and complexity of the larger businesses is extraordinarily high and the interdependence of state and economy is very intensive. This has led, amongst other things, to the fact that apartheid and capitalism have become synonyms for most blacks, so that one would have to suppose that the future role of private enterprise will depend largely on the conditions of the transition into a post-apartheid society. Whether there will still be room for a social democratic model, as Nelson Mandela described it years ago⁴⁶, nobody can predict today. Yet even under present conditions of an increasingly harsher conflict⁴⁷, and especially now, the ANC explains its options and strategies on the basis of the Freedom Charter.⁴⁸ According to an official contribution to a special edition of *The Yale Journal of International Law*⁴⁹, the statements of the Charter form the basis of the policy of the ANC; Mandela is quoted in the following words:

"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."⁵⁰

This position was again affirmed by representatives of the ANC towards a delegation of the SACC in Lusaka on 9 May 1987.⁵¹

2. The United Democratic Front (UDF)⁵² is in its attitude towards the Freedom Charter not really comparable to the ANC because of its totally different structure. Founded in 1983 the UDF constitutes no homogenous, centrally and firmly ruled organization, but is a loose association of about 800 anti-apartheid-organizations which still function, even if within narrow limits, under the conditions of the state of emergency, because it is not easy for the

45 Compare for example *Archer* (1986).

46 "For the first time in the history of this 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." *Mandela*, In our Lifetime (1956), in: *Karis/Carter*, vol. 3 (1977), 245-250 (247).

47 Compare *Lodge* (1986).

48 Compare only the numerous contributions about 26 June, the anniversary of the passing of the Freedom Charter, in a single issue of the *Weekly Mail* of 26.06.1987: 2.7.16 f.

49 Vol.11, no.1, Autumn 1985.

50 Loc.cit., 10

51 The text of the "aide mémoire" of the meeting in: *epd-Dokumentation* 37/1987, 44 f.

52 Compare also the review of *Barrell* (1984).

administration of repression to affect the decentralized structure.⁵³ Technically, the UDF agrees with the central demands of the ANC and the Freedom Charter, although the UDF-declaration of 20.08.83 does not expressly mention the latter and itself contains no demand for nationalization. Nevertheless, the assessment of UDF-Secretary General, P. Molefe, could be true when he states: "Two documents - a single vision".⁵⁴ These convictions were finally confirmed recently when the UDF officially adopted the Freedom Charter and called for a campaign to propagate the Charter more widely. This step has been followed by the militant youth organization "South African Youth Congress" (SAYCO). The Secretary General of the South African Bishops Conference, Smangalis Mkhathshwa⁵⁵, who has been imprisoned for over a year stated in this connection:

"The Freedom Charter provides a broad-based progressive forum for those who are committed to self-determination for the majority of the people. Nothing could be more Christian than waging a struggle for freedom."⁵⁶

In view of the vast diversity of the different UDF-groupings it is not advisable to differentiate this position further.

3. Parts of the Freedom Charter are, however, opposed by movements and groups which have emerged from the Black Consciousness Movement (National Forum and especially Azanian People's Organization). AZAPO criticizes firstly the recognition of different 'national groups' by the Charter and demands in its place the "development of one national progressive culture in the process of struggle"⁵⁷, and secondly, it represents a decidedly socialist position which goes far beyond the demands of the Charter. This position is represented in a very precise form by the philosopher and educationalist Neville Alexander⁵⁸ who spoke on 'Nation and Ethnicity in South Africa'⁵⁹ at

53 Increasingly, there are attempts to arrest and intimidate individuals known to be UDF-supporters - especially blacks and such on the second and third level of leadership; see foot-note 39 above.

54 Quoted in: *Suttner/Cronin* (1986), 206.

55 Short biography in *Ansprenger* (1987), 160; more detailed in *Gastrow* (1985), 185-187.

56 Report and quotation according to *Weekly Mail* of 26.06.1987, 2. In the same issue there is a two page call by the UDF with the complete text of the Charter printed on a full page.

57 Quotation according to *Adam/Moodley* (1986), 99. - Concerning the National Forum, compare especially the interview with S.Cooper and L. Ntloko in the journal *Work in Progress* 42, May 1986, 20 - 24.

58 Compare *Gastrow* (1985), 27-29.

59 German translation now in *Alexander* (1985), 41-56.

the first meeting of the National Forum in Hammanskraal in 1983 and explained that the national struggle against racial oppression and the class conflict against capitalist exploitation must unite, if the process of liberation is not to bring forth new divisions again and again. "Class, colour and nation converge in the national liberation movement."⁶⁰

In this position it is noticeable that class conflict and adult education⁶¹ are seen in close interaction, but one hardly encounters deliberations about the political form, not to mention the questions about the future legal order. Finally, it should be noted that AZAPO distinctly and clearly emphasizes the necessity for a far-reaching land reform and thus goes far beyond the Freedom Charter which remains quite unclear on this point.

4. As far as I can judge up to now, G. Buthelezi⁶² and his Inkatha-movement do not quote the Freedom Charter. They emphasize in its place "the widely accepted black political ideas and principles which were first formulated by the founding fathers of the ANC in 1912 and as they were actualized in black political experience".⁶³ The (shortened) German version of the Buthelezi-report⁶⁴ does not mention the Charter. In essence the report pleads for a consolidation of Kwa Zulu and Natal under a mixed administration, a 'one man, one vote' franchise and a socially tempered market economy. In July 1986 Inkatha submitted a Bill of Rights for Kwa Zulu/Natal of which the text confined itself mainly to the recording of basic legal rights.⁶⁵ Independent of the extremely controversial role of Inkatha, these remarks can be left at that because of the obvious disinterest in the Freedom Charter.

5. cursory reference can be made to the reaction of the church to the Freedom Charter. It is well-known that the Charter speaks out in favour of "the right to preach, to worship and to educate their (ie the people's) children", but institutional guarantees for the religious societies are not given. By state

60 Loc.cit., 53 f.

61 Here Alexander explicitly establishes agreement with the Freedom Charter: *Alexander* (1985), 165 f. That the National Forum aims at cultural uniformity, as *Adams/Moodley* (1986), 99, fear, is impressively refuted by the publications of Alexander and the institutions for adult education which were established by him.

62 Compare only his talk in Bonn: *Buthelezi* (1983).

63 As in an information paper on the occasion of Buthelezi's visit to the Federal Republic of Germany in November 1986.

64 Buthelezi commission (1982). Concerning the constitutional political ideas in this connection, compare *Boulle* (1982) and *Venter* (1982).

65 A German version was circulated in the Federal Republic of Germany by the Adenauer-Stiftung.

church law, South Africa today has formally a strict system of separation between church and state and one can assume that this as such will in future also not hinder, but rather promote the activity of the churches. It is surely no coincidence that church statements about the Freedom Charter do not stop at the rudimentary statements of freedom of religion, but appreciate its political, economic and legal content.⁶⁶ This need not be reviewed here in detail.

6. The significance of the Charter for the programmes and strategies of trade unions in South Africa is not easy to assess.⁶⁷ On the one hand, it is true that the relevant passages of the Freedom Charter for the economic order in particular cannot be directly translated into practical trade-union demands, although the Charter quite clearly contains skeleton provisions for a future economic system. On the other hand, the trade unions have to concentrate on economic and industrial-political issues, if they do not wish to be brought to a standstill by political restrictions. The parent organization of the South African trade unions, the Congress of SA Trade Unions (COSATU), has officially accepted the Freedom Charter as well as the second largest trade union in the history of South Africa, the National Union of Mineworkers in SA (NUM). They announced that this document should in future be supplemented by a worker's charter.⁶⁸ This shows that the trade unions are clearly aware of the necessity to fill the framework of the Charter by concretization.⁶⁹

4. THE FREEDOM CHARTER AND THE FUTURE OF SOUTH AFRICA

If one enquires into what the future significance of the Freedom Charter is, it is necessary to bring to mind the most important problem areas with which a post-apartheid South Africa will be confronted. The existing structures, the power relationships, the internal and foreign interests and the natural resources, not less decisively than the politico-economic chances of development, determine the scope of a future liberated society. The burdens of the 'Ancien Régime' cannot be removed from one day to the next. The enormous burden of a new start cannot be overestimated. At least in the following areas basic decisions will possibly have to be taken quickly and the course set: on the question of land, on the economic system, on the political order (constitution,

66 Compare the statements in *Suttner/Cronin* (1986), 222-246.

67 Concerning latest developments compare *Friedman* (1987).

68 Weekly Mail of 29.05.1987, 11.

69 Compare also the, on the whole, minimally productive passage "In the worker's interest" in *Suttner/Cronin* (1986), 143-148.

administration, orientation in foreign affairs) and on the questions regarding the education system and the sciences.⁷⁰ By no means have all the future points of controversy been mentioned in this short list, only key areas have been emphasized and nobody can overlook the possible interdependences between these areas from which certainly a greater intensification of conflicts could arise. But it may be helpful to sketch at least in the perspective from Europe some of the possibilities and impediments in a post-apartheid order, which can already now be detected. For it is in view of these highly explosive problems that the Freedom Charter will have to be concretized if it is to show the way to a liberated South Africa.

The political scope on this way will be narrow. Already today transition crises are predicted for southern Africa which could overshadow the civil war in the Congo at the beginning of the sixties while others point towards the development in Zimbabwe between 1975 and 1980 as a successful example of peaceful change.⁷¹ Some conflicts can easily be forecast under present circumstances, but nobody can know which critical situations will really arise. With these strong provisos, some relevant opportunities and dangers, which will probably arise in the course of the Freedom Charter being realized, will be pointed out in broad outline.

1. Agriculture⁷²

A free South Africa will be a developing country. The Freedom Charter demands that restrictions to landownership on the grounds of race be lifted and that land shall be divided amongst those who work it. The state shall support the farmers with implements, seed and melioration measures. These demands include the dissolution of the existing homelands. Whether and how this can be realized against the bitter resistance that can be anticipated from the established regimes dependent on white South Africa, is an open question. But what will happen then? Restitution or a new division of the land is a standard demand of black politicians. Is there as a basis a system of registering land which would cover the total surface of South Africa? Should there be dispossession without compensation or should one pay compensation? Which size of enterprise, which organizational and legal forms are aimed at in agri-

70 Sheena Duncan, in a contribution for a colloquium on South Africa at the University of Yale, emphasized the problem areas concerning the question of land, bureaucracy and rule of law; compare *Duncan* (1985).

71 Concerning this, there is an extensive documentation of the Hamburg Institute for African Studies: *Baumhögger* (1984).

72 In this part formulations of K. Nürnberger, Pretoria, have been included, which he kindly put at my disposal. Compare also *Nürnberger* (1971).

culture? Should the path of socialist collective farming or that of capitalist agrobusiness be favoured? In both systems small and medium agricultural concerns generally collapse.

South Africa's agriculture is very limited in its possibilities by the climatic features and the condition of the land.⁷³ Arable farming is only possible in the east, especially south-east, along the whole coastal strip up to the Cape Peninsula and in the Highveld of Transvaal and the Orange Free State (Maize Triangle). The limits of possible agricultural use are clearly indicated by the fact that 65% of the surface of the Republic obtains less than 500mm precipitation per annum.⁷⁴ With that the limits of possible expansion of the (to a large part) extensive sheep and cattle farming are also already indicated.

The dramatic aggravation of future agricultural problems only becomes clear if one understands the employment structure and property-ownership ratios. About 200 000 people, for example, earn a livelihood from the cultivation of sugar-cane in Natal. While blacks in approximately 3500 enterprises of the smallest category produce only 2,5% of the sugar cane harvest, 2000 white enterprises produce seventy percent of the harvest on medium-sized enterprises, averaging 120 ha, by means of cheap black seasonal labour.⁷⁵ The circumstances are different in fruit and wine growing of the Western Cape, again different in maize cultivation or in cattle farming. While sugar-cane and maize are already cultivated mainly in large enterprise units and could in this respect be transferred to a co-operative form of ownership, such a development is hardly conceivable in other areas.

A further problem is the extraordinary ecological vulnerability of the land and the vegetation cover. In order to stop galloping erosion in many tribal areas, money, training and local expertise are necessary.⁷⁶ In the meantime the widespread simple subsistence farming in the Homelands in many places apparently requires the support of money-making relatives in the 'white' areas. Although communal landownership often still exists, the productivity is understandably low. Over and above this, the Homeland regimes favour firms

73 Compare *Klimm/Schneider/Wiese* (1980).

74 *Loc.cit.*, 36. Compare also the graphic map, 52 f.

75 *Loc.cit.*, 70.

76 It is certainly possible that the available black 'human capital' could be activated after it had been dequalified under the conditions of apartheid; compare *Keenan* (1982). Concerning this in detail *Onselen* (1982).

of agrobusiness which are interested in maximum profits, but not in balanced development.⁷⁷

These examples can only suggest some problems which are already obvious. Nevertheless, the agricultural policy in Zimbabwe⁷⁸ has shown that, with relatively good net profits, the subsistence economy can in quite a short period be changed to market orientated production, which yields the producers increasing profits. Due to this, Zimbabwe can also export food. If, as in many countries in the Third World, the state intervenes in favour of urban dwellers to keep the agricultural prices down, the farmers must become poor.

Under these conditions the following scopes and options for a realization of the Freedom Charter can be mentioned in a first approach:

- a) Big farms can be divided into small enterprise units which could at market orientated prices give the producers at least a profit similar to the lower income groups in the cities. Thereby the results of the suspected uncontrolled emigration from the Homelands to the densely populated areas in the cities could be mitigated, not prevented.
- b) Large-scale farms belonging to agrobusiness as well as those belonging to owners, who have other primary incomes and visit their, in some cases, lordly estates only at weekends or during the holidays could be dispossessed under certain (legal) circumstances. Although dispossessions without compensation can certainly be justified morally, they are for many reasons often counter-productive (loss of confidence, kindling of ethnic tensions etc.). Compensations at market prices would, conversely, probably lead to bankruptcy of the state. A politically acceptable compensation could, however, possibly result from an agricultural fund which would have to be financed by those states who want to back up their criticism of the apartheid state with actions.⁷⁹
- c) Dispossessions would probably be made where land only passed into white hands through the resettlement of black owners and new boundary markings. It would be difficult to fix a date; redistribution will be the result of the power game.
- d) The state would probably have to grant, in a transitional phase, next to extensive financial aid, support also to co-operative institutions. In so doing, it could partly continue with existing co-operative institutions, but would

77 Further information is contained in the hectographic reports of the Transvaal Rural and Development Programme (TRADP) of the Department of Social Anthropology of the University of the Witwatersrand.

78 However, 54% of the land was in black hands, while it is less than 14% in South Africa; *Duncan* (1985), 19.

79 Certainly this suggestion has grotesque features: Giving financial aid to a developing country in order to protect the rich against impoverishment!

probably have to begin fundamentally new developmental work in the homelands.

e) Finally, the opening of overseas' markets to South African agricultural products should be mentioned as a potentially desirable supporting measure. Whether and how this can be done is totally open and uncertain, particularly with regard to the agricultural policy of the European Community.

f) Moreover the agricultural policy of a liberated South Africa will continuously be confronted with problems of extreme disparity. Next to a technically highly developed agricultural industry with high productivity there will be totally underdeveloped areas of subsistence farming in the same country. In this manner the North-South conflict concentrates itself in one country. Whoever knows the problems of European agricultural politics, will hardly have illusions with regard to the solvability of the agricultural problems in South Africa.

2. *Economic System*

With regard to the future development of trade and industry even speculative considerations are totally uncertain. Nobody can predict which economic development will be probable when the distortions of the present national economy determined by apartheid are removed. It cannot be denied (1) that there is a big demand for all sorts of goods and services, (2) that there are workers who are to some extent well trained (3) that the country has a uniquely good provision of mineral resources and (4) that the level of organization of trade unions will probably be high under free conditions.

The Freedom Charter states three main demands: (1) The mineral resources, the banks and monopoly industry shall be transferred to the ownership of the people as a whole. (2) All other industries and trade shall be controlled to contribute to the wellbeing of the people. (3) All the people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions. Thereby nationalization, the obligation of public welfare and market freedom are proclaimed in just about one breath. It is obvious that numerous conflicts and incompatibilities will follow in the course of the abolition of apartheid.

Nevertheless, the following primary conditions can at least be presumed:

(a) A black majority government will be confronted with the question of whether and in what form they can and will guarantee freedom of contracts, tariffs, trade and crafts. A consequent socialist planned economy according to the example of the countries belonging to the COMECON (Council for Mutual Economic Assistance) would hardly stand a chance. It is probable that on the labour market there will be a displacement competition between

adequately educated blacks and whites fighting for their jobs.⁸⁰ The danger of a political radicalization of those whites who are threatened by social decline is evident. Nevertheless, a black majority government will have to open the labour market for non-whites without discrimination. Nobody knows whether these developments will have chaotic results or whether, because of an excess demand and an increasing supply of goods and labour, the prelude to a sort of 'Wirtschaftswunder' will come about.

(b) South Africa's trade and industry has a high degree of capital concentration in a few hands. The leading position of the Anglo-American Corporation is known⁸¹, also the exceptional significance of the raw material sector⁸² for the foreign trade balance and the budget of the Republic. High capital input and well-trained engineers together with internationally experienced management are indispensable in this area, while the hard work is done by well organized black workers in trade unions. Everything indicates that a black majority government will also try to keep the know-how of white engineers and managers. Whether a nationalization of property rights is possible and appropriate will also depend on whether internationally operating corporations such as Anglo-American and De Beers can indeed be controlled in a national framework and which cost-benefit calculation will mitigate for or against nationalization.⁸³

(c) In the rest of trade and industry the interests of capital owners and the workers which are organized in trade unions naturally diverge greatly. In relation to the present situation - not to speak of the State of Emergency proclaimed in 1986/1987 - a liberalizing of the economy by freedom of employment and establishment, freedom of tariffs and association would be similar to a social revolution. For the first time the black worker class would in fact be capable of conflict with the primarily white capital. The development of the big strikes of the mine-workers in July/August 1987 points to the fact that there is a great willingness on both sides not to overstretch the economic productive power. Whether a willingness on the part of the trade unions to

80 The problem of the 'Poor Whites' stands in the background of the rise of the National Party since the thirties; compare the extensive Enquête of the Carnegie Foundation: *The Poor White Problem in South Africa* (1932). - In 1984 the same Foundation again financed an extensive inquiry: SALDRU (1984).

81 Compare *Pallister/Stewart/Lepper* (1987).

82 *Klimm/Schneider/Wiese* (1980), 122-148 (concerning diamonds, gold, uranium, coal, iron-ore, asbestos, platinum, chrome).

83 Concerning the monopoly development, compare the recently contribution of R. Davies for the 'Conference on the Southern African Economy after Apartheid' in York, United Kingdom, September/October 1986, compare *Davies* (1987); reference numbers of the most important groups of entrepreneurs are in the appendix. Extensive dates offered in *Davies/O'Meara/Dlamini* (1984).

compromise can be maintained even under the increasing expectations which black majority rule must rouse (and satisfy?) cannot be forecast.

(d) The critical opposition in South Africa sees that 'nationalization' in the area of the economy at the start does not mean more than "a change in the legal form of property".⁸⁴ For the dependently employed workers the change of property rights from a private owner to the state must certainly not result in a noticeable change in their income situation, their rights and chances in life. The Freedom Charter, however, obviously aims at a redistribution of the social wealth⁸⁵ in combination with a qualified participation for the workers in economic decisions. In talks with proponents of the economic aims of the Charter there are often demands for an (extensive) self-management by workers, covering at least qualified managerial and overall participation. The spectrum of these suggestions is very wide. "The People shall share in the country's wealth" is a demand of the Charter which can certainly only be concretized and eventually realized in a process full of conflicts. *That* the present distribution of wealth cannot be maintained in the long term, will hardly be disputed by a thinking observer of the South African development; however, *how* the process of distribution will proceed, is surely unforeseeable.

(e) It is noticeable that most of the leaders of black resistance do not voice radical opinions in politico-economic issues.⁸⁶ Gatsha Buthelezi has for a long time pleaded for a moderately socialistic path of free enterprise. The ANC can not be pinned down precisely with regard to the economic order aimed at, and PAC and National Forum officially represent the demands for socialization with regard to the mining industry, large scale industry and banks and institutions of a socialized democracy, but they say little about possible individual measures. It can therefore be suspected that the respective decisions will only crystallize in a complicated process of power relationships, about which less can be said the longer the State of Emergency prevents the different groups of the opposition to take up their positions.

(f) Many signs indicate that a post-apartheid South Africa will have a mixed economic structure.⁸⁷ It cannot be foreseen in which form free entrepreneurship and public property can be combined in numerous or in few strategically important enterprises. The trade unions, strengthened by their reliable commitment to the liberation struggle, should play a key role - be it in the tempering of the market economy, or in the urgency of stronger participation by dependent workers. A future, orientated to free enterprise with strong

84 *Davies* (1987), 92.

85 Compare *Moll* (1986); *Archer* (1986).

86 Compare *von Lucius*.

87 Compare the report of the NZZ, Fernausgabe of 25.7.8 on two conferences of the National African Federated Chamber of Commerce (NAFCOC) and the Business School of the Witwatersrand University.

social components, will be less probable the clearer apartheid and capitalism are experienced by the black majority as being two sides of the same coin.

(g) It is also difficult to assess the effects of the interlacing of the South African economy with the world market in future. In view of the large contribution of the mining or raw material industry towards the balance of trade and the gross national product, this branch of the export economy has a sensitive key function in all future development. Although in recent years the metal quotations on the international raw material stock markets and especially the gold rate have developed favourably for South Africa, a change of trend which could be manipulated internationally is certainly conceivable. On the other hand the economic strength of the Republic of South Africa indicates that the country which is comparable to threshold countries ('Schwellenländer') such as South Korea or Brazil, could take on the economic role of a regional epicentre in the world economy. However, the extent to which the economic development will determine the internal and foreign scope of action of a black majority government cannot be forecast by anybody at present.

3. Political Order

After the comments on the significance of the Freedom Charter in the first parts of this contribution we can be concise here; it must suffice to mention a few important problems and fears with regard to the future:

(a) In the case of 'majority rule' the white minority especially fears that firstly, the constitutional guarantees (which are at present extensively denied the majority) could be undermined and secondly, that the tendency towards a one-party state noticeable in other African states will be unavoidable. Both fears prove to be founded, if one looks to the neighbouring states of South Africa. Nevertheless, it may be plausible that respect for the standards of human rights will be the more secured the more timely they are introduced and practised by the whites. Over and above this, there is the hope that a future South Africa will participate intensively in the specification and further development of the Human Rights Charter of the Organization of African Unity (OAU)⁸⁸ and thereby make an essential contribution to the legal culture of Africa as a whole. With regard to one-party rule it is not easy to see how this could be prevented if the black population should prefer such a system in future. Quorum provisions such as in Zimbabwe would be conceivable, if these could not after some time be put at the disposal of a majority. It is in this key issue that the significance and necessity of transitional rules on the way to a 'National Convention' and a democratic and legal constitution for the Republic of South Africa show themselves.

88 The text is printed in the appendix in *Nowak* (1986), 403-410.

(b) From contrasting positions of interest whites as well as blacks see the established bureaucracy as a major problem on the way to a post-apartheid order. Sheena Duncan appropriately speaks of an "Africanization of the civil service"⁸⁹ and thereby refers to the simple fact that the administration is not only de facto 'white', but that it protects the position of power which goes with it and that it will presumably not simply subject itself to the decisions of a legislative power which is mainly black, even if it is constitutionally restricted. Added to the 'Poor Whites' threatened by poverty are then the middle-class whites who are also threatened by social decline and for whom the maintenance of their social position seems to be inseparable from the preservation of the apartheid structures. A black majority government, however, undoubtedly depends upon a loyal administration.

*There will have to be a rapid Africanization of the civil service, and new officials will inevitably be those who are supporters of the new ruling party."⁹⁰

(c) With regard to the South African security forces, the onlooker is totally at a loss. If and as far as the administration already lacks the virtue of political neutrality and loyalty towards the black majority, this applies to an even greater extent to the military, the police and the secret services. The close connection between the leading political groupings and the establishment of the security forces is known and well documented⁹¹; on all levels of the National Security Management System (NSMS) the civil administration and the institutions of the security forces are interwoven. Can it be imagined that the South African (white) officers will obey the commands of a (black) Minister of Defence or President? However, it is easy to realize that in dramatic transitional crises it is of decisive importance that an army has to be loyal towards the respective central political power if a civil war is to be avoided. Probably the biggest dangers on the way to a new post-apartheid order lie in this sphere.

4. Culture, Education and Science

Not only in talks with 'liberal' whites in South Africa can one come across the insight that a new order of power sharing as well as sharing of the economic wealth will at some stage be unavoidable. It is understandable if it is attempted in view of these conflicts to secure optimally their own material interests. Much deeper are the fears and suspicions in the realm of culture, education and language. Pointedly, one can say that many whites fear the loss of their

89 Duncan (1985), 23.

90 Loc.cit., 24.

91 Compare *Gastrow* (1986), passim.

cultural way of life, i.e., not so much the loss of power and wealth, but of their identity. (However, it is only seldomly mentioned that they persistently disregard this fear with regard to the cultural identity of the non-whites.) This fear becomes concrete (especially for the Boer identity) in the question of language, then in the new order of the whole education system.

Many fears would be cushioned if it were certain that the respect of cultural group rights could also be guaranteed legally and constitutionally under the conditions of a majority democracy. It could be argued that after decades of disqualifying 'Bantu Education' the whites could not claim a moral right to such protection of their cultural needs, but this would be an expression of revengeful thinking which is still far from the present black opposition despite all its experiences. On the contrary it can be observed that the protection of the cultural identity and diversity certainly lies within the spectrum of the Freedom Charter. It is true that there will be financial bottlenecks as it is economically unimaginable that for example the educational institutions can retain for all citizens the standards of the schools and universities which are still reserved for whites. Nevertheless, it is conceivable that a mixed system of state and private schools and other educational institutions is to be maintained that propagates and advances the cultural characteristics without racial discrimination. Cultural minority protection beyond one-sided privileges is a problem that just about every state has to solve.

The intention of these short deliberations was to point out only where the difficulties and the scope for action become visible when looking into the conditions under which the demands of the Freedom Charter could be realized. Moreover the angle of perception was probably strongly influenced by the experiences of European history. Every individual point requires depth and supplementation, but it is not a case here of adding new arguments to the extensive literature on future options of South Africa. It was rather a case of looking only at the scope given by the Freedom Charter. Thereby on the one hand, the suspicion that the Charter is only a text of a political declaration with no concretization, was to be answered, and on the other hand, it was to be stressed which contradictions and difficulties could presumably be met, if steps are taken in the direction which the Charter and therefore a large part of the black majority demand. Against **this** background the final socio-ethical assessment of the Freedom Charter **should be understood**.

5. SOCIO-ETHICAL ASSESSMENT

The Freedom Charter describes an outline for the future order in South Africa after apartheid. The previous explanations have shown to what extent this concept includes clearly identifiable constitutional commitments, but also which constitutionally politically open questions and what organizational scope and which possible restrictions may exist. The Freedom Charter is therefore a document whose significance can change considerably in extremely difficult transitional phases. Nevertheless, it is possible to determine theological criteria for the political legitimacy claimed by the Charter and to apply them to the Charter.

This assertion may astonish all those who complain about the allegedly confusing multitude of church opinions. However, I think that there is an ecumenical consensus about the basic conceptions regarding political legitimacy in the Christian churches today. It is only when this consensus has been determined that the question of differences in opinion, however they may be substantiated, may find their restricted place.

1. The Freedom Charter stands in the tradition of those modern constitutions to whose historical origin belong the Declaration of Human Rights by the French Constituante of 26 August 1789, the Bill of Rights of Virginia of 12 June 1776 as well as the French Constitution (3 September 1791) and the constitution of the thirteen United States (1787). As is well-known, European Christian churches for a long time regarded this revolutionary change under the banner of freedom, equality and fraternity critically, because through these the traditional political legitimacy, the privileges of the big churches and the conventional relationship of state and church were threatened. At present, however, there is no longer any Christian church which would not consider the respect for human rights as the foundation of all political ethics. The Roman Catholic Church did not recognize the secular ethos of human rights until the Second Vatican Council (Declaration on Freedom of Religion "Dignitatis humanae" of 07.12.1965). Since its beginnings the ecumenical movement has always given priority to the practical issues of the protection of human rights, and in the seventies it deepened the insight for related questions in the member churches of the World Council of Churches (WCC), through its study programme on human rights. Thereby it became clear, amongst other things, that (1) the specifically secular substantiations of human rights which, as a rule, traditionally and historically go back to the concepts of natural law, (2) the conviction that humans are created in the image of God, a belief shared by Jews and Christians and (3) Christianity's characteristic understanding of the universal will of God to reconcile and redeem do not have to be mutually

exclusive, but can complement one another. The respect for the dignity of every person, the protection of freedom, of life and physical intactness as well as the protection of freedom of religion and conscience form the basis of the ecumenical consensus with regard to the legitimacy of a political community. The Freedom Charter shares this basis unreservedly.

2. Catholic moral theology has at all times emphasized more strongly than protestant social ethics the social responsibility of the state and the public responsibility for all economic actions. The basis of this appears to be the insight of Aristotle, conveyed by Thomas Aquinas in the West, that each economy should be bound with the political purpose of a 'good life' for all citizens. Therefore the Roman Catholic Church, since the social encyclical of Pope Leo XIII, *Rerum novarum*, has taught that the state must protect the workers against exploitation and promote social balance through legislation and other measures. Finally, the pastoral letter by the North American Bishops "Economic Justice For All" once again emphasized the 'preferential option for the poor' as being the basis of Catholic social doctrine.

In contrast to this, the ethos of modern Protestantism is more strongly determined by the acknowledgement of the market laws and their independent functions. But this tendency is qualified by two insights. Firstly, through a growing awareness for development politics on the part of churches since the sixties, the insight grew that a humane development could not exclude state intervention in the course of economy, but - under certain conditions - demands this. And secondly, that in spite of all partly justified, partly dubious church criticism of communism, Christian existence in a socialist society is possible in so far as E. Wolf describes it: "the deprivation of power of the 'principalities' caused by Christ frees one to 'accept' the 'state' in its respective form as a task of sanctification, that is: as the innerworldly human action in obedience to God's laws."⁹²

It is sufficiently clear that a majority within the South African liberation movements strive for a (type of) 'socialist' economic order in accordance with the statements of the Freedom Charter. Nobody can predict what might become of this, except that all signs indicate a strong position for the trade unions in a free South Africa. (This would also correspond to an established ecumenical conviction). If one therefore looks at the outlined social state criteria for legitimacy in this connection, one hardly has a choice but to observe a far-reaching agreement with the Freedom Charter.

92 *Wolf* (1975), 244.

3. One principle in Luther's judicial thinking which is carried through all phases of his development, reads: *Nobody can be judge in his own case*. Time and again Luther refers to Rom. 12,19 (together with Deut. 32, 35): "Never avenge yourselves!" This warning has as its historical context the feudal justice of the late Middle Ages and efforts to reform the empire. This reform had, amongst other things, the object of protecting temporal peace (according to Luther the greatest good on earth) through a central power bound to justice and law. The renunciation of self-help can, however, only be expected, if the institutions of a general and independent judiciary are guaranteed as a matter of principle, that is, if one succeeds in securing the functional principles of a constitutional state. That, and the extent to which the democratic constitutional state, with its differing institutional forms, reflects evangelical judiciary thinking and the political-ethical convictions of the churches, need not be explained further; it suffices to refer to the memorandum of the EKD "Evangelische Kirche und freiheitliche Demokratie. Der Staat des Grundgesetzes als Angebot und Aufgabe" (1985).

With reference to the principles of the rule of law ("Rechtsstaat") many people in Western Germany regard the Freedom Charter and its supporting movements with suspicion. There are, in fact, enough historical examples for the fact that the rule of law in revolutionary liberation processes has time and again proved to be especially endangered: at first it is restricted or abolished for a transitional period, then this transition becomes a permanent condition. That the same will not happen in South Africa cannot be guaranteed by anybody; neither can it be guaranteed that such a development is probable. The synopsis of the Basic Law - Freedom Charter has shown how great the agreements are. If the guarantee of effective division of legislative, executive and judicative power is only expressed indirectly in the Charter, one will have to consider that the black majority in South Africa had no chance under the apartheid 'laws' to get to know the individual and social protective function of an independent judiciary which is oriented towards human rights and controlled constitutionally. From this I would like to draw the following conclusion: the Freedom Charter is open for the principles of the social constitution, but the longer governments who claim these principles for themselves support apartheid, the more the power of persuasion of this humane, old European model of order must suffer irreparable harm.

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