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DOI: <https://doi.org/10.38140/sjch.v49i1.8273>

[org/10.38140/sjch.v49i1.8273](https://doi.org/10.38140/sjch.v49i1.8273)

ISSN 2415-0509 (Online)
Southern Journal for
Contemporary History
2024 49(1):81-84

PUBLISHED:

28 June 2024

BOOK REVIEW

Odendaal, André. *Dear Comrade President: Oliver Tambo and the Foundations of South Africa's Constitution*. Cape Town: Penguin Books, 2022. 441 pp. ISBN: 9781776096695.

Many South Africans, particularly Black Africans, are increasingly disgruntled about the Constitution of the country and its perceived lack of inclusive representation. One of the overarching arguments is that the Constitution should be re-written to be more just. On 27 February 2018, the Economic Freedom Fighters (EFF) tabled a motion in parliament for section 25 Constitution to be amended to allow Land Expropriation Without Compensation (LEWC). The process failed after the National Assembly could not get a two-thirds majority to amend the Constitution. Additionally, when the United Democratic Front (UDF) held its 40th anniversary at City Hall in Johannesburg on 19 August 2023, former South African minister of finance Trevor Manuel noted that “the Constitution of the country should be amended so that citizens can hold government accountable, as voices of the general public are not represented”.¹ Post-apartheid South Africa is, therefore, undergoing a moment of critical introspection, with the Constitution at the centre of many public and scholarly debates.

There is a growing scholarship on the Constitution of South Africa, tracing its merits and demerits.² Some scholars and political

1 C Kamp, “UDF fighting monstrous government”, <https://www.news24.com/news24/community-newspaper/noordkaapbulletin/udf-fighting-a-monstrous-government-20230829>, accessed 6 December 2023.

2 T Madlingozi, “Mayibuye iAfrica disjunctive inclusions and black strivings for constitution and belonging in South Africa” (PhD, University of London, 2018).

commentators have dubbed South Africa's Constitution commendable and worth protecting.³ Andre Odendaal's *Dear Comrade President: Oliver Tambo and the Foundations of South Africa's Constitution*, is a welcome addition to this growing scholarship. In *Dear Comrade President*, Odendaal adds to the historical understanding of the country's Constitution by examining the African National Congress (ANC) and its process of compiling a "working" document that was used as a skeleton to develop the Constitution. Odendaal places Oliver Reginald Tambo at the centre of his narrative. As the president of the ANC, Tambo was responsible for assembling a team (the Constitutional Committee) tasked with drafting the ANC's working document (p. 52).⁴ Odendaal organised his book into seven parts, with 41 thematically divided chapters. These various themes assist the reader in systematically understanding the progress and activities surrounding the ANC's role in shaping South Africa's Constitution.

With Part One of the book, Odendaal brings into perspective the composition of the Constitutional Committee and its core responsibilities. He notes that these individuals were all males, political activists and, importantly, law pundits in their own right. The ANC National Executive Committee (NEC) lobbied the international community to impose sanctions on South Africa. With sanctions imposed, the National Party (NP) government was unable to sustain the repressive system of apartheid and lost support within its ranks. Moreover, traditional leaders were also lobbied to destabilise the system of apartheid within the country. These strategies ensured South Africa became ungovernable and paved the way for a Constitutional democracy.

In Part Two, Odendaal looks at the activities of the Constitutional Committee. Between the Committee members, robust debates were held about the make-up of post-Apartheid South Africa. The Freedom Charter was placed at the centre of these debates, especially on how it could be used as a working document to assist in developing a Constitution. Thus, the ANC's NEC resolved that the Freedom Charter should be used as a guiding document for the Constitutional Committee. In this sense, Odendaal suggests that it was the vision of the Freedom Charter that was turned into the Bill of Rights, which guaranteed that everybody was to be treated equally in South Africa.

3 MS Kende, *The constitutional rights in two worlds: South Africa and the United States* (Cambridge: Cambridge University Press, 2009), p. 4; L Segal and S Cort, *One law, one nation: The making of South African Constitution* (Auckland Park: Jacana, 2011).

4 The Constitutional Committee consisted of six members, who were all males. These committee members were Jack Simons, Zola Skweyiya, Ntozintle Jobondwana, Kader Asmal, Penuell Maduna, SL Teddy Pekane and Albie Sachs. The committee was chaired by Jack Simons.

In the book's third part, Odendaal observes additional to the Freedom Charter, the ANC also used lessons from other independent African states to develop these guidelines, especially about the question of whether South Africa should become a one-party state or a multi-party state. Tambo visited many countries in Africa and East Asia to study how these former colonial countries dealt with their transition to independence. Out of this learned experience, it was then agreed that South Africa would adopt a unitary state over a federal state. Tambo argued that federalism will perpetuate racial and tribal divisions (p. 61). When dealing with the issue of African traditional leadership in a democratic South Africa, the Committee resolved that they should be part of the democratic processes but do away with hereditary ruling (p. 125).

Part Four of the book explores the challenges of whether the ANC should negotiate with the NP. According to Odendaal, the Dakar Declaration of 1987 pushed the ANC to negotiate with the NP government. However, Chris Hani was not happy with the process of the Dakar Declaration. Hani argued that other members of the alliance were not informed on time to prepare for the Dakar Declaration meeting. The exclusion of women was met with fierce responses from women like Ruth Mompati, Ivy Matsepe-Casaburri, and Brigitte Mabandla, who were at the forefront of agitating for the inclusion of women in the process. This exposed patriarchal nature of the ANC politics.

Furthermore, Part Five discusses in detail the demands and warranties by the NP government to the ANC in exile before they could enter negotiations. The Constitutional guidelines gave guarantees and compromises to win over both the NP and ANC to negotiate. Resolution 435 was signed in Namibia and was used by some Frontline States to pressurise the ANC to negotiate (p. 299).

Meanwhile, in Part Six of the book, Odendaal explores Tambo's role in ensuring that the Constitutional Committee aligned with the United Nations (UN) Declaration of Human Rights. The Organisation of African Unity (OAU) later African Union (AU henceforth) and the UN accepted the guidelines. As a result, the UN Declaration on Apartheid was announced (pp. 309-321). The NP and its minority constituencies were guaranteed that the country's Constitution would not be used as a witch-hunt but as a unifying document. On 2 February 1990, Willem De Klerk opened parliament and announced that all political formations would be unbanned, and all political prisoners would be released. These baby steps led to negotiations as political exiles came home to begin the second transition phase.

Finally, Part Seven engages the challenges that the ANC experienced which among others included Tambo's deteriorating health. Tambo was at the centre of the Constitutional Committee, and his presence was important. Upon their arrival back in South Africa from exile, the Constitutional Committee established its headquarters at Shell House in Johannesburg; later, in 1990, it was absorbed into the Negotiations Committee.

While *Dear Comrade President* therefore provides a detailed overview of how the ANC envisioned and conceptualised its draft constitution, it does not reveal how ordinary ANC members inside and outside South Africa viewed the ANC's Constitution drafting process, which became the core of the subsequent negotiations and compromises. This gap in Odendaal's work opens an avenue for further research on the role of women and ordinary members during the times of the ANC's Constitutional Committee. Hence, in recent times, people like Advocate Muzi Sikhakhane have referred to the compromised Constitution of the country, which needs to be rewritten because the ANC negotiated for a political settlement.⁵ It is argued that if the Constitution could be more people-led, it would assist in creating a more inclusive South Africa, particularly regarding socio-economic issues of representation.

Apart from this critique, *Dear Comrade President* is undeniably insightful and well-researched work on how the ANC's Constitutional guidelines came into existence. It uses a plethora of sources, including archival documents from the National Heritage and Cultural Studies based at the University of Fort Hare in South Africa (including letters that were exchanged among the negotiators) and several oral history interviews with key role players like Pallo Jordan and Albie Sachs among others. Odendaal's book can be used by university lecturers who teach South African history and transitional democracies, as well as law and Constitutional developments, particularly in South Africa. It can also benefit History teachers at the Basic Education level, as they teach South Africa's road to democracy. This book adds value to the growing scholarship about the country's Constitution and how it can be used as a unifying tool for the people of South Africa. Odendaal did an exceptional job and should be commended.

5 SNWX, "SA Constitution must be rewritten": Race and the law, threats to black advocates, ANC failures", <https://www.youtube.com/watch?v=Wf1dsV7GTEc>, accessed 28 April 2024.