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# THE SOUTH AFRICAN PRISONERS ORGANISATION FOR HUMAN RIGHTS (SAPO[hr])

We, the peace loving people of South Africa at large, have organised ourselves at the bottom line to form the SAPO(hr) for suspects, ex-suspects, convicts, ex-convicts, death row, ex-death row inmates, their next of kin and others interested in improving the conditions of those incarcerated in South African jails shall organise to support convict -initiated prison change and seek redress of convict and ex-convict and their next of kin, end economic exploitation by gaining the right to a prevailing wage for all work done in prison, establish a uniform and equitable sentencing procedure, restore civil and human rights to convict and ex-convict and their next of kin and others. Work for shortening sentences to ease South African prison overcrowding.

Most social movements in the Republic of South Africa ignore the treatment of those put behind the bars. All prisoners sentenced to the loss of liberty, should be so treated that they can re-enter society as good and loyal citizens, capable of supporting themselves and their families. There should be a striving to rehabilitate prisoners through arrangements made for their benefits during the time of their loss of liberty. Within the prison system, we should see schools, work training, group therapy introduced and aftercare offered.

Just like the 19th Century reformers in Europe and United States of America, we became fascinated by the monastery idea which is still intact in the Republic of South African prison systems i.e. solitary confinement to make prisoners reflect their sins; to be visited by the prison chaplain and chosen religious people; to be given a bible to read and nothing else; to be given hard and forced labour work; like those mentioned in the Prison Abuse Project.

Our position is clear:-

1. A reward of the criminal legislation and not a strict control of opportunities for



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- crime would be far more effective means than measures directed towards single offenders.
2. The average offender is not a sick person in need of psychiatric care, and we should not expect psychiatry or psychology to provide the solutions to fundamental dilemmas of criminology and penal policy.
  3. Punishment should never be camouflaged by calling it treatment, rehabilitation or therapy. No one must be subjected to suffering which is disproportionate in comparison with one's crime.
  4. The punishment must not only fit the crime, but also the criminal. Society itself, as it is organised, breeds criminality, and therefore society should be changed in order to make it possible to live in, even for those who are today deviant in their behaviour.

### VIOLENCE BETWEEN GUARDS AND INMATES

It is open, naked and you see a lot of prisoners defending themselves in fist and baton charge fights with wardens.

I have seen one warden whip one inmate. Not even two guards can whip an average prisoner. When I speak of prisoner fist and baton charge fighting guards - I mean that literally at least ten or fifteen guards at a time.

The authorities tell the public they are at a disadvantage. How so? Well you see when they are in a fight with a convict, they say they can only apply "necessary force" they cannot beat him up because, you see the laws "forbids" it. Whereas a prisoner is not so restrained.

Not once in the judicial history of this country has the law forebode beating a prisoner in a fight - by beating I mean beating him to death - never. The law forbid the methodical use of torture and corporal punishment. How can anyone prove such practices exist when only convicts witnesses it? None in this country can cite for a single instance in which a prisoner's complaint of cruel and unusual punishment has ever at any time been affirmed as true either by the government in general or the prison regime in particular. Never has it happened.



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Why does none believe the word of a prisoner and ex over the word of the prison authorities? I would like to know, because in every single instance in which a prisoner is lucky enough to air his complaint in a Courtroom, he always has been vindicated. Always said that he/she have told lies. Never, not a single time, has a prisoner been shown in Court to have been telling the truth in his complaint of cruel and unusual punishment.

I think that this country has an excessive number of people who take pride openly or secretly in the fact that their government is so inhumane, so evil, to take pride in the fact that their government so thoroughly, crushes men they consider "enemies" (public enemies).

And those who do not have this kind of pride in their government, only sneer, at those who do. And did nothing more.

You said one of the weaknesses of my story is that I don't give anyone but prisoners character. You are absolutely correct. If it is a weakness it is the weakness of an ex-convict talking about prisoners.

### LET US NOW LOOK AT TREATMENT VERSUS PUNISHMENT

Punishment is a suffering imposed on an offender. Treatment aims at changing the offender's behaviour, or his general situation. A comprehensive social defence programme must include preventive measures, an effective and promptly functioning administration of justice and an up-to-date rehabilitation programme of offenders. The wide spread neglect of social defence problems has resulted in an increase of crime and violence which exceeds the tolerance level and has become an imminent threat to economic and social development.

Criminal legislation in the Republic of South Africa is out of date or merely an imitation of legislation in other countries and frequently does not correspond to the level of development in this country. The British, the French, the Dutch, the Portuguese, the Spaniards and the Americans have colonised and brought their own legislative concept in Africa. The Republic of South Africa has heavily relied on legal experts and other technicians from the former colonial power. Such legal expert or administrator from those countries, at the invitation of the Government is entrusted with the task of drafting a penal code, or a code of criminal procedure,



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● simply transfers the concepts of the judicial machinery of his or her home country disregarding the economic and social realities of this country. While on paper the draft law might appear to be as modern as any new legislation in force, in practice it is impossible to implement these laws.

A system of criminal legislation should be based not on foreign concepts and needs, but on existing needs of the individual nation. Criminal legislation often presents more problems than the criminal legislation itself. Criminal justice in the Republic of South Africa is slow, ineffective and unrelated to the rapid changes of modernisation. Its defects of criminal procedure creates suspicion and generally unfavourable attitude among us as citizens. To meet most "Blacks" in the Republic of South Africa, sanctions against law-breakers consist only of the incarceration of the offender, whether young or old. This, excludes those offenders serving under the system. Prisons, especially where only "Black" prisoners are kept, are places not for rehabilitation and treatment, but of human degradation. The legislators pretend that these institutions are "Correctional Services" or something other than the ugly prisons which in fact, they remain. Prison regulations often contain provisions for work training facilities, sport activities and health services - all of which are non-existent, and where they exist they are meant for some, not all prisoners. Amnesty, probation and parole are meant for a portion of "whites", and sellouts. Public participation in social defence (in preventive activities and in the machinery for administering justice as well as in rehabilitation efforts) is prohibited to the "Black" skinned people and poor "Whites" in this country. These defects of the social defence system can effectively be dealt with only by continual, thorough planning by the society as a whole, in a form of national social defence composed of representatives from all sections. Unfortunately, many ministers of justice, and other responsible for law enforcement or the treatment of law breakers, jealousy guard their piece of the cake while promoting the evil system of "Apartheid". As a result, we still need the international and national Penal and Penitentiary Commission, because we can no longer rely on the document on "Standard Minimum Rules for the Treatment of Prisoners", done by a Geneva World Congress in 1955, and the rules of which were later endorsed by the United Nation's General Assembly. These Rules are also disregarded by the Government of the Republic of South Africa. In theory, practically the government adheres to the principle that the offenders should be humanely treated and rehabilitated. In reality, the government of the Republic of South Africa, with its racial discriminatory laws, which are still intact, has never organised or allowed any "organisation" to organise an effective and good treatment system for offenders.



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**REFERENCES:-**

The Hon. John Turner, Minister of Justice of Canada, in an address to John Howard Society in Ottawa on February 24, 1971, makes the point that the system must be viewed as a whole and warns against a categorised approach when he said:-

*"It is no longer sufficient for us to think of criminal justice and penal rehabilitation as a series of connected events. We must see it as a convicted person does, as a total system. We must work to achieve clearly enunciated goals that work for the entire system. And we must do it from the point of view of the man and woman involved. We cannot talk of better criminal laws, or better police enforcement or more efficient penal system unless we look at it as the convict must".*

Crime being a violation of the law, and law being a measure designed for creating and maintaining order, it is obvious that there can be no question of properly maintaining law and order if the law is constantly, intentionally and flagrantly being violated by both those who supposed to enforce and and order and those who are governed by the laws they didn't even participate in making them. History reminds us that an anarchy chaos will follow when those in authority are unwilling or unable to provide and maintain adequate restraints on the incidence of crime.

Criminal law is part of the process of social control although it had throughout the centuries been indispensable for the regulation of human conduct, it is today described as the most over-worked instrument man has ever designed. We are all familiar with the expression that prevention is better than cure and that to remove the causes of evil is to remove the evil itself.

Generally speaking however, it could possibly be argued that the existence of crime depends in part upon factors which stimulate individuals to commit offences, in part upon the opportunities that society presents for crime and in part upon the social tolerance or acceptance of certain forms of crimes. It is universally accepted that economic and social conditions play an important, if not the largest role, in promoting criminality. Population growth, urbanisation, education, poverty, unemployment, inadequate housing, racism, discrimination and other factors all have a profound effect on the crime problem. In addition, experts know that there is a very close relations between crime and family disorganisation which has assumed such alarming proportions and which has become such a disturbing phenomenon in modern society.



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The definition of Rupert Cross set out in his own words:-

*"I think that any change at rehabilitation of the offender can properly be described as penal reform. This seems to be true, not only of the introduction of a new penal method, which is like Forestal training, aimed directly at rehabilitation, but also of the introduction of rehabilitative concomitants of punishment, such as the provision of education and vocational training in prison. Furthermore, I would have no hesitation in describing as penal reform, the introduction into the penal system of rehabilitative measures which are strictly speaking, neither penal in themselves nor the concomitants of penal measures, Legislation, providing for the possibility of hospital orders for mentally abnormal offenders or for care orders in case of delinquent children, comes into this category. Such orders result in the treatment of opposed to punishment, although the fact that they may be as co-ercive as prison sentences means that, the distinction between treatment and punishment is far from clear cut .... I conclude that a change in the penal system can properly be described as an endeavour to achieve penal reform if it is names directly or indirectly at the rehabilitation of the offender, or if its object is to avoid, suspend or reduce punishment or humanitarian grounds, Whilst it is not strictly correct to say that the plea for penal reform is exclusively directed at reducing the penal consequences for the offender, the heavy artillery certainly appears to be directed at breaking down or mitigating the punitive effect of the criminal law of our day".*

On the contrary, the overall impression gained from publications and utterances is that the "state", as the custodian of our criminal law, has failed to effect the desired and necessary penal reform. High prison population, escalating crime and violence would in all probability have been much lower if proper use had been made of the powers granted by the legislature for keeping offenders, especially petty offenders, out of gaol. The learned Judge, Mr Justice Frankfurter of the United States Supreme Court is reported to have said, inter alia:-

*"I myself think that the bench - we lawyers who become judges are not very competent, are not qualified by experience to impose sentences where any discretion is to be exercised. I don't think it is in the domain of the training of lawyers to know what to do with a fellow after you find out that he is a thief. I do not think legal training gives you any special competence .... But all the questions that follow upon ascertainment of guilt, I think require very different and much more diversified talents than lawyers and judges are normally likely to process".*



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Maybe it's even of a return to the law of the jungle. It is also quite possible that criminal sanction could be replaced by rehabilitative measures unlike a few instances as has been done e.g. in the case of Section 341 and others of the Criminal Procedure Act of 1955 and that of 1977. According to this Act it is possible to refer an offender to specified centres for purposes of rehabilitation instead of bringing a criminal charge against him.

### REHABILITATION

To become rehabilitated means to accept and live by the values of your society. It requires not just faith in the laws and customs of your society, but faith in the people of your society and to extend those values, and reproduce that faith, in your transactions with others in society intercourse.

To rehabilitate someone is a process of teaching. It is a process of learning by experience for the man in need of rehabilitation. He requires to know the benefits of the values of his society; he requires a firm understanding of the proper uses of the laws and customs of his society.

Only a man who is a social anomaly (uneven) can fail to pursue his best interest, especially when the pathway becomes clear to him, for a social anomaly knows the values of his society and its laws and customs.

The system of justice in R.S.A. teaches these lessons to men as if they were social anomalies already as if they had knowledge of the values and customs and laws of this society. This reflects the South African maxim (rule of conduct). Ignorance does not acquit.

So rehabilitation is presumed and South African justice seeks to punish men who (theoretically) know better. And what does punishment that aims at rehabilitation entail? It does not aim at winning men over by reason - it is presumed a prisoner cannot be won over by reason. It is the application for force.

### MEDIA:-

In fact, we would go so far as to say that if the publication media were, responsible



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and justly, to meet their obligations as guardians over the standard of human respect for property, integrity and justice of individual rights and liberties within the essential context of the interest of the community as a whole, the task of the law-enforcement agency would be immeasurably lightened instead of burdened as it is today in contemporary in Western Society in which individual and collective rights, and obligations are in conflict instead of in balance.

There are too many skeletons in journalistic cupboards, too much blatant bias and petty prejudice abhorred in journalistic ethnics but perpetrated in journalistic practice, to elevate the press to the status of holy cows in a free society. The natural tendency for authority is to cover up; the essential function of the press is to uncover. The establishment prefers to work behind closed windows. The task of the press is to open curtains.

In our days the written word glorifies the dregs of human conduct and conversation; the visual arts, the film, television, the theatre, thrive on human abnormality or perversity. For be it for us to submit that these modern media consciously exploit the amoral which is the logical incitement to criminal tendency, while allowing themselves to be used by the state or other movements for political gain. In this regard the press by a responsible and discreet exercise of its publication function, can do more than any other institution towards the sane and criminal free society; which has a very low rate of crime and violence.

### HANDLING OF APPEALS

From the time of Magna Carta an even earlier, the makers of English law had been concerned to protect the physical freedom of the individual. A person who is being kept in prison on grounds of doubtful legality has the right, under Common Law as clarified by the statute of 1679, to appeal to one of the higher Courts of Justice for a "writ habeas corpus". This "writ" is addressed by a Judge of High Court to a sheriff or jailor, to bring the person he is holding in custody to the Court for an examination of his case - to bring, be it noted, not the person's written complaint, nor his legal representatives, but his corpus, his body, the too solid flesh which has been made to sleep on the floor, to smell the fetid prison air, to eat the revolting prison food.

Now, in terms of the Republic of South African Criminal Procedure Act 51 of 1977, Section 305, makes it difficult for an accused person to prosecute to any



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proceedings for the review of his case. It reads thus:-

305 Right of appearance on review of certain cases subject to certificate of a judge:-

*Norwithstanding anything to the contrary in any law contained, no person who has been convicted by a lower Court of an offence and is undergoing imprisonment for that or any other offence, shall be entitled to prosecute in person any proceedings for the review of the proceedings relating to such conviction unless a judge of the provincial or local division having jurisdiction has certified that there are reasonable grounds for review (Section 305 amended by Section 14 of Act 105 of 1982). Is this the right way of dealing with appeals in terms of justice?*

THE SOUTH AFRICAN POLICE:-

The definition of the model policeman given way back in 1828 by Britain's Commissioner of the time does not apply in the Government of the Republic of South Africa, and that is why we cannot respect the South African Police force, and other structures, e.g. traffic officers, SADF and prison staff, unless they comply with the definition hereunder. "Every member of the force must remember that he has his duty to protect and help members of the public no less than bring offenders to justice. While prompt to prevent crime and arrest criminals, he must look at himself as the servant and guardian of the general public, treat them like law-abiding citizens, with unfailing patience and courtesy. If he does his duty in a quiet and determined manner, such conduct will excite the well-disposed of bystanders to assist him, if he requires them to do so." This is the policeman's credo. This is the essence of his accountability obligation as a public servant. This is the quality of personality and the standard of conduct we expect - "yes" -, demand from the policeman in the Republic of South Africa and in the whole world.

PRISON STAFF

I have never seen an indifferent guard. I have seen lazy and unconcerned guards., but never an objective and indifferent guard. The lazy ones are like magnanimous kings, who carelessly overlook slights and arbitrarily pass-out "mercies" but will, at a whim, suddenly rise up and take it all back, relegating everyone to hell.



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Among themselves, the guards are human. Among themselves the prisoners are human. Yet between these two the relationship is not human. It is animal only in reflection subjective reflection - do they acknowledge sharing a common consciousness. It is the consciousness that we belong to a common species of life. But this is not the consciousness of society. It is not humanistic, it is animalistic. What I am saying is that the prisoner is closer to humanity than the guard because he is deprived by the warder. That is why I say that evil exists not in the prisoner, but in the warder. Intentions play none but an illusory role. In fact the guard is evil. His society is demonic. I have seen prison warders and heard their talks. They are extremely venal. Extremely devoid of any trace of spirituality. Their dullness approaches the mentally defective. It is fascist (extreme rightwing). The very symbol of injustice. It would seem to be an irony, but it is not prisoners that make prison authorities to be what they are. Neither does society in general. The state does. It gives them arbitrary power over prisoners. They embrace it as a way of life. That is the source of their evil. It is much difficult and therefore it has a moralising quality for a prisoner to hurt or kill a guard that for a guard to hurt or kill a prisoner. The consequences to a prisoner are severe to a hellish degree. A warder gets a medal for it, a promotion. It has been my experience that in justice is perhaps the only (if not merely the greatest) cause of insanity behind bars. You'd be surprised to learn what a little old fashioned oppression can do to anyone.

If I wrote of a guard's home life, it would be a study in domination of women and children, their women and children do not love them; they worship them.

The only time they appear humane is when, you have a knife at their throats. The instant you remove it they fall back into animality obscenity (highly offensive). They have a good side - only when there is a knife at their throats. They obey violence in their hearts, as do all animals.

A prisoner does not. A prisoner rebels even with a knife at his throat.

### INMATES

If one of the prisoners wants to, he can taunt you with insults and threats at anytime, you have no chance of silencing him. So you have to be careful not to get one of these guys (Big fives) running his mouth at you (for weeks on end sometimes). So



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you have to be friendly and converse with him about any stupid subject he wants. It is who can shout the loudest over the longest period who dominates, this situation.

To live in peace in such circumstances can change you into one of those damned men who will do anything to live to exist biologically.

If you love life too much or fear violence too much,, before you become a thing, no longer a man.. You can end up scurrying about like a rodent, lending yourself to every conceivable lots, evil, degrading act anyone tells you to do either guards or inmates.

Sometimes a prisoner who happens to be physically big is encouraged to run the other prisoners lives. That is the traditional dream of the typical warden. A hierarchy he can control the big inmates who believe that because they can overpower with their hands the average man everyone will obey them. What throws a wrench into all of this is the little skinny kid with some other weapon.

In prison we are all polite to each other; formal in our respect. If I had a verbal disagreement with someone and I am in the wrong, my apologies are given sincerely. But if I am in the right and some inmate is wrong and he knows it. I have to see his face every day. If he threatened to kill or assault me, I have to see him day in day out for years. You can't afford having someone with ill feelings for you walking around. He could drop a knife or attack you with a prison cup tided with a belt or handkerchief.

You learn to smile him into a position to disarm him with friendliness. so when you are raging inside at anyone, you learn to conceal it, to smile or feign cowardice. (pretend)

You can become so consumed within potent hatred, so enraged at someone or something in prison, you must masturbate to the violence taking place in your mind, because if you cannot contain it somehow, if you loosen the grip on yourself a little you may start by speaking out loudly - an end your days in a screaming raging froth (idle talk) from which there are no return. You will leave this work berserk.

You relate the notion that violence is associated with sexuality. It is an absurdity, but I agree to an extent. It is an absurd contradiction in South African Society for a man to see the sexual penetration of his wife (or female companion) as a



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consecration and expression of love - an then to see this same act of penetration but of another male as just the opposites a desecration (destroy) and expression of the deepest contempt. It is because of this contradiction that sexuality so profoundly wed to violence.

In prison, if you take a juvenile she is yours. He is like a slave, a chattel slave. some treat them like queens. It is the custom that no one addresses him directly. he cleans and make-up your sleeping place, wash and iron your clothing, polish your shoes and runs around for. Others treat them *vice-versa*) (28's and 26's). anything you tell him to do, he must do - exactly the way a wife is perceived in some marriages even today. But you can sell her or lend her out or give her away at any time. Another prisoner can take her from you if he can dominate you.

Only once or twice in my life have I seen in prison two men demonstrate sexual affection by kissing or otherwise touching each other. The open homosexual plays the role of a woman and is usually the wife a prisoner respected on the yard. He gives her the security and protection he would a woman outside prison. Prison regimes respect these relationship. In reality, they encourage them.





# **SOUTH AFRICAN PRISONERS ORGANISATION FOR HUMAN RIGHTS**

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07 JULY 1993

## **SAPO(HR) CONCERN ABOUT THE VOTE FOR ALL PERSONS DETAINED, AWAITING TRIAL AND SENTENCED**

AS SOUTH AFRICA APPROACHED THE MOMENT OF TRUTH WHEN THE ELECTION DATE OF 27 APRIL 1994 WAS FINALLY AND AT LONG LAST FINALISED ON THE 2 JULY 1993 AT WORLD TRADE CENTRE DESPITE COSAG'S UNWILLINGNESS AND COMMITMENT THEREOF. THERE IS NO TURNING POINT NOW. FREE AND FAIR ELECTIONS IS WHAT THE PEOPLE HAS BEEN WAITING FOR, FOR MANY, MANY DECADES ON END.

**WE SAY: FORWARD WITH DEMOCRATIC ELECTIONS FORWARD!!!!**

VARIOUS PARTIES AND INDIVIDUALS HAVE CONTRIBUTED THEIR IDEAS AND A GROWING CONSENSUS HAS EMERGED THAT OTHER SYSTEM OF PROPORTIONAL REPRESENTATION WILL BE BEST SUITED FOR OUR COUNTRY.

A RELEVANT RELATED ISSUE HOWEVER REMAINED UNDISCUSSED AS FAR AS SAPO(HR) KNOWS, AND THAT IS THE ELIGIBILITY FOR THE FRANCHISE OF PERSONS BEHIND BARS BEFORE AND DURING THE ELECTIONS.

WE NOW FEEL THAT IT IS A MATTER OF VITAL IMPORTANCE THAT THE DISCUSSION REGARDING THE VOTING OF PERSONS PUT IN THE CUSTODY OF THE PRISON HIERARCHY ALSO BE PUT ON THE AGENDA AS A MATTER OF ABSOLUTE NECESSITY.

THE CONSENSUS WAS THAT THE GENERALLY ACCEPTED POSITION THAT ALL SOUTH AFRICAN CITIZENS WHO HAVE ATTAINED THE AGE OF EIGHTEEN AND THOSE ABOVE SHOULD BE ENTITLED TO THE FRANCHISE WAS REASONABLE. AGAIN WHEN THIS CONSENSUS WAS REACHED THE PRISONERS POSITION WAS NOT EVEN TOUCHED, LET ALONE DISCUSSED ACCORDING TO OUR UNDERSTANDING.

SAPO(HR) WISHES TO UNDERScore THE FOLLOWING: IT RECOGNISES THE IMMEASURABLE CONTRIBUTION AND SACRIFICE MADE BY PERSONS WHO HAPPENED TO FIND THEMSELVES IN AN UNCOMFORTABLE POSITION OF BEING IN JAIL AT THIS CRUCIAL AND HISTORICAL MOMENT IN OUR COUNTRY.

THE ANC IN ITS PRESS STATEMENT DATED 18 JUNE 1993 SAID: "THE KEY CHALLENGE FOR THE COMING ELECTIONS IS TO ENSURE THAT 18 MILLION IN OUR COUNTRY WHO HAVE NEVER VOTED BEFORE WILL LEARN HOW TO VOTE BEFORE THE ELECTIONS ON THE 27 APRIL 1994. THE ANC SET IT TO ENSURE THAT EVERY VOTER IN EVERY STREET AND VILLAGE IS REACHED OVER THE COMING MONTHS. NINE MILLION PEOPLE ARE ILLITERATE AND IN ORDER TO GET THE MESSAGE ACROSS WE WILL NEED AUDIO-VISUAL COMMUNICATION FOR THIS PURPOSE. THE ANC WILL USE MOBILE VIDEO UNITS.

## **Human Rights abuse is a universal crime!**



WE SAY TO THE ANC AND ALL DEMOCRATIC FORMATIONS THAT : PRISONERS ARE ALSO PART OF THE +- 18 MILLION PEOPLE THAT NEED TO BE EDUCATED NOW TO VOTE. SAPO(HR) NEEDS THE ENTIRE SUPPORT OF ALL PROGRESSIVE FORMATIONS TO ENSURE THAT EVERY PRISONER IN EVERY PRISON AND POLICE CELL IS READY OVER THE COMING MONTHS FOR THIS PURPOSE OF THE +- NINE MILLION PEOPLE WHO ARE ILLITERATE INCLUDE PRISONERS AND ELECTION EDUCATION THROUGH AUDIO-VISUAL COMMUNICATIONS IS DESPARATELY NEEDED.

OUR VIEW REMAINS PERSISTENT CONCERNING THE DISCUSSION AROUND THE VERY IMPORTANT ISSUE AND CAN ONLY ENRICH OUR HUMAN RIGHT CULTURE AND IS TO BE WELCOMED.



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