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TC**THE INDEPENDENT CENTRE FOR HUMAN RIGHTS**

PO BOX 651 GROENKLOOF 0027

TO: Ms Melody Emmett

FAX NO: (011) 397-2211

FROM: Prof PJ Visser

DATE: 29.06.93

PAGES: 2

RE: Human right to maintenance of
law and order

IF THE MESSAGE OR COPY YOU RECEIVE IS INCOMPLETE OR INDISTINCT, PLEASE ADVISE US IMMEDIATELY AT THE FOLLOWING TELEPHONE NUMBER: (012) 429-8429 (Prof JM Potgieter).

Dear Ms Emmett

Would you kindly photocopy the statement attached and please distribute amongst the delegates and members of technical committees?

This is an extremely urgent appeal.

Thank you very much!

PJV.

THE INDEPENDENT CENTRE FOR HUMAN RIGHTS
PO Box 651 Groenkloof 0027
Prof PJ Visser (Head) (012) 45-3268 420-2343

DIE ONAFHANKLIKE SENTRUM VIR MENSEREGTE
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THE INDEPENDENT CENTRE FOR HUMAN RIGHTS

INCLUSION OF RIGHT TO MAINTENANCE OF LAW AND ORDER AS FUNDAMENTAL RIGHT IN AN INTERIM CONSTITUTION

In view of the unstable political conditions prevailing in South Africa, we submit that it is essential to specifically include a human right to the maintenance of law and order in the community in the chapter of the proposed interim constitution dealing with fundamental rights.

We suggest the following formulation:

"Every person has the right to the maintenance of law and order in so far as it is reasonably necessary for the protection or the exercise of his or her rights."

Explanatory note:

1. It is self-evident that a fair democratic election in 1994 will only be possible in a situation where law and order has been restored and is maintained as well as is humanly possible.
2. Furthermore, the exercise of almost every right intended to form part of the interim "bill of rights" currently under consideration is dependent on the maintenance of law and order in the community. In a sense the proposed right to law and order will serve as a type of guarantee that the state will take positive action to ensure that the other fundamental human rights will in fact be worth more than the paper they are written on.
3. The inclusion of the suggested right will in a sense be a codification of the statutory function which already rests on the police in terms of section 5 of the Police Act 7 of 1958. However, it is necessary to have this function recognised as a specific and important duty resting on the state which is owed to the people of South Africa because they are entitled to the maintenance of law and order. This will demonstrate the high regard in which impartial, professional and timeous police and security force action is held in South Africa.
4. If the right to a safe environment is deemed important enough to warrant inclusion in the proposed "bill of rights" (even though there are many ordinary statutes dealing with the protection of the environment), it goes without saying that law and order also merits specific recognition as a fundamental right in the constitution.
5. A fundamental right to law and order would legally compel the government to use the security forces at its disposal to take such positive steps as are reasonable and necessary to ensure that threatened breaches of law and order are detected and prevented, or, that, once a situation occurs where there is a breach of law and order, peace and security is restored as quickly and effectively as is reasonably possible.
6. Of course the recognition of a human right to law and order should not be misused to limit other human rights unnecessarily. A healthy balance must be found between the right to law and order and the other rights and freedoms in the "bill of rights".
7. In our opinion the measures already included in the draft "bill of rights" to ensure the maintenance of law and order in an emergency, are not sufficient to address all problems in this field (although such measures should, of course, be retained). First, it approaches the problem from a negative angle, viz a suspension of "normal" human rights in certain situations instead of recognising a "positive" right; secondly, everything is dependent on an actual state of emergency being declared whereas the maintenance of law and order should also be seen as a continuing process where the state inter alia has a vital duty to take positive steps to ensure that breaches of law and order are prevented or minimised as far as possible, even if there is no need to declare an emergency.

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