

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

21 July 1993

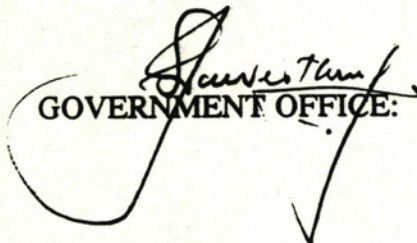
Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE: VIOLENCE**

1. Attached is a submission by the South African Government entitled ***REINTRODUCE THE DEATH PENALTY.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK



REINTRODUCE THE DEATH PENALTY

1. It is important to point out that the death penalty as a form of punishment has not been removed from our statutes (see section 277 of the Criminal Procedure Act, 1977 (Act 51 of 1977) and therefore the courts still continue to apply the law as it stands and pronounce death sentences where this is appropriate (93 persons have been sentenced to death in 1992 and 52 persons to date in 1993).
2. The Government has on numerous occasions expressed its conviction that its present policy of retaining the death penalty is both morally and legally sound and gives proper effect to the duty of the State to safeguard the interests of its citizens. However, in view of the progress already made with the acceptance of the principles of a bill of fundamental rights and in view of the South African Law Commission's proposal that the death penalty be depoliticized and be dealt with by means of a future constitutional court in a negotiated bill of rights, the Government deemed it fair on 27 March 1992 to suspend for a reasonable period the execution of death sentences which are not commuted, pending the outcome of negotiations on an interim bill of fundamental rights.
3. More than a year has passed since the Government's decision to suspend all executions. During this period the country was marked by a wave of cruel murders, violence and crime which still continues to cause public outrage and also hampers the negotiation process. The public looks to the Government for help and stability and the possibility of the lifting of the moratorium on the execution of the death penalty may, *inter alia*, be seen as one of the mechanisms to bring this about. On 17 June 1993 all members of Parliament had the opportunity to express their opinion whether the moratorium on the execution of the death penalty should be lifted. The fact that the vast majority of the members voted in favour of the lifting of the moratorium clearly supports the Government's conviction on the death penalty. However, the State President also deemed it fair that extra parliamentary groups and organisations be consulted with in this regard and such consultations will now take place.

MEMORANDUM OOR PERSVRYHEID

Die Konferensie van Redakteurs, saamgestel uit die redakteurs van al die vernaamste koerante in Suid-Afrika het verskeie buitelandse modelle van wetlike bepalinge oor persvryheid bestudeer, in die besonder waar persvryheid en vryheid van spraak in 'n grondwet of 'n handves van menseregte omskryf is.

Die vernaamste hieronder is die Switserse grondwet, die Brasiliaanse grondwet, die Namibiese grondwet, die Duitse grondwet en die Amerikaanse grondwet.

Daarbenewens het die Konferensie die SA Regskommissie se tussentydse verslag oor groep- en menseregte bestudeer, asook die ANC se voorstelle oor 'n media-handves.

Die model wat die Konferensie verkies, is dié van Duitsland, wat miskien die uitdruklikste wetlike versekering oor persvryheid bevat.

Die Konferensie beveel aan dat persvryheid in 'n grondwet verskans word, selfs al is daar byvoorbeeld in 'n handves van menseregte vir vryheid van spraak voorsiening gemaak. Dit is inderdaad wat die SA Regskommissie van regter Olivier doen, met sy Artikel 12 van sy voorgestelde Akte van Menseregte. Dit lui:

'Elke persoon het die reg op vryheid van spraak en ander wyses van uitdrukking en om inligting te bekom en te versprei.'

In hierdie artikel word nie spesifiek na persvryheid verwys nie, wat na die mening van die Konferensie 'n tekortkoming is. Die Konferensie verkies die baie sterk verkansing van persvryheid in die Duitse grondwet. Dit maak deel uit van die Fundamentele Regte (Grundrechte) wat nie wesenlik verander mag word nie - nie eens deur 'n tweederde-meerderheid wat in die Parlement vir 'n wysiging van die Duitse grondwet nodig is nie.

Die Konferensie meen dat die betrokke Duitse bepaling oorgeneem en aangepas kan word, eerstens met byvoeging van die noodsaaklikheid om media-diversiteit te beskerm, en tweedens deur die woorde "uit algemeen beskikbare bronne" weg te laat.

Die aangepaste ontwerp-voorstel (sonder die onderstreepte deel) sal dan so lui:

'Elke persoon het die reg om sy mening mondeling, skriftelik en in beeld vryelik uit te druk en te versprei, en om homself ongehinderd uit algemeen toeganklike bronne in te lig. Persvryheid en die vryheid van verslaggewing deur uitsaai en film word gewaarborg, terwyl die diversiteit van inligting en menings in die media beskerm sal word. Geen sensuur sal toegepas word nie.'

Die Konferensie van Redakteurs beveel aan dat dié ontwerp-voorstel die absoluut verskanste deel van basiese regte in 'n nuwe grondwet uitmaak.