

MCH 91-18-2-4

II.

CLASSIFICATION  
OF  
OFFENCES AND PENALTIES

GRAVE CRIMES AGAINST THE STRUGGLE

1. Any offence aimed at the integrity of the organisation and at destroying its personnel, its material or its fighting capacity, shall be considered a 'grave crime'.
2. A grave crime shall be committed by any person who, inter alia,
  - (a) With intent to destroy the integrity of the organisation, its personnel, its material or its fighting capacity:
    - i) sabotages the activities of the organisation;
    - ii) impedes its proper functioning;
    - iii) creates divisionism within its ranks;
    - iv) attacks or threatens to put in jeopardy its personnel or its property;
    - v) or does any other act calculated to undermine its effectiveness as a liberation organisation.
  - (b) Infiltrates the organisation, acting on behalf of or in collaboration with:
    - i) the racist regime, or
    - ii) the intelligence services or other organisations or groups of other countries that collaborate with the regime, or
    - iii) any person or group who wish to destroy the organisation or prevent it from fulfilling its mission as the liberation organisation of South Africa.
  - (c) Being already a member of the organisation, establishes or maintains contact with any of the above bodies.
3. Article 2(c) above shall not apply to any person who maintained such contact with the knowledge and approval of the responsible organs of the ANC and with a view to securing the interests of the organisation.
4. It shall be a defence for anyone mentioned in paragraph 2(c) to prove that he/she took the first opportunity to reveal the contact to the

appropriate organs of the ANC and to reduce any possible damage that may have been caused.

5. It shall be a mitigating circumstance, to be considered when weighing the appropriate penalty, for any accused person to prove that he/she has taken steps in collaboration with the organisation to reduce the damage caused by his/her collaboration with the enemy and demonstrated his/her patriotism even at a later stage.

Penalties for grave crimes against the Struggle

The penalties shall be one or more of those set out in the Schedule of Penalties.

SERIOUS OFFENCES

1. Any violation of the principles of the organisation and standards of behaviour expected of members, which seriously threatens the safety, property or good name of the organisation, or which substantially impedes its good functioning, or which creates or is calculated to create disunity and demoralisation amongst the members, shall be considered a serious offence.
2. Such offences shall include:
  - (a) Acting in a way that exposes members to serious physical harm or death;
  - (b) Deliberately destroying the property of the organisation, or recklessly exposing it to danger;
  - (c) Behaving dishonestly in relation to the property of the organisation;
  - (d) Carelessly passing on information that might be of substantial use to the enemy, or failing to keep documents under proper control;
  - (e) Behaving corruptly in seeking or accepting any kind of illicit reward for performing or not performing any task on behalf of the organisation;
  - (f) Abusing office by using one's position to obtain material or sexual or other undue advantage from members or others;
  - (g) Fighting or behaving in a grossly disorderly and unruly way;

- (h) Racketeering in cars, drugs, food, clothes or other items;
  - (i) Persistently sowing racism, regionalism or tribalism in the organisation;
  - (j) Behaving in such a way as to provoke serious divisions and a breakdown of unity in the organisation;
  - (k) Sexually assaulting or in any other way seriously offending the dignity of members;
  - (l) Persistently and without just cause undermining the respect for or impeding the functioning of the structures of the organisation;
  - (m) Engaging in organised factional activity that goes outside the recognised norms of free debate inside the organisation and threatens its unity;
  - (n) Committing any breach of the laws or standards of good behaviour of a host country so as to bring the ANC into disrepute.
3. Any person committing a serious offence shall be liable to any of the penalties mentioned in the Schedule of Penalties under Articles 2, 4, 5, 6, and 7, save that in relation to Articles 2 and 4 the maximum period shall not exceed 2 years.

#### VIOLATIONS OF DISCIPLINE

1. Any person, who acts in an uncomradely way and breaches the standards of conduct normally expected of a member, and whose behaviour is not so serious as to constitute a Grave or Serious Offence, shall be guilty of a Violation of Discipline.
2. In addition to all the forms of misconduct mentioned in the Section on Offences, Violation of Discipline shall include:
  - (a) Rowdy and aggressive behaviour;
  - (b) Drug-taking;
  - (c) Excessive drinking;
  - (d) Abusive and disrespectful behaviour to other comrades;
  - (e) Carrying or possessing unauthorised dangerous weapons;
  - (f) Gossiping maliciously so as to set comrade against comrade;

- (g) Disrupting meetings and interfering with the orderly functioning of the organisation;
  - (h) Carelessness in relation to documents of the organisation, or carelessly talking about the organisation in a way that could be useful to the enemy;
  - (i) Negligent driving or careless use of organisation transport;
  - (j) Any negligent behaviour that harms or threatens to harm the organisation, especially when persisted in;
  - (k) Unauthorised use of the organisation's property for personal advantage;
  - (l) Behaving in a manner calculated to bring the organisation into disrepute.
3. The penalties for Violation of Discipline shall be those set out in Articles 5, 6, and 7 of the Schedule.

GENERAL

Guiding Principles for Classifying Breaches/Violation of the Disciplinary Code

1. The difference between a Grave Offence and a Serious Offence shall lie in the degree to which the offender's conduct is directed towards destroying, subverting or neutralising the effectiveness of the organisation. Such objective will be presumed when the offender is acting on behalf of or in collaboration with the enemy. In considering whether an offence should be classified as 'grave', weight should be given both to the seriousness of intent of the actor and the seriousness of the actual or potential consequences of his/her conduct.
2. The difference between a Serious Offence and a Disciplinary Violation shall lie in the degree of intent of the offender, the extent of the actual or potential harm to the organisation, the extent of repetition, and the degree of shock which the conduct produces in fellow comrades.

### Standards

3. In evaluating the evidence and deciding on their finding, the tribunal shall apply the standards of ordinary highly-disciplined comrades, neither demanding conduct that is totally pure and heroic nor tolerating conduct that might be excusable in other situations but which is below that required of a good comrade.

### Omissions

4. Failure, refusal or omission to perform an act in circumstances where a good comrade would have acted, shall be treated as 'conduct' for the purposes of deciding whether an Offence or Violation has been committed.

### Defences

5. The Tribunal should apply the principles of the organisation in the light of the general experience of the organisation and using their common sense, in determining whether in any particular case, the existence of special circumstances, such as necessity, self-defence or complete accident, constitutes a complete defence to the allegations, whether it reduces the gravity of the offence, or whether it constitutes a mitigating circumstance with regard to penalty only.

### Host Country

6. Offences which have an element involving a host country, should be dealt with in a manner agreed upon between the organisation and the relevant authorities of that country. In all other cases, the holding of hearings and the carrying out of sentences should be done with due sensitivity to the sovereignty of the host country.

## SCHEDULE OF PENALTIES

### 1. Maximum penalty

In exceptionally serious cases, where no other penalty would be appropriate, maximum punishment may be imposed. In considering whether or not to impose this penalty, Tribunal shall recall the traditions of humanity of the ANC and its long-standing opposition to capital punishment.

The Tribunal shall in particular consider the following factors:-

- (a) The seriousness of the threat posed by the accused actions to the organisation;
- (b) The degree of collaboration, if any, with the enemy, including the seriousness of training given, the carefulness of the steps taken to infiltrate the accused, the degree of corruption involved, and generally his/her skilfulness and value to the enemy;
- (c) The extent to which the accused has demonstrated a willingness and capacity to reduce the damage he/she has caused and to make a contribution in the future to the liberation struggle;
- (d) Any personal factors which may be relevant, such as threats or blackmail by enemy or persuasion by others already in the organisation.

Poverty and the need to support a family are no mitigating circumstances.

The Tribunal shall weigh these factors cumulatively in relation to each other, forgetting neither the need to be firm in defence of the organisation, nor the importance of maintaining the principles of humanity that have characterized the struggle.

#### Review of Maximum Penalty

No maximum penalty shall be carried out until fully reviewed by the competent review body. Only the most extreme circumstances, such as impossibility of a review in battlefield conditions, can justify any departure from this rule, a full report must be made thereafter, and a post factor ratification sought, as soon as possible.

The reviewing body shall take into account, inter alia, all factors mentioned above, in deciding whether to confirm or alter the death sentence, but may also take into account wider political factors, such as need at any particular moment to show special firmness or clemency, the possibility of exchange of prisoners, problems that may be caused with host countries if the sentences are carried out and, to some extent, the general feelings of the membership.

#### 2. Deprivation of Liberty

- a) In case of deprivation of liberty, the offender shall be confined for a specified period within a designated area or

place for the purposes of serving his/her term of such confinement.

- b) A senior political authority of the area or place duly appointed as supervisor, shall monitor and observe the activities, work and behaviour of the offender and shall, in case of terms of more than three (3) months, submit written quarterly reports to the Secretary General's Office which report shall amongst other things reflect the offender's general behaviour and attitude towards the struggle.
- c) The written quarterly reports filed with the Secretary-General's Office may be used against the offender in subsequent expulsion proceedings which may be instituted against him/her.
- d) Rights and privileges of confined persons shall be as defined in the regulations.
- e) The maximum period of deprivation of liberty in respect of grave offences shall be 5 years and for serious offences it shall be 2 years.

### 3. Expulsion

Powers of expulsion and deprivation of membership rights of a person by the organisation shall be exercised only by the supreme governing body of the ANC.

- a) The Secretary General or his Deputy shall in writing notify the respondent person of the NEC decision to expel him/her, in such notice reasons for expulsion shall be given.
- b) The respondent person shall then be called upon to appear in person with an advisor, if any, before the supreme governing body on a date to be fixed, to show cause, if any, why he/she shall not be expelled from the organisation with forfeiture of membership rights.
- c) The expulsion order shall be communicated to the President within a month that it has been made for his confirmation.
- d)
  - i) No order of expulsion shall operate before confirmation in writing by the President;
  - ii) The President's confirmation shall be communicated to the respondent in writing by the Secretary General's Office;
  - iii) Once confirmed by the President, any order of expulsion shall normally be communicated to the general membership with a summary of the reasons that led to it



and any other information deemed appropriate;

- e) The NEC shall have the right to readmit an expelled person.

4. Suspension

When a member is suspended the organ suspending him/her shall state the period and conditions of such suspension.

In respect of serious offences the period of suspension shall not exceed two (2) years.

5. Public Reprimand

Normally reprimands shall be in public, in the presence of as many fellow members as possible and where the information media of the organisation should be mentioned in appropriate. The objective of the reprimand shall not be to humiliate the person concerned, but to remind him/her and the whole membership of the standards expected of members, and to re-inforce the sense of unity and shared values in the organisation.

6. The Performance of Useful Tasks

This should be the normal penalty for less serious offences. The Tribunal should specify the nature of the work to be done, its duration, and the kind of supervision necessary. This work should not be performed in substitution for normal tasks of the organisation, but in addition to them.

7. Forfeiture of Privileges

In appropriate cases, especially where relevant to the nature of the offence, privileges, such as rations of tobacco, cinema money etc. may be withdrawn.

8. The penalties mentioned in Articles 4, 5, 6 and 7 may be combined.