[1]

# WORKING GROUP 1

## SUB GROUP 1

## INTERNAL SUBMISSIONS

## JANUARY - FEBRUARY 1992

## VOL 1

## CONTENTS:


1. AFRICAN NATIONAL CONGRESS

   Laws which militate against a climate for free political activity

2. DEMOCRATIC PARTY OF SOUTH AFRICA:

   Repeal of any remaining laws militating against free political activity

3. INKATHA FREEDOM PARTY:

   The release of political prisoners

4. SOUTH AFRICAN COMMUNIST PARTY

   Release of remaining political prisoners

5. SOUTH AFRICAN GOVERNMENT

   The finalisation of matters relating to the release of political prisoners

6. VENDA GOVERNMENT

   Completing the reconciliation process

7. VENDA GOVERNMENT

   Illegal aliens in South Africa

8. XIMOKO PROGRESSIVE PARTY

   Completing the reconciliation process




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## ANC SUBMISSIONS TO SUB-GROUP 1 OF WORKING GROUP 1 ON LAWS THAT MILITATE AGAINST A CLIMATE FOR FREE POLITICAL ACTIVITY

One of the main tasks of Working Group 1 is to look into the amendment and/or repeal of any remaining laws militating against free political activity. First and foremost, from the ANC point of view, it is a gross misnomer to talk of "remaining laws militating against free political activity". The regime of repressive legislation reminiscent of the old order of apartheid basically remains intact; all that has happened since the 2nd of February 1990 is that the South African Government has tinkered with some aspects of legal reform with particular reference to the Internal Security Act of 1982. Secondly, it might well be possible that the TBVC territories too have repressive and obnoxious laws that have to be amended and/or repealed if we are to create the requisite political climate throughout the length and breadth of our country.

The ANC believes that most, if not all, the so-called security legislation and generally all laws that violate fundamental freedoms need to be repealed or amended as the case may be. While the ANC acknowledges that even a future government will need some form or the other of security legislation based on universally accepted democratic norms and principles, we believe there is a fundamental distinction between such security legislation and repressive legislation such as might have been required to buttress the system of apartheid.

The remarks that follow hereunder are not intended to be an exhaustive exercise but are merely intended to put across the viewpoint of the ANC in this regard. Due to time constraints, the situation in the TBVC territories has not been studied in any kind of depth as yet and therefore, wherever possible, the TBVC legislation will only be alluded to in passing.

### 1. SECURITY LEGISLATION

#### 1.1 The Internal Security Act 74 of 1982 (as amended)

The ANC strongly feels that this Act, in its entirety, should be repealed, for it is not consistent with the emergent concept of a new democratic South Africa. As indicated above, it is also inconsistent with basic universal norms and principles and completely negates the required climate for free political activity. To illustrate this, we look at the following aspects of the legislation:

##### 1.1.1 Banning of Organisations

1.1.1.1 Section 4 (1) (as amended by Section 5 (a) of the Internal Security and Intimidation Amendment Act, No.138 of 1991) still allows the Minister of Justice to declare by notice in the Gazette any organisation to be an unlawful organisation

1.1.1.2 The Minister of Justice may exercise this awesome power "without notice to the organisation in question". An affected organisation only becomes aware of the Minister's decision to proscribe it when it reads the notice in the Gazette and it is not given notice of the Minister's intention to do so. It thus cannot mobilise the courts and acquire an interdict restraining the Minister from banning it, for instance. The reasons for the Minister's action may be given to any person who proves to the satisfaction of the Minister that he was an office bearer of the organisation in question only subsequently, in terms of Section 10 (1) of the Act (as amended by Section 7 of Act 138 of 1991.)

1.1.1.3 The Minister proscribes an organisation if he "has reason to believe" that the affected organisation indulges in certain practices to achieve certain objectives. If, for instance, he has reason to believe that an organisation uses mass action, which causes disturbance of some sort, to "induce the Government of the Republic to do or to abandon a particular standpoint", (eg to cancel VAT or zero-rate certain basic foodstuffs) he can declare it to be an unlawful organisation.

1.1.1.4 The Minister's decision has dreadful implications for both the organisation and the individual members (and non-members) of the unlawful organisation.

1.1.1.4.1 In terms of Section 13 (1) (b) of the Act (as amended by Section 10 of Act 138 of 1991) the organisation in question ceases to have a legal existence and all its property, including its rights and documents, vests in a liquidator designated by the Minister. The liquidator eventually winds up the organisation and whatever balance remaining after the payment of its debts must be paid into the State Revenue Fund in terms of Section 14 (3) of the Act.

1.1.1.4.2 In terms of Section 13 (1) (a) (read with Section 56 (1) (a)) of the Act), it is a criminal offence to carry on the activities of the organisation in question, or to perform certain prescribed acts which would constitute a continuation of its affairs. Under Section 56 (1) (a) (as amended by Section 22 of Act 138 of 1991) this offence carries a sentence of imprisonment of up to ten years.

1.1.1.5 The ANC is fully aware that the Minister's action under Section 4 (1) of the Act is subject to some sort of judicial review. This, in terms of Section 12 (1) (as amended by Section 9 of Act 138 of 1991), can now be done within three months from the date of the Minister's notice under Section 4 (1). However, in terms of Section 12 (2), the courts have no jurisdiction to suspend or in any manner postpone the operation of the Minister's notice declaring an organisation to be an unlawful organisation under Section 4 (1). No matter how long the court proceedings take, the organisation in question remains banned, with all the consequences and implications referred to above.

1.1.1.6 Section 46 of the Act empowers the Minister and magistrates to ban and/or impose restrictions on meetings and gatherings. This, among a few other laws, gives government officials extensive, if not absolute, powers of control over meetings, gatherings, processions and other forms of assembly.

1.1.1.7 Sections 47 and 48 respectively give power even to low-ranking police officers of the rank of Warrant Officer to close places to prevent banned meetings and disperse crowds, and the latter (see sub-section (2) read with Section 49 of the Act) allows for the use of force, including the use of weapons. We, the victims of police brutality in the townships, know best what this license to injure, maim and even kill entails and will argue that the Internal Security Act in its entirety must go. The same applies to the Gatherings and Demonstrations Act, Number 52 of 1973 and the Demonstrations In or Near Court Buildings Prohibition Act, Number 71 of 1982.

1.1.1.8 The effect of all these laws is that one political player, the government, is legally entitled to make deep inroads into the freedom of assembly, thus making it the final arbiter of the right to gather in public or private places.

1.1.2 Detention of Individuals

1.1.2.1 The ANC takes note of the fact that in terms of Section 12 of Act 138 of 1991, Section 28 of Act 74 of 1982, which granted the Minister power to issue a notice for the detention of any person for such a period as he may deem fit, has been repealed. In short, this severe power of indefinite preventive detention, which was used even in times of peace and without any need for the declaration of a state of emergency, has since been done away with. We further note that Section 50A of the Act, which allowed for the so-called 180-day detention at the instance of the SA Police, has since been repealed by Section 18 of Act 138 of 1991.

1.1.2.2 However, the Act still retains the power of detention. People who have committed or intend or intended to commit so-called security offences or who withhold from the SAP information relating to the commission of such offences, may, under Section 29 (1) of the Act (as amended by Section 13 of Act 138 of 1991), be arrested without warrant and be detained for interrogation for a period not exceeding ten days, and, with the approval of judges of the Supreme Court, for such further period or periods not exceeding ten days or not exceeding ten days each.

1.1.2.3. A cursory reading of this provision shows that, far from intending to reinstate habeas corpus, the Supreme Court is expected, in terms of Section 29 (3) (a) (as amended) merely to deal with SAP applications for further detention of the affected persons. No appropriate judicial remedy is created for the victims or for those who have an interest in their welfare

to challenge the decision and action of the SAP in this regard. Furthermore, once such applications are made, the detainees are detained, pending the outcome of the applications, as if such applications had been granted, according to Section 29 (3) (c) of the Act. In short, the procedure is capable of abuse by the SAP.

1.1.2.4 Besides, this insidious semblance of the involvement of the judiciary in matters of detention of persons requires the Supreme Court to act contrary to the basic principle of audi alteram partem (hear the other side) and creates the illusion rather than the substance of judicial protection.

1.1.2.5 The Act retains short-term preventive detention under Section 50 (1) and (2), which allows a police officer of or above the rank of Warrant Officer to arrest or cause the arrest of any person without warrant and cause such a person to be detained for an initial period of 48 hours and thereafter, with a warrant from a magistrate, for a period not exceeding 14 days, including the initial period of 48 hours. This serious invasion of a citizen's right to personal freedom at the instance of a low-ranking police officer cannot be allowed. From a due process point of view, the procedure for the extension of detention provided for in this Section is not satisfactory at all. The Act makes no provision for the detainees to be heard, and the magistrate's decision to issue a warrant for further detention is based essentially on the subjective opinion of the arresting police officer.

1.1.2.6 The Act retains the provision for the detention of witnesses at the instance of the attorney-general under Section 31. As should be obvious, this form of detention covers even people whose only offence, if any, is to be thought to be knowing about subversives, though they themselves are entirely innocent. The person so affected is also subject to a "no-access" provision in terms of Section 31 (4) of the Act. Section 31 (7) excludes the courts' jurisdiction in respect of the person detained in terms of Section 31 (1).

1.1.2.7 In terms of Section 30 of the Act, a person arrested on a charge of having committed crimes specified in Schedule 3 of the Act may, at the instance of the attorney-general, be denied release on bail or warning. In such cases the power of the courts to release people on bail or warning is removed. This is a gross violation of both personal freedom and the right to a fair trial, all at the instance of a non-judicial official.

1.1.3. Security Offences

1.1.3.1 Section 54 of the Internal Security Act has created special security crimes (such as Terrorism, Subversion and Sabotage) that cover almost the entire spectrum of political, social and economic activity, most probably on the assumption that the established common-law crimes for the protection of

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the state are inadequate for securing the apartheid constitutional and political order. The Section seems to have criminalised virtually all possible activity, including strikes, school boycotts and even ordinary malicious damage to property that may ensue in the context of a call for mass action. As South Africa struggles to emerge from the quagmire of apartheid, it is imperative that these crimes should be abolished so that we can revert to the old common-law crimes intended to protect the new representative and democratic state.

1.2. The Public Safety Act, Number 3 of 1953

1.2.1 This Act empowers the State President to declare by proclamation in the Gazette that a state of emergency exists within the country or within any part thereof. In terms of Section 2 (1) of the Act, he may issue such a proclation if, in his opinion, there is a serious threat to the safety of the public or the maintenance of public order which cannot be dealt with by the ordinary law. The power to issue or withdraw the proclamation is within his discretion and is not subject to legal challenge in the absence of bad faith on the part of the State President. He is also entitled to make such regulations as he may deem necessary or expedient to deal with, as well as terminate the state of emergency. The State President thus assumes extreme powers to qualify or nullify basic human rights and freedoms, and the security forces are, from experience, literally freed to act indiscriminately and with impunity, with very little external control over the activities of the state.

1.2.2 This Act too should go in its entirety. The ANC submits that, in the interim, a law could be passed to deal with the issue of emergencies much more broadly, as opposed to leaving such matters within the subjective discretion of the State President and his government.

1.2.3. The same applies to the Public Safety Amendment Act, Number 67 of 1986, which authorises the Minister of Law and Order to declare areas to be unrest areas and to apply in such areas such regulations as he may deem necessary to control the situation. The declaration and the regulations are effective for three months and may be renewed with the consent of the State President. This Act and the principal Act produce two near-absolute despots in respect of the macro- and micro-emergencies.

1.3 The Situation In The TBVC Territories

1.3.1 With regard to the TBVC territories, only the situation in Boputhatswana has been looked into so far.

1.3.2 Boputhatswana has the Internal Security Act, Number 32 of 1979, which, in many respects, is similar to the old South

1.3.3 In terms of Section 31 (5) of the (Boputhatswana) Internal Security Act, all political activity, including the holding of meetings and gatherings, is dependant on registration as a political party under the Electoral Act. Those organisations and political parties that are not registered as political parties should apply to the Minister of Law and Order for permission to hold meetings.

1.3.4 Furthermore, all people who are not citizens of Bophuthatswana are not allowed to participate in political activity. If they attend, address, speak at or in any way whatever participate in a meeting, the meeting is unlawful and both the convenor thereof and the non-citizens are liable to pay a fine of R6 000,00 or to a sentence of imprisonment of five years or both.

1.3.5 One major implication of this is that all the participants at CODESA, with the exception of the ruling Christian Democratic Party, are banned in Boputhatswana and can therefore not have access, legally, to their supporters and potential voters, unless they acquire permission from the Minister of Law and Order. Otherwise they will be guilty of an offence.

1.3.6 It is clear that unless and until this Act is repeaeled in its entirety or is at the very least substantially amended, it would be absurd to talk of a climate of free political activity where all parties and organisations participate on an equal footing and without fear.

## 2 THE MEDIA, INFORMATION AND LEGISLATION

### 2.1 The Publications Act of 1974

2.1.1 The main statute affecting the free flow of information and opinion is the Publications Act, Number 42 of 1974. This Act allows for the banning of material on the grounds, inter alia, that it is prejudicial to the safety of the state, to general welfare or to peace and good order. The material may also be declared undesirable if, according to the Act, it causes harm to the relations between any sections of the inhabitants of the Republic of SA. Banning of material on the basis that it is undesirable is within the discretion of a committee consisting of not less than three persons drawn from a list compiled by the Minister of Home Affairs. In other words, the government in power, through its nominated committees and through its appointment of the members of the appeal board which deals with appeals against committee decisions, is in control of the awesome power of censorship.

2.1.2 Production, importation, distribution and even mere possession of undesirable material are criminalised by the Act. Political materials are the hardest hit of all the targets of the banning orders allowed under this Act.

2.2 Other laws that severely restrict the free flow of information and opinion are, among others, the Defence Act, Number 44 of 1957 (Section 101 (1) introduced by Section 7 of the Defence Amendment Act, Number 35 of 1977, as well as Section 118 (1) (a) and (b), and Section 118 (2)), the Police Act, Number 7 of 1958 (Section 27B (1)) and the Prisons Act, Number 8 of 1959 (Section 44 (1) (f)).

2.3 The Protection of Information Act, Number 84 of 1982, has negated both the freedom of expression and the right to information as its general effect is to punish the unauthorised disclosure of virtually the whole range of official government information. To disclose, publish, retain and neglect and/or fail to take care of official government information, or to act so as to endanger its safety, constitutes an offence under Section 4 (1) of the Act. If the accused is found guilty, he is liable to a fine of up to ten thousand Rand or imprisonment of up to ten years or both a fine and imprisonment. Section 3 of the Act creates the offence of espionage which relates to gathering certain information for the purpose of transmission to a foreign state. The penalty for such an offence is imprisonment for up to twenty years.

2.4 The National Key Points Act, Number 102 of 1980, is another anti-disclosure statute. It empowers the Minister of Defence to declare any place or area to be a National Key Point or a National Key Points Complex as the case may be. The Minister of Defence need not make public his decision to declare a place or an area to be a National Key Point or a National Key Points Complex. In general, the disclosure of information relating to a National Key Point, or the gathering of such information with the view to foreign communication, carries the drastic penalties provided for by the Protection of Information Act of 1982 referred to above.

2.5 Numerous other anti-disclosure provisions exist. Section 11A of the Armaments Development and Production Act, Number 57 of 1968, Section 8A of the National Supplies Procurement Act, Number 89 of 1970, and Sections 68, 69 and 70 of the Nuclear Energy Act, Number 92 of 1982, are examples of such provisions.

2.6 The ANC is of the view that all the laws that negatively impact upon the free flow of information and opinion should be repealed entirely or amended as the case may be.

3 <u>FUNDING OF ORGANISATIONS AND THE LAW</u>

3.1 The SA statute book contains laws and provisions that prohibit the reception of funds by organisations.

3.1.1 The first such statute is the Prohibition of Foreign Financing of Political Parties Act, Number 51 Of 1968. Section 4 of this Act criminalises the foreign financing of political parties.

3.1.2 The next important statute is the Affected Organisations Act, Number 31 of 1974. The main purpose of this Act is to prevent organisations declared "affected" under its terms from receiving funds from foreign sources. This is done by the State President under Section 2 (1) of the Act. It is an offence under the Act to ask for or canvass foreign money for an affected organisation, or to receive or deal with foreign money for and on behalf of such an organisation. The Minister of Justice is authorised to appoint an officer under Section 6 (1) who has extensive powers of entry, search, seizure and questioning under Section 6 (2). Obstructing or refusing to assist such an officer is an offence punishable under Section 7 of the Act.

3.1.3 The Fund-raising Act, Number 107 of 1978, is also of particular interest. First and foremost, it provides in Section 1 (2) that for the purposes of the statute, the funds solicited, accepted or obtained from any person or organisation being outside the RSA shall be deemed to be collected from the public within the RSA. Secondly, a collection of contributions without permission or a collection not done in accordance with this statute, is strictly prohibited by Section 2. The granting of the requisite permission is left to official discretion. Political organisations can collect only from their own members in terms of Section 33 (e) of the Act. Political parties (which are not defined in the Act) are also exonerated from the provisions of this Act in terms of Section 33 (f), and cantherefore, presumably, raise funds through collecting from the public.

3.1.4 In 1989 the tri-cameral Parliament passed the Disclosure of Foreign Funding Act, Number 26 of 1989, the aim of which is to regulate the disclosure of funding of certain organisations from sources outside the RSA. In terms of Section 3 (1) of the Act, organisations and persons may be declared repoting organisations or persons as the case may be. Section 8 creates offences around failure and/or refusal to comply with the provisions of the Act, which carry heavy penalties.

3.1.5 The ANC is of the view that all these laws were designed to cripple the enemies of the apartheid state by frustrsating their efforts to raise funds internally as well as externally. What is disturbing is that the ruling party, a participant in the unfolding political processes, reserves the right to decide which organisations shall, for instance, be declared to be affected and/or reporting organisations for purposes of these laws.

3.1.6 At the same time, tucked away among all these laws is the Secret Services Account Act, Number 56 of 1978. This Act provides for the creation of a fund, out of moneys appropriated by Parliament, to support secret government schemes and activities. Access to vouchers, auditing and even the auditor-general's report in respect of funds from such an account among

others, may be severely restricted/limited by administrative fiat. There is a perception that such funds are being, and have always been, used to cripple and undermine the enemies of the apartheid state within the mass democratic movement; there have also been allegations that such funds have also been used to fan the flames of violence that are currently engulfing our black townships.

3.1.7 Needless to say, all these laws will have to be repealed in their entirety or, at the very least, amended so that we can have a climate where all parties and organisations can operate freely, without fear, and on an equal footing. Left in the hands of one participant here at CODESA would provide such a party with a lethal weapon it can be tempted to use when the chips are down. To level the playing field and also allay the fears and concerns of the victims of the nefarious secret schemes and activities of the state, it is important that this be done as a matter of extreme urgency.

## SUBMISSION BY THE DEMOCRATIC PARTY TO CODESA, WORKING GROUP 1, SUB-COMMITTEE 1

## RE : REPEAL OF ANY REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY

1. The current negotiation process aimed at creating a non-racial democratic South Africa, presupposes the transformation of armed resistance against the apartheid state into peaceful political activity aimed at the successful conclusion of the negotiation process and the creation of a non-racial government. For this to be achieved successfully, political parties and organisations within the broader South Africa must be able to operate freely and without hindrances.

2. For political organisations to operate freely, they must be able to:

   (i) organise freely,

   (ii) raise funds from whatever source they can legitimately, according to generally accepted norms, obtain such funds.

   (iii) secure for their members freedom from harassment by the state or other political organisations,

   (iv) have free access to information,

   (v) have free access to the media and the freedom to communicate their policies in whatever way they deem fit, including the freedom to assemble.

   Legislative measures which inhibits political organisations in these functions, must be abolished or amended to reflect internationally accepted norms.

3. The Democratic Party believes that the following principles should thus be accepted as guidelines in the evaluation of existing legislation inhibiting political activity :

   (i) Every political organisation should have the freedom to organise and raise funds from whatever sources it deems fit.

   (ii) Freedom of association and assembly must be available to all.

   (iii) There must be a free flow of and access to information and all political organisations must have equitable access to the media.

   (iv) Political organisations and their members must be free from harassment by the state or other political organisations.

(v) The due process of law must not be excluded by any legislative measures affecting political organisations.

4. The following are examples of statutes or sections in statutes which may militate against the above principles. (It does not endeavour to be an exhaustive catalogue and further submissions will in due course be made to this Working Group.)

**FREEDOM TO ORGANISE AND RAISE FUNDS**

1. Disclosure of Foreign Funding Act, 26 of 1989.

   This Act provides for the declaration by the appointed Registrar of any organisation or person as a reporting organisation or person. When so declared, that organisation or person is obliged to report any money received form outside the Republic to the Registrar and also inform him about the purpose for which that money is to be used.

2. Affected Organisations Act, 31 of 1974.

   This Act provides for the prohibition of the receipt of money from abroad by organisations declared by the State President to be affected organisations and for the confiscation of such monies already possessed by such organisations which have been declared affected organisations.

3. The Prohibition of Foreign Financing of Political Parties Act, 51 of 1968.

   This Act prohibits the receipt of financial assistance by political parties from sponsors abroad.

FREE FLOW OF INFORMATION AND ACCESS TO THE MEDIA

1. Correctional Services Act, 8 of 1959, s.44(1)(f) and (g).

   Sub-section (f) places an onus on anyone who writes anything about prisons to prove the truth thereof. The equivalent section in the Police Act has already been repealed. Sub-section (g) prohibits the publishing of any statement etc. by a prisoner unless such was admitted as evidence during his trial or unless the Commissioner has given his approval.

2. Criminal Procedure Act, 51 of 1977, Section 205.

   Section 205 can be used to force reporters to disclose information or confidential sources relating to any alleged offence or to face imprisonment.

3. Newspaper and Imprint Registration Act, 63 of 1971, ss.3, 8A

   The relevant sections deal with the registration of newspapers and the lapse, under certain circumstances of that registration. The Act creates the possibility that prohibitive registration fees can be prescribed by the relevant minister.

4. Registration of Newspapers Amendment Act, 98 of 1982.

   Section 1 of this Act gives certain powers to the minister to cancel the registration of a newspaper published by a publisher who is not a member of the Newspaper Press Union of South Africa

5. Electoral Act, 45 of 1979, Section 143.

   This section prohibits the publication of opinion polls during elections.

6. Armaments Development and Production Act, 57 of 1968, s.11A.

   This section contains a prohibition on the disclosure of certain information relating to the acquisition, development, etc. of armaments..

7. National Key Points Act, 102 of 1980, Section 10.

   Prohibition on publication of certain information relating to places declared as National Key Points.

8. Petroleum Products Act, 120 of 1977, Section 4A.

   Prohibition on disclosure of information relating to the source, storage, etc. of petroleum products.

8. Broadcasting Act, 73 of 1976, Sections 11 and 27(g).

9. Post Office Act, 44 of 1958, Sections 24, 27, 29 and 113.

10. Defence Act, 44 of 1957, Section 118.

**FREEDOM OF POLITICAL PARTICIPATION AND ASSEMBLY**

1. Demonstrations in or near Court Buildings Prohibition Act, 71 of 1982.

   The prohibition of gatherings in this Act is too widely formulated.

2. International Security Act, 74 of 1982, Section 46.

   This contains a magisterial and ministerial power to prohibit gatherings.

**FREEDOM FROM HARASSMENT**

1. Prevention of Public Violence and Intimidation Act, 139 of 1991.

   The ministerial power to issue regulations should be more narrowly defined.

2. Admission of Persons to the Republic Regulation Act, 59 of 1972.

   This Act regulates, inter alia, admission into and removal from the country of certain persons. Section 11 ousts the courts' jurisdiction in determining whether one is a prohibited person or not. Section 13 lists amongst the prohibited persons, one who is unable to read and write any European language.

3. Secret Services Account Act, 56 of 1978.

   This Act enables the Minister of Finance to make money available in a secret account for services of a secret nature as determined from time to time.

4. Internal Security and Intimidation Amendment Act, 138 of 1991, Sections 4 and 29.

   Section 4, as amended, still provides for the banning of organisations by the Minister if he has reason to believe that the organisation behaves in a certain manner. Section 29 provides for detention without trial for a period of 10 days, which period can be renewed by a judge on application by the Commissioner of Police.

5. Internal Security Act, 74 of 1982, various sections.

6. Public Safety Act, 3 of 1953.

7. Security, Intelligence and State Security Council Act, 64 of 1972.

8. Bureau for State Security Act, 104 of 1978.

Legislation of a discriminatory nature is not included in the above catalogue.

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IQembu leNkatha yeNkululeko

## THE IFP'S POSITION ON THE RELEASE OF POLITICAL PRISONERS

1. The IFP believes that all political prisoners should be released as soon as is practically possible.

2. In principle the IFP believes that a General Amnesty is desirable, as one delegate has suggested "We must forgive and forget". However, the IFP recognises that there is an unacceptably high level of violence and crime in South Africa, and the release of common criminals together with true political prisoners may occur under a General Amnesty.

3. The Government and the ANC have been involved in bilateral talks to secure the release of alleged political prisoners still held by the Government. The IFP suggests that the above two parties recommend to CODESA the role that CODESA should play in assisting them to secure the release of any political prisoners still held by the SA Government.

4. The IFP views with grave concern the contents of the two letters Annexed hereto marked 'A' and 'B', and requests that a full investigation into the matter be carried out.

   The letter 'A' is from a Mr Patrick Hlongwane to CODESA who claims that he was an ANC political prisoner and that the ANC is still holding political prisoners in Uganda and Tanzania. The second letter is a reply from CODESA to Mr Hlongwane. It will be noted that Mr Hlongwane's letter was addressed to Mr Zach de Beer, whereas Mr Morobe has taken it upon himself to reply to the letter. Why? Why has Mr Morobe falsely advised Mr Hlongwane that there is no item on the CODESA Agenda to discuss political prisoners?

5. Annexure C to this report is a sworn statement made by Mr Hlongwane. It describes his imprisonment as a political prisoner of the ANC and Mr Hlongwane believes that the ANC is still holding political prisoners in Uganda and Tanzania. The IFP believe that all political prisoners, including those allegedly held by the ANC must be released. To achieve this end the IFP recommends that a subcommittee be appointed to hear evidence from ex ANC political prisoners to determine whether and where ANC political prisoners are being held. The ANC and the SA Government must be seen to have clean hands on this matter.

2/...

President: The Hon. Prince Dr. Mangosuthu G. Buthelezi
National Chairman: Dr. F.T. Mdlalose
Deputy Secretary General: Inkosi S.H. Gumede
Sub Committee Chairmen:
Political Constitutional, and Legal: Dr. D.R.B. Madide
Economic and Finance: Mr. M.A. Nzuza; Social and Cultural: Dr. F.T. Mdlalose: Elections Publicity and Strategy: The Rev. C.J. Mtetwa
Appointment and Disciplinary: Mr. E.S.C. Sithebe; Community Development: Mr. M.V. Ngema.

6. If the ANC and the Government are unable to resolve their dispute on political prisoners an impartial, independent judicial commission must be established to review the position of <u>all</u> political prisoners.

Return Exiles Committee
To:Mr. Zac Debeer
The Chairman of the CODESA

'A'

Return Exile Committee
P.O. Box 47605
Greyville
4023

Telephone number:
(0358)791061 Mr.Makama or
Pat Hlongwane (031)5091808

We are the A.N.C. Ex.Detainees we have arrived in South Africa on 17.8.1991 from Uganda in the A.N.C.Prison. So now we are preparing to go to court with the A.N.C.as they call us enemy agents,we were held in different countries in Africa. So now our request is that you should also involve our case in th Multi Party Conferance as the people who want their voice to be heard in South Africa,if you can just involve our case in your Conferance,we will be very happy. SoIfyou have any objection repport back to us,so we will be very glad if you can inform us early.

We are calling for independant Commission of inquiry which will be set up b O.A.U.,U.N.,RED CROSS,S.AFRICAN CHURCHES,COMMON WEALTH before we go to cour with the A.N.C. IN HAIG.

CHAIRMAN :Pat Hlongwane
SECRETARY:Sipho Laliso
TREASURE :Sipho Ngema

OTHERS
Sphiwe Muzi Lombo
Keke Kheswa
Mandla Mapu
John Bester
Charlton Mavundla
Bongani Ntshangase
Linda Ntshangase

SIGNED BY: ____________

'B'

18 December 1991

Return Exile Committee
P O Box 47605
Greyville
4023

Thank you for your letter of 17 December addressed to Dr Zach de Beer.

Although no item on the Agenda for CODESA presents itself as one under which the issue you mentioned can be classified, your letter will be placed before the Management Committee of CODESA.

Yours faithfully

M Morobe
Administrator

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

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AVADAVIT

EVIDENCE OF PATRICK HLONGWANE

In 1979 - 1983 Patrick Hlongwane was National Organiser of the Port Elizabeth Civic Organisation (PECO). In 1983 he had problems with some members of this organisation. The UDF was formed on 20th August 1983, and some of the PECO members wanted the PECO to affiliate under the UDF. Patrick refused to do this as he believed that the UDF was a front for the ANC.

In December 1986 Patrick left SA to meet Oliver Tambo In Zambia, and the PAC in Tanzania, and the BCMA in Botswana.

In Zambia security members of the ANC gave Patrick papers on which to write his autobiography. He then gave these papers to Jackie Mabuza the body guard of Oliver Tambo.

Jackie Mabuza accused Patrick of being a spy of the SA Government. He formulated a story that Patrick was involved in the Maseru massacre in 1982. Patrick was arrested and sent to a "rehabilitation" centre in Lusaka where he was tortured. Under torture he admitted that he was working for the SA Government.

He was then sent to Alpha farm in Lusaka where he was forced to confess in front of a TV crew which had been organised by Tabo Mbeki.

Patrick was then smuggled to Angola where he was locked up in the central prison in Luanda (The same prison as Capt. du Toit was locked up). He spent 3 weeks there and was then taken to Quibaxe in Northern Angola. He was locked up in Quadro Concentration Camp. He was again tortured and forced to write a confession. He then started hard labour for the next 3 years.

In December 1988 he was smuggled to Uganda. There he was locked up in Mbara under the authority of the State President of Uganda Yuroweni Musoveni.

In 18th September 1990 the ANC decided to hold a "Kangaroo Court" tribunal whereby Tony Mongale, a member of the SACP, and Palo Jordan presided.

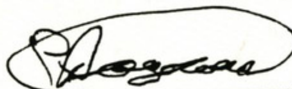
Those tried had their cases remanded to 18th February 1991. Patrick was sentenced to 15 years hard labour.

Approximately 16 people were sentenced. Sentences of up to 18 years hard labour were given.

Patrick embarked on a hunger strike on 23 February. He realised that there was no justice.

He told the ANC that according to the Pretoria Minute the ANC should release it's prisoners as well as the SA Government.

PATRICK HLONGWANE



Patrick was prepared to die if the ANC would not release him.

The hunger strike lasted to the 25th of March, i.e. 29 days. Tony Mongale then decided to release Patrick. The ANC advised Patrick that they had no other accommodation for him other than in the prison where he was to remain until the ANC could make arrangements for Patrick to return to SA.

While still in prison on June 16th 1991. Patrick was beaten up by an ANC prison warden. Patrick embarked on a second hunger strike demanding his release by death if need be. Some senior ANC officials undertook to discuss Patrick's release at the ANC Conference in Durban on 3/7/1991. Patrick refused to stop his hunger strike and collapsed after approximately 33 days.

He was taken to the Ugandan Military hospital where he was treated by a Ugandan doctor.

The Ugandan doctor was advised of Patrick's plight and he was requested to advise the international coummunity. Under pressure the ANC decided to release Patrick on 17 August 1991 plus approximately 32 other prisoners.

As a consequence of his ill treatment received at the hands of the ANC, Patrick suffers from ulcers, piles and poor eye sight.

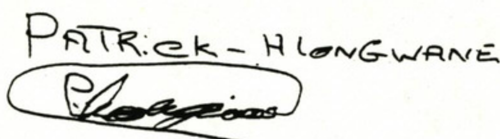
Patrick Hlongwane believes that there are still ANC political prisoners which are still being held in prisons of the Ugandan Government.

There is a house called Victor Verster in Gaba in Kampala which is also a prison of the ANC, where there may still be prisoners held by the ANC.

In 1990, some of the local MK in a Uganda camp, who were mainly from Natal, held a mutiny. They were frustrated and wanted to attack Inkatha. Mr Mandela was called in to sort out the problem but was unsuccessful. Oliver Tambo was called from Sweden in February 1991 and he ordered all the mutinuous soldiers to be locked up. Patrick believes that these soldiers remain locked up in Ugandan Prisons.

At Mbarara, which was an old military camp of Idi Amin, and which was made available to the ANC by the Ugandan Government, approximately 69 were held.

ANC prisoners were also held at Dakawa in Tanzania.



I swear that the above information is to the best of my knowledge true and correct.

Sworn this 14th February 1992

Patrick Hlongwane

PATRICK HLONGWANE-

0413742

Justice of the Peace
Commissioner of Oaths

LEON BASSO
(BLOCK LETTERS)

SERSANT

20 SHEPARD AVE KENSINGTON B

92-02-14 RANDBURG

SUID-AFRIKAANSE POLISIE
1992-02-14
SOUTH AFRICAN POLICE

SOUTH AFRICAN COMMUNIST PARTY

SUBMISSION TO WORKING GROUP 1 : CREATION OF A CLIMATE FOR FREE POLITICAL PARTICIPATION AND ROLE OF INTERNATIONAL COMMUNITY

Subject : Release of remaining Political Prisoners:

It is the SACP's submission that the speedy resolution of this volatile problem would be of enormous benefit to the entire negotiations process and the creation of a climate of peace. It is an issue that needs to be urgently attended to and resolved as soon as possible.

What we will do is summarise the main points of argument - we will not go into the history of the agreements between the Government and the ANC in any detail.

1. Most importantly - this is not a difficult problem to resolve. At the most there are 250 prisoners still in prison or on trial who would fall into the broad category of political offenders. Looking at the release in July 1991 of thousands of criminal offenders within a matter of weeks, releasing persons from prison (even when such persons have been convicted of murder) is relatively easy.

2. Discussion in CODESA of the detail and wording of the two major agreements reached between the ANC and the government serves no purpose. There are varying interpretations of who or what is a political prisoner. This, at this stage, remains an obfuscation of the issue. All parties involved actually know what e.g. the ANC and SACP means by "release all remaining political prisoners" - when you have in prison members of Umkhonto We Sizwe who carried out the instructions of persons participating in the CODESA talks - you have a problem.

3. The Government has shown itself willing to release persons convicted of identical offenses to those still in prison. They developed elaborate methods of release including parole, remission of sentence, etc. to do this. Of particular note here was the release at the beginning of July last year of fifteen MK operatives including the Delmas three, Maboa and Vilakazi and others, who were all released on parole. What they are called by the Government or by others is of no relevance - the fact is that tortuous mechanisms were negotiated (so that the government did not have to admit that they were political offenders) to effect their release. What is stopping the Government using the same methods to release the remaining political prisoners - most of whom are first offenders as well?

supporters - actions which only serve to inflame the emotions of the populace (bitterness and frustration are increasing).

9. Reasons must be presented by the Government as to why they have not resolved this issue. The intent of the agreements reached was to effect the release of all those prisoners regarded as political by the ANC. When, two years later, their members are still in prison - the intent of the agreement has not been realised.

10. Finally it is not possible to have a climate for free political participation whilst our members remain in prison.

**Conclusion:**

It is quite easy to imagine the positive impact the releases would create. On the one hand we would be rid of an irritating bone of contention between the Government and the liberation movement; on the other hand trust and confidence in the process would be boosted and all parties to the CODESA talks would benefit. At CODESA 1 the ANC and SACP requested the releases by Christmas. Let us strive to make this a reality before Easter, at CODESA 2.

the release of political prisoners and the granting of indemnity to persons both inside and outside the Country. The plan was submitted to the respective principals on 31 August 1990 and was immediately accepted by the Government. The ANC informed the Government of their acceptance on 24 September 1990.

1.7 According to the plan, better known as the Report of the Working Group established in terms of paragraph 2 of the Pretoria Minute (Working Group 2), certain remissions of sentence would be granted, resulting in administrative releases. In addition to this procedure, provision was made for prisoners to be released in terms of guidelines to be formulated in terms of the Report of Working Group 1. These guidelines, which were published in the Government Gazette of 7 November 1990, in some respects went even further than the Norgaard Principles. These guidelines, after being studied by for instance persons from the United States of America, were said to be very liberal and would result in the granting of indemnity or release to persons who would not be regarded as political prisoners in the United States or many other Western Countries.

1.8 The process, it was envisaged, would commence on 1 October 1990, and if possible be concluded by 30 April 1991. Applications

were initially received at a very slow rate, as is demonstrated by the following figures:

| Month | Number |
|---|---|
| September 1990 | 9 |
| October 1990 | 10 |
| November 1990 | 190 |
| December 1990 | 2 455 |
| January 1991 | 792 |
| February 1991 | 1 323 |
| March 1991 | 725 |
| April 1991 | 2 003 |
| | 7 507 |

1.9 Eventually, more applications were received after 30 April 1991 than the total number received before. To date a further 8 751 applications have been received and applications are still being submitted to the Office for Indemnity, Immunity and Release.

**THE RELEASE OF POLITICAL PRISONERS**

2.1 In terms of the Report of Working Group 2, all sentenced prisoners regarding their offences as being political, could apply for release.

2.2 6602 applications for release were received. Of this figure 5183 applications were received after 30 April 1991. As stated

before, these applications were also processed. The applications were dealt with as follows:

APPLICATIONS FOR RELEASE

| | | |
|---|---|---|
| Applications received | | 6602 |
| Applications finalized | 6298 | |
| Offences committed after the Cut off date | 97 | |
| Still being processed | 207 | |
| | 6602 | 6602 |

2.3 The 207 applications still being processed have already been checked and according to the initial indications, fall outside the guidelines. However, a Scrutiny Committee was created on which the ANC is represented to reconsider these cases before a final decision is taken. Response from the ANC is outstanding in approximately 150 of these cases.

2.4 A large number of applications for release related to offences which could not, by any stretch of the imagination, be regarded as political. These cases were discussed with representatives of the ANC who agreed that they fall outside the guidelines. Consequently they were refused.

2.5 A total of 1221 security and security related prisoners where released in terms of the guidelines or administratively.

2.6 On 30 June 1991 the Government and the ANC signed an agreement to the effect that for the purposes of their mutual endeavour in regard to the release of prisoners, it is deemed that finality in the process had been reached and that the **results were accepted**, provided that in any case in which the Government advised that release was not warranted, this would not infringe on the right of the individual to request further advice from the Advisory Committees. This, however, was not to be construed as extending or delaying the finality of the agreement.

2.7 According to a report in "Business Day" of 29 July 1991 Mr Maduna of the ANC said at a meeting with Justice Officials that the ANC needed time to engage in broad consultations on the cases of individual prisoners, but that almost all the clearly political cases had been resolved.

2.8 The ANC on 13 June 1991 provided the Department of Correctional Services with a list containing 462 names of persons claimed to be political prisoners. In verifying this list, the following was found:

| | | | | | |
|---|---|---|---|---|---|
| * | Names duplicated | - | 7 | | |
| * | Names not verifiable in official records | - | 193 | | |
| | **Sub Total** | | | 200 | |
| | (Note : 32 of the 200 appear to have been dealt with by courts of neighbouring States) | | | | |
| * | Persons already released | - | 159 | | |
| | Prisoners sentenced for serious common law crimes and still in custody | | 103 | | |
| | **Sub Total** | | | 262 | |
| | **TOTAL** | | | | 462 |

2.9 The following offences were committed by the offenders

remaining in prison:

| | | |
|---|---|---|
| Attempted Murder | : | 5 |
| Murder | : | 72 |
| Theft | : | 6 |
| Robbery | : | 11 |
| Culpable Homicide | : | 5 |
| Rape | : | 4 |
| **TOTAL** | | 103 |

2.10 Various discussions that were held with the ANC since 28 November 1991 resulted in Mr Phosa of the ANC undertaking to furnish the Department of Justice with a final list of political prisoners on or before 19 December 1991, containing all the names of persons who were not released and who, according to the ANC, were political offenders.

2.11 Lists containing a total of 90 names were submitted. Two names were however duplicated. According to the records, the situation regarding these names is as follows:

| | | | |
|---|---|---|---|
| * | Prisoners in custody that did not apply for release | : | 1 |
| * | Released (without application) | : | 3 |
| * | Released after applying | : | 11 |
| * | Refused | : | 27 |
| * | Pending | : | 7 |
| * | Under consideration by the Scrutiny Committee | : | 27 |
| * | Unknown | : | 12 |
| * | Duplicated | : | 2 |
| **TOTAL** | | | 90 |

2.12 The position of the South African Government regarding the release of political prisoners is that all prisoners falling within the agreed guidelines have been released. A number of disputed cases remain. Mechanisms to address these disputes exist. The

release of political prisoners should therefore not be an issue.

Should any person or organisation be of the view that any prisoner, other than the disputed cases which are known to the Government, falls within the agreed guidelines and should be released, the Government, upon being furnished with full particulars of such case, will investigate the facts and deal with the matter as expeditiously as possible.

**"POLITICAL TRIALS"**

3.1 At the time when the agreements were concluded and after these dates, a number of persons were being tried for offences committed with a political motivation.

3.2 In practice, virtually all cases, where the accused had applied for indemnity, were postponed pending the outcome of the applications for indemnity. After the publication of the last category of offences on 24 April 1991, a large number of cases were withdrawn.

3.3 The present position is that the ANC has made reference to only 4 persons still awaiting trial for offences which they regard as political.

VENDA GOVERNMENT

SUBMISSION TO WORKING GROUP I SUB GROUP I.

COMPLETING THE RECONCILIATION PROCESS.

b) **THE RETURN OF EXILES AND THEIR FAMILIES**

To keep in line with the principle of democracy and to create a climate for free political participation, all parties and organisations need to be completely free to participate in all political processes leading to the new South Africa. The South African Government having already committed itself to redress in the best possible way the evils occasioned by apartheid policies, should feel duty bound to refrain from stalling on the question of general amnesty. It is along this line that the return of exiles and their families should be expedited.

In certain instances committees had already been established to facilitate the smooth process of the return of exiles. However, since the birth of CODESA, it is our submission that where certain arrangements have not yet been finalised, they be transferred to the attention of CODESA. To this end, all remaining apartheid laws which pose as stumbling block to the return of exiles and their families should be repealed. It is our view that these aspects should be addressed to ensure progress in the whole transformative process because when the new South Africa is in the making, we cannot afford to have a situation where fellow South Africans are barred from participating from the onset.

Finally it is essential that returning exiles be given the necessary protection from prosecution on arrival and beyond.

c) **THE AMENDMENT AND/OR REPEAL OF ANY REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION.**

It is the assignment entrusted to this subgroup to see to it that a climate for free political participation is created by removing any remaining laws that are not conducive to completing the process of reconciliation. There can be no free political participation if there is inequality before the law. The apartheid system has created a situation of inequality of apportunities in the sense that the majority of the citizens have been excluded from the process of democracy.

It is our submission that in the process of negotiation all legislation which hinder free political activity due to its discriminatory nature be repealed. Moreover, with the South African Government having committed itself to democracy and to redress all the evils of apartheid this sub-group should explore all possibilities of expediting the process. One need not over-emphasise the importance of the repeal, amendment or elimination of discriminatory legislation at local, regional and national level which at this point in time has a bearing on the progress of other working groups. By delaying the mechanism of harmonising the laws, we may retard or hamper the progress of other working groups.

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POSITION PAPER: ILLEGAL ALIENS IN THE RSA

1. The ~~attached~~ ~~[illegible]~~ VENDA submission to work group 1, sub-group 1, refers.

2. <u>FACTUAL SITUATION</u>

2.1 Over the past few years, because of conditions prevailing in their countries of origin, many foreigners have gravitated to South Africa, especially persons from African countries and from European countries such as Poland, Romania and Yugoslavia as well as persons from Israel (former Russian Jews) and others.

2.2 Many of these persons enter the country clandestinely, while others do so legally as visitors. Once in the RSA, they endeavour to prolong their stay by applying for work permits or permanent residence.

2.3 Because of the high incidence of unemployment in the RSA such applications are generally discouraged and in fact only approved in exceptional circumstances, where a proven need exists for a specific type of worker. It is also a prerequisite that South Africa citizens and legal permanent residents are not deprived of employment.

2.4 All applications in the above regard are treated strictly on merit and in terms of standard procedures. No other criteria are allowed to influence the matter.

2.5 These persons who enter the country with the purpose of improving their living conditions and prospects, do not comply with the definition of a refugee as defined by the Statute of the United Nations.

2.6 Records are kept of all aliens in the RSA who either enter the country legally or who subsequently come to the attention as persons who entered the country clandestinely. There may be many others of whom there

is no official knowledge and who may be exploited in a number of ways not referred to by the Venda Government.

3. OFFICIAL APPROACH

3.1 Because of the socio-economic conditions prevailing in the RSA at present, irregular methods of immigration are strongly opposed. Such people are rather urged to return to their country of origin or elsewhere.

3.2 This stringent policy unfortunately has the result that in some cases persons whose temporary residence permits expire and are not renewed, go "underground" and try to establish themselves in various quarters of the country, as well as the TBVC states and self-governing territories.

3.3. It must be noted that an alien can normally only qualify for naturalisation as a SA Citizen after five years of continuous legal residence in the RSA. Only in exceptionally meritorious cases is consideration extended to the reduction of the period of 5 years.

4. GENERAL REMARKS

4.1 The temporary detention of illegal aliens who have been apprehended and are in the process of being properly identified prior to repatriation, is avoided as far as possible. Where unavoidable such detention seldom lasts for more than a few days. The general rule is that these cases should, as far as humanly possible, be resolved within one week.

4.2 It has come to the attention that some illegal aliens in the RSA succeed somehow in obtaining extensions of their stay, permanent residence permits or SA identity documents, in an unlawful manner.

4.3 The possibility has been mooted that at least in some instances, government officials may be involved in this regard. This is, however, viewed in a very serious light and whenever an occurrence of this nature is reported, it is followed up immediately with an intensive investigation on an individual basis and remedial action taken where proven.

4.4 Factors lost sight of in the Venda paper is that South Africa is a haven for the hungry and deprived of neighbouring states. This has the effect that scarce work opportunities are taken up by these people who because they are so dependent may be exploited. While not losing sight of the humane aspects the problem must be dealt with in a multi-faceted manner also taking into account economic factors.

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XIMOKO PROGRESSIVE PARTY

WORKING GROUP 1, SUB WORKING GROUP 1

24 FEBRUARY 1992

"COMPLETING THE RECONCILIATION PROCESS"

1. THE AMENDMENT AND/ OR REPEAL OF ANY REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION.

1.1 Mr chairperson, ladies and gentlemen we in the Ximoko Progressive Party believe that all laws militating against free Political activity especially in the self-governing territories, are not laws of our own making per se, but are laws which have come into being because of the Homeland Constitution Act of 1971 (Act NO. 21 of 1971) which is also a product of the so-called "Bantu Administration Act of 1927" passed by the South African Government.

1.2 The Homeland Constitution Act referred to above by its very nature has limited and is still limiting political activity in the respective territories to a specific ethnic grouping and as such militates against free political activity.

1.3 The other laws and regulations promulgated from this main Act such as Electoral Act, Land Act, Citizenship Act etc. are clear manifestation of the discriminatory legislation that militate against free political activity.

1.4 Mr chairperson, it is therefore the submission of the Ximoko Progressive Party that this Act be either amended or repealed by the South African Parliament to make way for free political activity in the unified South Africa.

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