

# THE GROOTE SCHUUR MINUTE

The government and the African National Congress agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as commitment to stability and to a peaceful process of negotiations.

Flowing from this commitment, the following was agreed upon:

1. The establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. All persons who may be affected will be considered. The working group will bear in mind experiences in Namibia and elsewhere. The working group will aim to complete work before 21st May 1990. It is understood that the South African government, in its discretion, may consult other political parties and movements and other relevant bodies. The proceedings of the working group will be confidential. In the meantime the following offences will receive attention immediately:
  - (a) The leaving of the country without a valid travel document.
  - (b) Any offences related merely to organisations which were previously prohibited.
2. In addition to the arrangements mentioned in paragraph 1, temporary immunity from prosecution for political offences committed before today, will be considered on an urgent basis for members of the National Executive Committee and selected other members of the ANC from outside the country, to enable them to return and help with the establishment and management of political activities, to assist in bringing violence to an end and to take part in peaceful political negotiations.
3. The government undertakes to review existing security legislation to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities.
4. The government reiterates its commitment to work towards the lifting of the state of emergency. In this context, the ANC will exert itself to fulfill the objectives contained in the preamble.
5. Efficient channels of communication between the government and the ANC will be established in order to curb violence and intimidation from whatever quarter effectively.

The government and the ANC agree that the objectives contained in this minute should be achieved as early as possible.

Cape Town, 4th May 1990

## PRETORIA MINUTE

The Government and the ANC have held discussions at the Presidency, Pretoria, tod 6 August 1990.

1. The Government and the ANC have again committed themselves to the Gro Schuur Minute.

2. The final report of the Working Group on political offences dated 21 May 19 as amended, was accepted by both parties. The guidelines to be formulated terms of the Report will be applied in a phased manner. The Report ma provision for formulation of guidelines which will be applied in dealing v members of all organisations, groupings or institutions, governmental otherwise, who committed offences on the assumption that a particular c was being served or opposed. The meeting has instructed the Working Group draw up a plan for the release of ANC-related prisoners and the granting indemnity to people in a phased manner and to report before the end of Au. The following target dates have in the meantime been agreed upon:

- \* The body or bodies referred to in paragraph 8.2 of the Report of Working Group will be constituted by 31 August 1990.
- \* The further release of prisoners which can be dealt with administrat will start on 1 September 1990.
- \* Indemnity which can be dealt with in categories of persons and not c individual basis will be granted as from 1 October 1990. This pr will be completed not later than the end of 1990.
- \* In all cases where the body or bodies to be constituted accordin paragraph 8.2 of the Report of the Working Group will have to cor cases on an individual basis, the process will be expedited as mu possible. It is hoped that this process will be completed withi months, but the latest date envisaged for the completion of the tota in terms of the Report of the Working Group is not later 30 April 1991.

This programme will be implemented on the basis of the Report of the W Group.

3. In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, the ANC announced that it was now suspending all armed actions with immediate effect. As a result of this, no further armed actions and related activities by the ANC and its military wing Umkhonto We Sizwe will take place. It was agreed that a working group will be established to resolve all outstanding questions arising out of this decision to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly as possible.
4. Both delegations expressed serious concern about the general level of violence, intimidation and unrest in the country, especially in Natal. They agreed that in the context of the common search for peace and stability, it was vital that understanding should grow among all sections of the South African population that problems can and should be solved through negotiations. Both parties committed themselves to undertake steps and measures to promote and expedite the normalisation and stabilisation of the situation in line with the spirit of mutual trust obtaining among the leaders involved.
5. With due cognizance of the interest, role and involvement of other parties the delegations consider it necessary that whatever additional mechanisms of communication are needed should be developed at local, regional and national levels. This should enable public grievances to be addressed peacefully and in good time, avoiding conflict.
6. The Government has undertaken to consider the lifting of the State of Emergency in Natal as early as possible in the light of positive consequences that should result from this accord.
7. In view of the new circumstances now emerging there will be an ongoing review of security legislation. The Government will give immediate consideration to repealing all provisions of the Internal Security Act that -
  - (a) refer to communism or the furthering thereof;
  - (b) provide for a consolidated list;
  - (c) provide for a prohibition on the publication of statements or writings of certain persons; and
  - (d) provide for an amount to be deposited before a newspaper may be registered.

The Government will continue reviewing security legislation and its application in order to ensure free political activity and with the view to introducing amending legislation at the next session of Parliament. The Minister of Justice will issue a statement in this regard, inter alia calling for comments and proposals.

- 8. We are convinced that what we have agreed upon today can become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk that road in consultation and co-operation with each other. We call upon all those who have not yet committed themselves to peaceful negotiations to do so now.
- 9. Against this background, the way is now open to proceed towards negotiation on a new constitution. Exploratory talks in this regard will be held before the next meeting which will be held soon.

PRETORIA

6 August 1990

## REPORT

### WORKING GROUP ESTABLISHED UNDER PARAGRAPH 1 OF THE GROOTE SCHUUR MINUTE

1. On 2, 3 and 4 May, 1990, at Groote Schuur in Cape Town, a delegation of the African National Congress met the State President accompanied by Ministers and officials. At the conclusion of the meeting a document, called the Groote Schuur Minute, was adopted. A copy thereof is attached. Paragraph 1 provided for the establishment of a working group. The ANC nominated as its representatives on the working group, Messrs Zuma, Maduna, Nhlanhla, Pahad, Phosa and Ndlovu (its members on the Steering Committee). The Government nominated as its representatives Minister Coetsee, Deputy Minister Meyer and Messrs Van de Merwe, Swanepoel, Louw and Viall, Major General Knipe and Brigadier Kok.
2. The Working Group was charged with -
  - making recommendations on a definition of political offences in the South Africa situation;
  - discussing, in this regard, time scales; and
  - advising on norms and mechanisms for dealing with the release of political prisoner and the granting of immunity in respect of political offences to those inside and outside South Africa.
3. It is recognised that in terms of the Groote Schuur Minute, the category of person involved only in offences set out hereunder have already been catered for, for immediate attention:
  - 3.1 The leaving of the country without a valid travel document.
  - 3.2 Any offences related merely to organisations which were previously prohibited (including membership of Umkonto We Zizwe).
4. Persons in the above category are entitled to be dealt with in terms of the provisions set out in paragraphs 6.2 and 6.3 hereof, as the case may be.

5. The Working Group met on a number of occasions and reports as follows:

DEFINING POLITICAL OFFENCES IN THE SOUTH AFRICAN SITUATION:

- 6.1 The following classes of persons, whether inside or outside South Africa, must be taken into account with regard to pardon or indemnity for political offences:
- (A) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review.
  - (B) Persons who may be liable to prosecution, or who are awaiting or undergoing trial.
  - (C) Persons in detention
- 6.2 The power to pardon is vested in the State President by virtue of section 6 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), and section 69 of the Prisons Act, 1959 (Act 8 of 1959), and will apply to persons already sentenced, i.e. class (A) above.
- 6.3 Special power to grant indemnity is required in regard to persons referred to in class (B) above. The relevant power is contained in section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977 provides for the stopping of a prosecution and may therefore be applied.
- 6.4 The recommendations contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the powers mentioned in paragraphs 6.2 and 6.3.
- 6.5 In preparing for the making of *"recommendations on a definition of political offences in the South African situation"*, the following principles and factors were noted (the principles and factors are largely those applied by Prof Norgaard in the Namibian situation after study of the jurisprudence and the representations of the parties concerned and do not purport to be exhaustive):

6.5.1 There is no generally accepted definition of "political offence" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offences" and "common crimes".

6.5.2 The law and practice of states show that there is now a considerable degree of consensus both as to the types of offence which may in principle be classified as political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not. In particular, the following are aspects of the law and practice of extradition which appear to provide valuable guidance:

- (a) Whether or not an offence is political depends on the facts and circumstances of each individual case. The question is thus approached on a case by case basis.
- (b) Certain offences are recognized as "purely" political e.g. treason directed solely against the State and not involving a common or "ordinary" crime such as murder or assault; or the dissemination of subversive literature.
- (c) In certain circumstances a "common" crime, even a serious one such as murder, may be regarded as a political offence. Here the following are the principal factors which are commonly taken into account by national courts:
  - (i) The motive of the offender - i.e. was it a political motive (e.g. to change the established order) or a personal motive (e.g. to settle a private grudge).
  - (ii) The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance.
  - (iii) The nature of the political objective (e.g. whether to force a change in policy or to overthrow the Government).
  - (iv) The legal and factual nature of the offence, including its gravity (e.g. rape could never be regarded as a political offence).

- (v) The object of the offence ( e.g. whether it was committed against Government property or personnel or directed primarily against private property or individuals).
- (vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or proportionality between the offence and the objective pursued.
- (vii) The question whether the act was committed in the execution of an order with the approval of the organization, institution or body concerned.

6.6.1 The Working Group endorses the principles and factors set out in paragraph 6.5.1 and accepts that these will form the basis of guidelines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences.

6.6.2 As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guidelines which it will apply in dealing with members of such organisations, groupings, institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed.

### TIME SCALES

7.1 Having defined political offences, the norms and the guidelines a cut-off date will have to be fixed. Pardon and indemnity will only be considered in respect of political offences committed on or before that date.

7.2 Bearing in mind the preamble to the Groote Schuur Minute, the Working Group accepts that the process should proceed as expeditiously as possible. It is understood that diverse periods for pardon, indemnity and release will apply to diverse persons, categories of persons and categories of offences. A mechanism to provide advice to the Government in this regard is necessary.

7.3 It is understood that the Government may, without waiting for the implementation of the process contemplated in this document, proceed to exercise the power



referred to in paragraph 6.2., in terms of existing policy. This may result in substantial results in the very near future in regard to persons referred to in clause A of paragraph 6.1.

#### A MECHANISM

- 8.1 The granting of pardon or indemnity in respect of a specific offence or a category of offences, is an executive governmental function. The purpose of devising a mechanism, is to provide the executive with wise advice and to demonstrate that the interests of all parties are being taken into account in as objective a manner as possible.
- 8.2 It is suggested for this purpose that a body or bodies be constituted, consisting of a convenor with ad hoc appointments from concerned groups when dealing with particular offences (or categories of offences).
- 8.3 It is recommended that this Working Group be kept active in respect of ANC interests.

-----oooOooo-----

REPORT OF THE WORKING GROUP ESTABLISHED UNDER PARAGRAPH TWO OF THE  
PRETORIA MINUTE

1. In paragraph 2 of the Pretoria Minute the Working Group was instructed to draw up a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner and to report before the end of August 1990. The ANC was represented on the Working Group by Messrs Zuma, Nhlanhla, Pahad, Maduna and Phosa. The Government was represented by Minister Coetsee, Deputy Minister Meyer, Messrs Van der Merwe, Louw, Van Wyk, Odendaal, Viall, Swanepoel, Geyser, Du Rand (secretary), Lieutenant General Venter, Major General Knipe and Brigadiers McIntyre and Munro. The Working Group met on 17 and 27 August and agreed on the undermentioned plans which will be submitted to the principals of member

A. PLAN FOR THE RELEASE OF ANC-RELATED PRISONERS

2. In terms of the Pretoria Minute the Working Group must draw up a plan inter alia for the administrative release of ANC-related prisoners and to report before the end of August 1990.

3. REMISSION OF SENTENCE

According to existing Prison Regulations remission of sentence exceeding 1/3 may be granted in respect of determinate sentences

3.1 Recommendation:

Remission of sentence will be granted to all sentenced prisoners presently regarded as ANC-related prisoners. Ex-serviente prisoners will benefit immediately.

#### 4. CONDITIONAL RELEASE (PAROLE)

Conditional release (parole) implies that a prisoner is released subject to specific conditions that he must adhere to. Parole be considered after completion of at least 1/3 of the original sentence.

##### 4.1 Recommendation:

This concept is not to be applied at this stage.

#### 5. SPECIAL REMISSION OF SENTENCE

Section 69 of the Prisons Act, Act No 8 of 1959, as amended, states as follows:

"(1) Notwithstanding anything to the contrary in any law contained, if at any time it appears to him to be expedient, the State President may authorize the release of any prisoner either unconditionally or on probation or on parole as he may direct, and may grant remission of a portion of the sentence of any prisoner".

6. By applying normal remission and special remission of one year at this point of time in terms of section 69 of Act 8 of 1959, all ANC-related prisoners progressive release of an appreciable number of prisoners in phases will be effected.

7. This process will as the earlier release dates are progressively reached, affect further numbers of ANC-related prisoners.

3. Where a person is sentenced on more than one count and it is ordered that the sentences should run concurrently and indemnity granted in respect of some of the offences the effect on the remaining sentence(s) will be taken into account when making a recommendation to the State President in terms of Section 69 of Act No 8 of 1959, as amended.

9. Taking into account the South African guidelines for defining political offences, persons who have already been sentenced will be considered for release in phases subject to the application of paragraph 8.2 of the Report of the Working Group established under paragraph 1 of the Groote Schuur Minute in respect of those persons that the Government will refer to such bodies for appraisal and advice.

#### 9.1 Recommendation

It is recommended that this process commence on approximately the 1st October 1990.

### B. PLAN FOR THE GRANTING OF INDEMNITY TO CERTAIN PERSONS IN TERMS OF SECTION 2(1) OF THE INDEMNITY ACT, 1990 (ACT 35 OF 1990)

10. The power to grant indemnity is contained in section 2 of the Indemnity Act, 1990 which provides that the State President may, by notice in the Gazette grant indemnity to any person or category of persons, either unconditionally or on the conditions he may deem fit, in respect of any event or category of events specified in

notice.

11. In paragraph 7.1 of the Report of the Working Group established under paragraph 1 of the Groote Schuur Minute it is pointed out that a cut off date would be fixed and that indemnity would only be considered in respect of political offences committed on or before that date.

## 12. CATEGORIES OF PERSONS

12.1 It has also been decided that indemnity which can be dealt with in categories of persons and not on an individual basis be granted as from 1 October 1990. This process must be completed not later than the end of 1990.

12.2 It will initially be recommended to the State President that unconditional indemnity be granted to the following categories of persons:

(a) Persons who left South Africa without being in possession of valid travel documents. Such indemnity will be granted on an individual basis alternatively on an inventory basis.

(b) Persons who left South Africa at a place other than the port referred to in section 2(b) of the Departure from the Union Regulation Act, 1955 (Act 34 of 1955).

12.3 Should the aforementioned indemnity be granted it would mean that everyone would now automatically be allowed into the Republic. All persons abroad must still satisfy the requirements of citizenship and the right to stay in the Republic before being allowed to enter the Republic. The Department of Home Affairs should be approached in this regard prior to departure for the Republic. Persons who wish to return to the Republic must on arrival already be in possession of documents of citizenship and such other documents as may be necessary or apply afresh beforehand for such documents if they are not in possession thereof. The Department of Home Affairs will submit guidelines regarding the procedure to be followed in respect of persons who wish to return to the Republic, and such guidelines will be drawn up in consultation with the Steyn Committee.

12.4 The recommendations that may relate to the identification of further categories shall be considered by the Executive in accordance with the guidelines for defining political offences in the South African situation which have been approved by the Government. As set out in paragraph 8.2 of the Report of the Working Group established under paragraph 1 of the Groenouwschuur Minute, the consulting body or bodies (infra) must be approached for advice when dealing with categories of offences. Should further categories be identified the procedure set out in paragraph 12.2(a) above will apply.

12.5 Should there be any doubt in a particular case as to whether a person concerned falls within the category of certain offences or a particular offence as published in the Gazette it is recommended that such a person should apply for indemnity on an individual basis in the manner as suggested further in this document.

### 13. INDIVIDUAL PERSONS

13.1 It has been decided (Par 1 of the Pretoria Minute) that a body or bodies (hereinafter referred to as the consulting body) be constituted, consisting of a convenor with *ad hoc* appointments from concerned groups to provide the Executive with advice when dealing with particular offences.

13.2 Not all applications shall be submitted to the consulting body, but only those which may be referred by the Government to the body *suo motu* or in terms of paragraphs 13.7 and 13.8.

13.3 In order to facilitate and expedite applications for indemnity on an individual basis as far as possible, it is suggested that such applications be addressed to the Office for Indemnity and Indemnity, c/o the Department of Justice, Private Bag X81, Pretoria, (telephone number 3239302 x 2142 or 2144 number: 012-260991).

13.4 The following particulars should be furnished in the application:

13.4.1 Full names.

13.4.2 Place and date of birth.

13.4.3 Identity number (if in possession of a South African identity document).

13.4.4 The name of the organization(s), grouping(s) or institution(s) of which the applicant is an officer, office bearer or member (if applicable).

13.4.5 Sufficient particulars of the event in respect of which indemnity is sought to enable a decision to be taken on whether the offence in question was a political offence or not.

13.4.6 An indication whether the applicant was prosecuted by a court of law as a result of the acts committed and, if so, in which court, when, on what charges and what was the outcome.

13.4.7 If the applicant is in a foreign country, the date and the manner in which he left South Africa should also be furnished.



- 13.4.3 A motivation for his application, setting forth reasons why he is of the opinion that his acts can be regarded as political offences.
- 13.5 If the applicant is a member of an organization, his application could be channelled through the organization concerned. The organization should also make a recommendation in that regard. A line of communication between the Department of Justice and the above-mentioned organizations concerned should be established in order to deal with enquiries regarding applications.
- 13.6 The Department of Justice shall process the applications in consultation with the Minister of Justice and the State President. Any enquiries which might emerge, will be taken up with the relevant persons or organizations.
- 13.7 In cases where a disagreement arises as to whether an application should be forwarded to the State President for decision or not or when the State President refuses an application where such application has been considered by him with prior reference to the consulting body or whenever deemed necessary in the discretion of the State President, the matter shall be referred to the consulting body to advise the Executive on the matter. The Government shall also submit comment regarding such an application to the consulting body.

13.3 In cases where an application has been turned down and it has not been submitted to the consulting body, the applicant shall have the right to request that his application be referred to the consulting body. Should such a request be received, the application shall be referred to the body supported by relevant views and documents. If the consulting body advises that the event concerned complies with the guidelines it shall submit such advice to the State President.

14. In matters where the police have already investigated a case against a person who applies for indemnity and the decision of the Attorney-General is pending, the Attorney-General's decision and comment shall also be obtained without delay and submitted to the State President. In matters where the Attorney-General has already decided to prosecute a person concerned, but where the case against the person has not as yet commenced, or where the case has commenced, but has not been finalized, the Attorney-General's comment shall also be obtained before the matter is submitted to the State President.

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

Selling price • Verkoopprijs  
(GST excluded • AVB uitgesluit)  
Local 70c Plaaslik  
Other countries R1,00 Buitelands  
Post free • Posvry

Regulation Gazette  
Regulasiekoerant  
No. 4584

Registered at the Post Office  
as a Newspaper  
As 'n Nuusblad by die  
Poskantoor geregistreer

Vol. 305

PRETORIA, 7 NOVEMBER 1990

No. 12834

## GOVERNMENT NOTICE

### DEPARTMENT OF JUSTICE

No. R. 2625 7 November 1990

- A. GUIDE-LINES FOR DEFINING POLITICAL OFFENCES IN SOUTH AFRICA
- B. PROCESS OF GRANTING PARDON AND INDEMNITY
- C. TEMPORARY IMMUNITY
- D. ENTRY INTO THE REPUBLIC

INFORMATION REGARDING THE ABOVE-MENTIONED MATTERS IS PUBLISHED HEREUNDER FOR GENERAL NOTICE

- A. GUIDE-LINES FOR DEFINING POLITICAL OFFENCES IN SOUTH AFRICA

#### INTRODUCTION

1.1 In the Groote Schuur Minute the Government and the African National Congress agreed upon the establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. There is no generally accepted definition of "political offence" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offences" and "common crimes". The law and practice of states show that there is now a considerable degree of consensus both as to the types of offence which may in

## GOEWERMENSKENNISGEWING

### DEPARTEMENT VAN JUSTISIE

No. R. 2625 7 November 1990

- A. RIGLYNE VIR DIE DEFINIËRING VAN POLITIEKE OORTREDINGS IN SUID-AFRIKA
- B. PROSES OM BEGENADIGING EN VRYWARING TE VERLEEN
- C. TYDELIKE VRYSTELLING
- D. BINNEKOMST VAN DIE REPUBLIEK

VIR ALGEMENE KENNISNAME WORD DIE INLIGTING HIERONDER IN VERBAND MET SOVERMELDE AANGELEENTHEDE GEPUBLISEER

- A. RIGLYNE VIR DIE DEFINIËRING VAN POLITIEKE OORTREDINGS IN SUID-AFRIKA

#### INLEIDING

1.1 Die Regering en die African National Congress het in die Groote Schuur-minuut ooreengekom om 'n werkgroep tot stand te bring om aanbevelings te maak ten opsigte van 'n omskrywing van politieke oortredings in die Suid-Afrikaanse omstandighede; om in die verband tydskaal te bespreek; en om te adviseer rakende norme en meganismes ten einde die vrylating van politieke gevangenes en die verlening van vrywaring ten opsigte van politieke oortredings aan persone binne en buite Suid-Afrika te hanteer. Daar is geen algemeen aanvaarde omskrywing van "politieke oortreding" of "politieke gevangene" in die volkereg nie. Wat egter algemeen aanvaar word, is dat beginsels wat ontwikkel het op die terrein van die reg insake uitlewering, relevant is by die onderskeid tussen "politieke oortredings" en "gewone oortredings". Die reg en gebruike van state toon aan dat daar nou 'n aansienlike mate van konsensus bestaan, sowel oor die soort oortreding wat in beginsel as "politieke" klas-

principle be classified as political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not.

1.2 The final report of the Working Group was accepted by both parties, as reflected in the Pretoria Minute and provides *inter alia*:

"The Working Group endorses the principles and factors set out in paragraph 6.5.2 and accepts that these will form the basis of guide-lines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences . . .

As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guide-lines which it will apply in dealing with members of such organizations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed."

1.3 In formulating these guide-lines the Government has borne in mind that in the South African situation there are a variety of institutions and political organizations and groupings across the whole political spectrum. In the interests of the process of reconciliation the Government considers it appropriate that all persons, irrespective of their affiliations, who have committed political offences in the South African situation, should be considered for the grant of pardon or indemnity. These guide-lines will therefore be applied when dealing with, amongst others, members of a variety of organizations, groupings or institutions, governmental or otherwise, who committed political offences on the assumption that a particular cause was being served or opposed.

2.1 The Government accepts that the following classes of persons, whether inside or outside South Africa, should be taken into account with regard to the grant of pardon, indemnity or release for political offences:

- (a) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review.
- (b) Persons who may be liable to prosecution, or who are awaiting or undergoing trial.
- (c) Persons in detention.

2.2 The power to pardon is vested in the State President by virtue of section 6 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), and section 69 of the Prisons Act, 1959 (Act No. 8 of 1959), and will apply to persons already sentenced, i.e. class (a) above: Provided that a person who has been sentenced to death and whose sentence was com-

missiebaar is, as oor die soort faktore wat in aanmerking geneem behoort te word wanneer besluit word of 'n oortreding "politities" is of nie.

1.2 Die finale verslag van die Werkgroep is, soos weerspieël in die Pretoria-minuut, deur beide partye aanvaar en bepaal onder andere:

"Die Werkgroep onderskryf die beginsels en faktore in paragraaf 6.5.2 uiteengesit en aanvaar dat dit die grondslag sal vorm van riglyne vir die Suid-Afrikaanse omstandighede by die oorweging van begenadiging of vrywaring ten oorsigte van politieke oortredings . . .

Soos uiteengesit in die Groote Schuur-minuut, word dit aanvaar dat die Regering na sy oordeel met ander politieke partye en bewegings en ander betrokke liggame oorleg mag pleeg oor die verlening van begenadiging of vrywaring ten oorsigte van oortredings wat met hulle verband hou. Vir hierdie doel staan dit die Regering vry om sy eie riglyne te formuleer vir toepassing by die hantering van lede van sodanige organisasies, groeperings of instellings, staats- of andersins, wat oortredings gepleeg het in die veronderstelling dat 'n spesifieke doel nagestreef of teengewerk is."

1.3 By die formulering van hierdie riglyne het die Regering die bestaan van 'n verskeidenheid van instellings en politieke organisasies en groeperings oor die hele politieke spektrum in gedagte gehou. In die belang van die proses van versoening ag die Regering dit gepas dat alle persone, ongeag hulle affiliasies, wat politieke oortredings binne die Suid-Afrikaanse omstandighede begaan het, in aanmerking geneem moet word by die verlening van begenadiging of vrywaring. Hierdie riglyne sal gevolglik toegepas moet word by die hantering van, onder andere, lede van 'n verskeidenheid van organisasies, groeperings of instellings, staats- of andersins, wat politieke oortredings begaan het in die veronderstelling dat 'n spesifieke doel nagestreef of teengewerk is.

2.1 Die Regering aanvaar dat die volgende klasse persone, hetsy binne of buite Suid-Afrika, in aanmerking geneem moet word met betrekking tot begenadiging, vrywaring of vrylating vir politieke oortredings:

- (a) Gevonnisd persone, insluitend persone wat 'n vonnis uitdien, persone onderhewig aan enige opgeskortte vonnis, persone wat die tenuitvoerlegging van 'n vonnis afwag, of waar die saak op appèl of hersiening is.
- (b) Persone wat vervolg kan of staan te word of wat verhoorafwagtend is, of wat tans teregstaan.
- (c) Persone in aanhouding.

2.2 Die bevoegdheid om te begenadig berus ingevolge artikel 6 van die Grondwet van die Republiek van Suid-Afrika, 1983 (Wet No. 110 van 1983), en artikel 69 van die Wet op Gevangenis, 1959 (Wet No. 8 van 1959), by die Staatspresident en sal toegepas word ten oorsigte van reeds gevonnisd persone, te wete klas (a) hierbo: Met dien verstande dat 'n persoon wat reeds ter dood veroordeel is, en wie se vonnis ingevolge artikel 6

mitted to a term of imprisonment in terms of section 6 of Act No. 110 of 1983, will not automatically in terms of these guide-lines be entitled to further consideration in terms of section 69 of Act No. 3 of 1959.

2.3 Special power to grant indemnity is required in regard to persons referred to in class (b) above. The relevant power is contained in section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977, provides for the stopping of a prosecution and may therefore also be applied. As regards persons referred to in class (c) above the relevant powers of release are contained in security legislation.

2.4 The procedures contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the powers mentioned in paragraphs 2.2 and 2.3.

## GUIDE-LINES

3.1 In pursuance of the above, a set of guide-lines has adopted to be applied to all organizations, groupings, institutions, governmental or otherwise, and individuals.

3.2 Taking these into account the following factors, as may be appropriate in a particular case, will be considered when making a recommendation for the grant of pardon or indemnity in appropriate cases:

- (i) The motive of the offender, i.e. whether the offence was committed for a political motive (e.g. to further or oppose the aims of a political organization, institution or body) or for a personal motive.
- (ii) The context in which the offence was committed; in particular whether it was committed in the course of or as part of a political uprising or disturbance, or in reaction thereto.
- (iii) The nature of the political objective (e.g. whether to force a change in the policy of or to overthrow or destroy the political opponent).
- (iv) The legal and factual nature of the offence, including its gravity.
- (v) The object and/or objective of the offence (e.g. whether it was committed against the political opponent or his property, or directed primarily against private individuals or property; or was committed on the assumption that a particular cause, governmental or otherwise, was being served).
- (vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.
- (vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.

van Wet No. 110 van 1983 tot 'n periode van gevangenisstraf versag is, nie outomaties ingevoige hierdie riglyne geregtig sal wees op verdere oorweging ingevoige artikel 69 van Wet No. 3 van 1959 nie.

2.3 Spesiale magtiging vir die verlening van vrywaring word vereis ten opsigte van persone gemeld in klas (b) hierbo. Die betrokke magsvertening is vervat in artikel 2 van die Wet op Vrywaring, 1990. Artikel 6 van die Strafprosedewet, 1977, maak voorsiening vir die staking van vervolging en kan dus ook aangewend word. Met betrekking tot persone vermeld in klas (c) hierbo, is die relevante vrylatingsbevoegdhede vervat in veiligheidswetgewing.

2.4 Die aanbevelings in hierdie dokument verwys slegs na politieke oortredings en impliseer geensins 'n beperking op die algemene uitoefening van die bevoegdhede genoem in paragrawe 2.2 en 2.3 nie.

## RIGLYNE

3.1 Ter bereiking van bogenoemde is 'n stel riglyne aanvaar vir toepassing ten opsigte van alle organisasies, groepe, instellings, staats- of andersins, en individue.

3.2 Dit inaggenome, sal die volgende faktore, soos wat dit toepaslik mag wees in 'n besondere geval, oorweeg word wanneer 'n aanbeveling vir die begenadiging of vrywaring in toepaslike gevalle gemaak word:

- (i) Die motief van die oortreder, dit wil sê of die oortreding met 'n politieke motief gepleeg is (byvoorbeeld om die oogmerke van 'n politieke organisasie, instelling of liggaam te bevorder of teen te werk) of weens 'n persoonlike motief.
- (ii) Die omstandighede waarbinne die oortreding gepleeg is, veral of die oortreding gepleeg is in die loop of as deel van 'n politieke opstand of oproer, of in reaksie daarop.
- (iii) Die aard van die politieke oogmerk (byvoorbeeld om 'n beleidsverandering af te dwing of om die politieke teenstander omver te gooi of te vernietig).
- (iv) Die regs- en feitelike aard van die oortreding, insluitend die erns daarvan.
- (v) Die doel en/of oogmerk van die oortreding (byvoorbeeld of dit gerig was teen 'n politieke teenstander of sy eiendom, of primêr geng was teen privaat individue of eiendom; of gepleeg is in die veronderstelling dat 'n spesifieke oogmerk, staats- of andersins, gedien is).
- (vi) Die verband tussen die oortreding en die politieke oogmerk wat nagestreef is, byvoorbeeld die direktheid of aanwesigheid van die verwantskap of die proporsionaliteit tussen die oortreding en die oogmerk wat nagestreef is.
- (vii) Die vraag of die daad gepleeg is in uitvoering van 'n opdrag of met die goedkeuring van die betrokke organisasie, instelling of liggaam.

## B. PROCESS OF GRANTING PARDON OR INDEMNITY

## TIME SCALE

4.1 The granting of pardon or indemnity in terms of the above-mentioned guide-lines will only be considered in respect of political offences committed on or before 12:00 on 8 October 1990.

4.2 In paragraph 3 of the Pretoria Minute the ANC, in the interest of moving as speedily as possible towards a negotiated peaceful political settlement, undertook in the context of the agreements reached, to suspend all armed action and related activities with immediate effect. The rate at which progress is made under paragraph 3 of the Pretoria Minute will therefore obviously determine the time scales within which indemnity can be granted and prisoners can be released. The more difficult cases and especially offences involving elements of violence or acts preparatory to violence will only be considered once it is apparent that the principles and the undertakings in the Groote Schuur and Pretoria Minutes are being complied with, or to the extent that other organizations or individual persons commit themselves to peaceful solutions and development.

## MECHANISM

*Consulting bodies*

5.1 The granting of pardon or indemnity in respect of a specific offence or a category of offences, is an executive governmental function. Consulting bodies are included in the mechanism to provide the executive in appropriate cases with wise advice and to demonstrate that the interest of all parties are being taken into account in as objective a manner as possible.

5.2 A body or bodies will now be constituted in terms of the Regulations issued under section 3 of the Indemnity Act, 1990, consisting of a convener with *ad hoc* appointments from concerned groups when dealing with particular offences (or categories of offences).

*Categories of persons*

6.1 Unconditional indemnity will now be granted to the following categories of persons:

- (a) Persons who left South Africa without being in possession of valid travel documents. Such indemnity will be granted on an individual basis, alternatively per a list of names.
- (b) Persons who left South Africa at a place other than a port referred to in section 2 (b) of the Departure from the Union Regulation Act, 1955 (Act No. 34 of 1955).

6.2 Recommendations relating to the identification of further categories may be made by interested persons and shall be considered by the Executive in accordance with the guide-lines referred to in paragraph 3 above. The consulting body or bodies may be approached for advice when dealing with categories of offences.

## B. PROSES OM BEGENADIGING EN VRYWARING TE VERLEEN

## TYDSKAAL

4.1 Die begenadiging of vrywaring ooreenkomstig bogenoemde riglyne sal slegs oorweeg word ten opsigte van politieke oortredings wat op of voor 12:00 op 8 Oktober 1990 gepleeg is.

4.2 In paragraaf 3 van die Pretoria-minuut het die ANC, in belang daarvan om so gou moontlik na 'n onderhandelde vreedsame politiese skikking te beweeg, onderneem om in die konteks van die ooreenkomste wat bereik is, alle gewapende en verwante aktiwiteite op te skort met onmiddellike effek. Die tempo waarteen vordering gemaak word ingevolge paragraaf 3 van die Pretoria-minuut sal dus ooglappend die tydskaal waarbinne vrywaring verleen kan word en gevangenes vrygelaat kan word, bepaal. Meer ingewikkelde gevalle, veral oortredings waarby elemente van geweld betrokke is, of voorbereidende handelingte tot geweld, sal slegs oorweeg word sodra dit duidelik is dat die beginseis en ondernemings in die Groote Schuur en Pretoria-minute nagekom word of tot dié mate waartoe ander organisasies of individue hulleself tot vreedsame oplossings en ontwikkeling verbind.

## MEGANISME

*Raadplegingsliggame*

5.1 Begenadiging of vrywaring ten opsigte van 'n spesifieke oortreding of 'n kategorie van oortredings, is 'n uitvoerende regeringsfunksie. Raadplegingsliggame word by die meganisme ingestuit om die uitvoerende gesag met wyse raad te bedien en aan te toon dat die belange van alle partye so objektief moontlik in aanmerking geneem word.

5.2 'n Liggaam of liggame sal nou saamgestel word ingevolge die Regulasies uitgevaardig onder artikel 3 van die Wet op Vrywaring, 1990, bestaande uit 'n sameroeper met *ad hoc*-aanstellings uit belanghebbende groepe wanneer met spesifieke oortredings (of kategorieë van oortredings) gehandel word.

*Kategorieë van persone*

6.1 Onvoorwaardelike vrywaring sal nou aan die volgende kategorieë van persone verleen word:

- (a) Persone wat Suid-Afrika verlaat het sonder dat hulle in besit van geldige reisdokumente was. Sodanige vrywaring sal op 'n individuele basis, alternatieweik per naamslys, verleen word.
- (b) Persone wat Suid-Afrika verlaat het op 'n ander plek as by 'n toegangspoort soos bedoel in artikel 2 (b) van die Wet tot Reëling van Vertrek uit die Unie, 1955 (Wet No. 34 van 1955).

6.2 Aanbevelings wat betrekking het op die identifisering van verdere kategorieë kan deur belanghebbendes gemaak word en sal deur die Uitvoerende Gesag oorweeg word ooreenkomstig die riglyne waarna in paragraaf 3 hierbo verwys word. Die raadplegingsliggaam of -liggame kan genader word vir advies, wanneer met kategorieë van oortredings gehandel word.

6.3 Should there be any doubt in a particular case as to whether a person is covered by a category of certain events, or a particular event published in the Gazette it is recommended that such a person should apply for indemnity on an individual basis in the manner as suggested hereunder.

#### *Individual persons*

7.1 In order to facilitate and expedite applications for indemnity on an individual basis, all applications must please be addressed to the Office for Indemnity, Immunity and Release, Private Bag X655, Pretoria, 0001 (Tel. 323-9302; Fax number 21-1922).

7.2 An application form which must be used by persons who want to apply for indemnity, is available at the above-mentioned address. A specimen thereof is contained in Annexure A, and copies may be obtained at the office referred to in paragraph 7.1 above.

7.3 If the applicant is a member of an organization, he should channel his application through the organization concerned. The organization should also make a recommendation.

7.4 The Department of Justice will process the applications to the State President.

7.5 Should the State President turn down an application for indemnity, the applicant shall have the right to request that his application be referred to the consulting body to advise the State President on the matter. The consulting body will then investigate the matter and thereafter refer it back to the State President together with its recommendation.

#### *Criminal trials*

3.1 The process set out in these guide-lines shall not be construed as precluding an Attorney-General, in any appropriate case, from continuing with a prosecution. The State President may at the conclusion of such trial or in the course of proceedings or at the conclusion thereof exercise the powers referred to in paragraph 2.2 or 2.3 above. The issues of postponement and granting of bail remain entirely within the jurisdictional sphere of the Attorneys-General and the courts of law.

3.2 In matters where the police have already investigated a case against a person who applies for indemnity and the decision of the Attorney-General whether or not to prosecute is pending, the Attorney-General's decision and comment shall also be submitted to the State President. In matters where the Attorney-General has already decided to prosecute a person concerned, but where the case against the person has not as yet commenced, or where the case has commenced, but has not been finalized, the Attorney-General's comment shall also be submitted to the State President. In this regard attention is also directed to paragraph 4.1 of this document.

6.3 Sou daar in enige spesifieke geval twyfel bestaan of die betrokke persoon gedek word deur 'n kategorie van sekere gebeure of 'n spesifieke gebeurtenis wat in die *Staatskoerant* gepubliseer is, word aanbeveel dat so 'n persoon aansoek om vrywaring doen op 'n individuele basis soos wat hieronder uiteengesit word.

#### *Individuele persone*

7.1 Ten einde aansoeke om vrywaring op 'n individuele basis sover moontlik te vergemaklik en besoe-dig, moet alle aansoeke asseblief aan die Kantoor vir Vrywaring, Vrystelling en Vrylating, Privaatsak X655, Pretoria, 0001 (Tel. 323-9302; faksnommer 21-1922), geng word.

7.2 'n Aansoekvorm wat deur persone wat om vrywaring aansoek doen, gebruik moet word, is by bostaande adres beskikbaar. 'n Voorbeeld daarvan word vervat in Bylae A.

7.3 Indien die applikant lid van 'n organisasie is, behoort hy sy aansoek deur die betrokke organisasie te kanaliseer. Die organisasie behoort ook 'n aanbeveling te maak.

7.4 Die Departement van Justisie sal aansoeke na die Staatspresident prosesseer.

7.5 Indien die Staatspresident 'n aansoek om vrywaring sou weier, is die applikant geregtig om te versoek dat sy aansoek aan die raadplegingsliggaam voorgelê word om die Staatspresident oor die aangeleentheid te adviseer. Die liggaam sal dan die aangeleentheid ondersoek en dit daarna na die Staatspresident terugverwys tesame met sy aanbeveling.

#### *Strafsake*

3.1 Die proses soos uiteengesit in hierdie riglyne moet nie vertolk word as synde dit 'n Prokureur-generaal verhoed in enige toepaslike saak om 'n vervolging voort te sit nie. Die Staatspresident kan na afloop van so 'n vernoor of in die loop van enige verrigtinge, of by die beëindiging daarvan, sy bevoeghede soos in paragraaf 2.2 hierbo vermeld, uitoefen. Aangeleenthede soos die uitstel van sake en die verlening van borgtog bly steeds geheel en al binne die jurisdisionele bevoegdhede van die Prokureurs-generaal en die geregsnowe.

3.2 In aangeleenthede waar die polisie reeds 'n saak teen 'n persoon wat aansoek vir vrywaring doen, ondersoek het en die besluit van die Prokureur-generaal om te vervolg al dan nie nog hangende is, sal die Prokureur-generaal se besluit en kommentaar ook aan die Staatspresident voorgelê word. In sake waar die Prokureur-generaal reeds besluit het om die betrokke persoon te vervolg, maar waar die saak nog nie 'n aanvang geneem het nie, of waar die saak reeds 'n aanvang geneem het, maar nog nie voltooi is nie, sal die Prokureur-generaal se kommentaar ook aan die Staatspresident voorgelê word. In hierdie verband word aandag ook op paragraaf 4.1 van hierdie dokument gevestig.

**Release of sentenced prisoners**

9. Annexure A also makes provision for application for the release of sentenced persons who wish to apply for release. These applications should also be addressed to the above-mentioned Office for Indemnity, Immunity and Release. In this regard paragraphs 7.3 to 7.5 will apply *mutatis mutandis*.

**C. TEMPORARY IMMUNITY**

10. Persons not now applying for indemnity may nevertheless want to temporarily enter the Republic with a view to the promotion of peaceful constitutional solutions in South Africa. In order to facilitate and expedite their applications for temporary immunity such persons are advised to make use of the application form contained in Annexure B. This form will be published in the *Gazette* and copies thereof are available at the Office for Indemnity, Immunity and Release, Private Bag X655, Pretoria, 0001.

**D. ENTRY INTO THE REPUBLIC**

11. Apart from the above all persons abroad must still satisfy the requirements of citizenship and the right to stay in the Republic before being allowed to enter the Republic. The Department of Home Affairs should be approached in this regard prior to the departure of the person concerned for the Republic. Persons who wish to return to the Republic must on arrival already be in possession of documents of citizenship and such other documents as may be necessary, or apply afresh beforehand for such documents if they are not in possession thereof. The Department of Home Affairs will announce guidelines regarding the procedure to be followed in respect of persons who wish to return to the Republic.

**Vrylating van gevonniste gevangenes**

9. Bylae A maak ook voorsiening vir aansoeke deur gevonniste persone wat aansoek om vrylating wil doen. Sulke aansoeke moet ook aan die bovermelde kantoor vir vrystelling en vrywaring gestuur word. Paragrafe 7.3 tot 7.5 is in die verband *mutatis mutandis* van toepassing.

**C. TYDELIKE VRYSTELLING**

10. Persone wat nie nou om vrywaring aansoek doen nie mag nietemin die land tydelik wil binnekom met die oog op die bevordering van vreedsame konstitusionele oplossings in Suid-Afrika. Ten einde hulle aansoeke vir tydelike vrystelling te vergemaklik en te bespoedig, word aanbeveel dat hulle van die aansoekvorm in Bylae B gebruik maak. Dié vorm sal ook in die *Staatskoerant* gepubliseer word en kopieë daarvan is beskikbaar by die Kantoor vir Vrywaring, Vrystelling en Vrylating, Privaatsak X655, Pretoria, 0001.

**D. BINNEKOMS VAN DIE REPUBLIEK**

11. Afgesien van die voorgaande moet alle persone in die buiteland steeds voldoen aan die vereistes vir burgerskap en die reg om in die Republiek te woon voordat hulle toegelaat sal word om die Republiek binne te kom. Die Departement van Binnelandse Sake moet in hierdie verband genader word voordat die betrokke na die Republiek vertrek. Persone wat na die Republiek wil terugkeer, moet by hulle aankoms reeds in besit wees van burgerskapdokumente en sodanige ander dokumente as wat nodig mag wees, of van nuuts af en vooraf vir sodanige dokumente aansoek doen as hulle nie reeds in besit daarvan is nie. Die Departement van Binnelandse Sake sal riglyne bekendmaak aangaande die prosedure wat gevolg moet word ten opsigte van persone wat na die Republiek wil terugkeer.



APPLICATION FOR INDEMNITY OR RELEASE  
(To be completed in block lettering)

Please use separate page if more space is required.

SECTION A—To be completed by all applicants.

- 1. Surname .....
- 2. Christian names .....
- 3. Address .....  
.....  
..... Postal code .....
- 4. South African identity number: .....
- 5. Date of birth ..... 6. Place of birth .....
- 7. If applicant is an officer/office-bearer/member of any political organization/institute/association, state name(s):  
.....  
.....

SECTION B—To be completed by persons falling within a category of events announced by the State President.

- 3. Did applicant leave the Republic of South Africa without valid travel documents?—Yes/No.
- 3. Did applicant leave the Republic of South Africa at a place other than a legal port of exit?—Yes/No.
- 10. If applicant is in possession of valid travel documents, state—  
(a) Date of issue .....
- (b) Document number(s) .....
- (c) Issuing authority .....
- 11. State any further category of events (if applicable) for which indemnity is sought:  
.....  
.....

SECTION C—To be completed if indemnity is required on an individual basis.

- 12. Furnish sufficient particulars of the event(s) in respect of which indemnity is sought:  
.....  
.....  
.....  
.....  
.....  
.....

NOTE: It is in the applicant's own interest to ensure that all offences for which indemnity is sought, are mentioned.

- 13. Applicant's motivation for regarding said action(s) as political:  
.....  
.....  
.....
- 14. If prosecution is pending in respect of any of the above actions, state—  
(a) In which court? .....
- (b) On what charges? .....
- .....
- 15. If applicant currently resides outside the RSA, state—  
(a) Date of departure .....
- (b) Point of departure .....

SECTION D—To be completed if release from prison is sought after having been sentenced.

- 16. (a) Court in which applicant was sentenced .....
  - (b) Date of sentence.....
  - (c) Charges found guilty of.....
  - (d) Sentence imposed .....
17. Applicant's motivation for regarding action(s) referred to in paragraph 16 (c) as political:
- .....
- .....
- .....
- .....

SECTION E

- 18. If you are not a member of an organization or political party that has committed itself and its members to peaceful solutions and development, do you subscribe to these principles?
- .....

SECTION F—DECLARATION—To be completed by all applicants.

I hereby certify that the information supplied above is to the best of my knowledge correct.

.....

APPLICANT

DATE

- NOTES: (1) The granting of indemnity does not automatically enable the applicant to enter the Republic of South Africa. The requirements of citizenship and the right to stay in the Republic must be satisfied before the applicant will be allowed to enter the Republic. The Department of Home Affairs should be approached before departing for the Republic to obtain the required documentation.
- (2) The information contained in this document is protected under the Regulations promulgated under the Indemnity Act, 1990, and shall not be used for any purpose other than that envisaged in the Indemnity Act, 1990.

APPLICATION FOR TEMPORARY IMMUNITY IN TERMS OF SECTION 1 OF THE IMMUNITY ACT,  
1993 OF 1994

(To be completed and submitted)

- 1. Surname .....
- 2. Christian names .....
- 3. Address .....
- ..... Postal code .....
- 4. (a) South African identity number (if any) .....
- ..... (b) Particulars of present passport(s): .....
- .....
- 5. Date of birth..... 6. Place of birth .....
- 7. If applicant is an officer/office-bearer/member of any political organization/institute/association, state name(s): .....
- .....
- 8. State purpose and period for which temporary immunity in terms of section 1, of the above-mentioned Act is required (the relevant provisions of the Act are provided overleaf): .....
- .....
- .....
- .....
- .....
- 9. If you are not a member of an organization or political party that has committed itself and its members to peaceful solutions and development, do you subscribe to these principles? .....
- .....

**DECLARATION**

I hereby certify that the information supplied above is to the best of my knowledge correct.

.....  
APPLICANT

.....  
DATE



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

---

---

# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

*As 'n Nuusblad by die Poskantoor Geregistreer*

*Registered at the Post Office as a Newspaper*

Verkoopprijs • Selling price  
(AVB uitgesluit/GST excluded)  
Plaaslik **70c** Local  
Buitelands R1,00 Other countries  
Posvry • Post free

Vol. 299

KAAPSTAD, 17 MEI 1990  
CAPE TOWN, 17 MAY 1990

No. 1247

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1095.

17 Mei 1990

No. 1095.

17 May 1990

Hierby word bekend gemaak dat die Waarnemende Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 35 van 1990: Wet op Vrywaring, 1990.

It is hereby notified that the Acting State President has assented to the following Act which is hereby published for general information:—

No. 35 of 1990: Indemnity Act, 1990.

# WET

Om voorsiening te maak vir die verlening van tydelike vrystelling of permanente vrywaring; en vir bykomstige aangeleenthede.

(Afrikaanse teks deur die Waarnemende Staatspresident geteken.)  
(Goedgekeur op 15 Mei 1990.)

## Aanhef

**N**ADEMAAL onlangse wêreldgebeure en binnelandse realiteite geleenthede geskep het vir versoening en 'n gesamentlike soeke na gemeenskaplike doelwitte en vreedsame oplossings in Suid-Afrika:

**E**N NADEMAAL die verloop van gebeure daartoe gelei het dat kriminele aanklagte teen en arrestasies van 'n aantal persone hangend of moontlik is:

**E**N NADEMAAL dit nou nodig geword het, ten einde versoening teweeg te bring en vreedsame oplossings te vind, om van tyd tot tyd tydelike vrystelling of permanente vrywaring van arrestasie, vervolging, aanhouding en geregtelike verrigtinge aan sodanige persone te verleen:

**W**ORD DAAR DERHALWE BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

## Staatspresident kan tydelike vrystelling verleen

1. (1) Die Staatspresident kan, indien hy van oordeel is dat dit nodig is vir die bevordering van vreedsame konstitusionele oplossings in Suid-Afrika of die onbelemmerde en doeltreffende regsadministrasie, by kennisgewing in die *Staatskoerant* aan enige persoon die vrystelling in subartikel (2) vermeld, verleen, hetsy onvoorwaardelik of op die voorwaardes wat hy goedvind. 5

(2) Geen proses, hetsy siviël of strafregtelik, word in enige geregshof ingestel of voortgesit teen enige persoon aan wie sodanige vrystelling verleen word, gedurende die tydperk wat in sodanige kennisgewing ten opsigte van hom bepaal word, ten opsigte van enigiets deur hom gedoen of nagelaat op 'n datum voor die aanvang van daardie tydperk nie, en so 'n persoon word nie gedurende sodanige tydperk ingevolge enige wet aangehou ten opsigte van 'n handeling of versuim te eniger tyd voor die aanvang van daardie tydperk nie. 10 15

## Staatspresident kan vrywaring verleen

2. (1) Die Staatspresident kan by kennisgewing in die *Staatskoerant* vrywaring verleen aan enige persoon of kategorie van persone, hetsy onvoorwaardelik of op die voorwaardes wat hy goedvind, ten opsigte van enige gebeure of kategorie van gebeure in die kennisgewing vermeld. 20

(2) Geen proses, hetsy siviël of strafregtelik, word in enige geregshof ingestel of voortgesit teen enige persoon aan wie vrywaring ingevolge subartikel (1) verleen is,

# ACT

To provide for the grant of temporary immunity or permanent indemnity; and for incidental matters.

*(Afrikaans text signed by the Acting State President.)  
(Assented to 15 May 1990.)*

## Preamble

**W**HEREAS recent world events and domestic realities have created opportunities for reconciliation and a joint search for common goals and peaceful solutions in South Africa;

**A**ND WHEREAS the course of events has resulted in criminal charges against and the arrest of a number of persons being possible or pending;

**A**ND WHEREAS for the sake of reconciliation and for the finding of peaceful solutions it has now become necessary from time to time to grant temporary immunity or permanent indemnity against arrest, prosecution, detention and legal process to such persons:

**B**E IT THEREFORE ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

### State President may grant temporary immunity

1. (1) The State President may, if he is of the opinion that it is necessary for the promotion of peaceful constitutional solutions in South Africa or the unimpeded and efficient administration of justice, by notice in the *Gazette* grant to any person the immunity referred to in subsection (2), either unconditionally or on the conditions he may deem fit.

(2) No proceedings, either civil or criminal, shall be instituted or continued in any court of law against any person to whom has been granted such immunity, during the period stipulated in such notice in respect of him, in respect of anything done or omitted by him on any date prior to the commencement of that period, and such person shall not be detained during such period in terms of any law in respect of an act or omission at any time prior to the commencement of that period.

### 15 State President may grant indemnity

2. (1) The State President may by notice in the *Gazette* grant indemnity to any person or category of persons, either unconditionally or on the conditions he may deem fit, in respect of any event or category of events specified in the notice.

(2) No proceedings, either civil or criminal, shall be instituted or continued in any court of law against any person who has been granted indemnity in terms of

## Wet No. 35, 1990

## WET OP VRYWARING, 1990

ten opsigte van die gebeure in die betrokke kennisgewing vermeld nie, en so 'n persoon word nie ingevolge enige wet ten opsigte van daardie gebeure aangehou nie.

**Regulasies**

3. (1) Die Staatspresident kan regulasies uitvaardig oor enige aangeleentheid waarop hierdie Wet betrekking het indien hy dit nodig of dienstig ag om die oogmerke van hierdie Wet te bereik. 5

(2) Enige regulasie wat uitgawe uit die Staatsinkomstefonds tot gevolg het, word uitgevaardig na oorlegpleging deur die Minister van Justisie met die Minister van Finansies.

**Voorbehoud**

10

4. (1) 'n Artikel van hierdie Wet hou, behoudens die bepalings van subartikel (2), op om van krag te wees na die verloop van een jaar vanaf die inwerkingtreding van daardie artikel, maar dit raak nie die vroeëre werking van daardie artikel of enige vrystelling of vrywaring wat daarkragtens verleen is nie.

(2) Die tydperk in subartikel (1) vermeld, kan deur die Staatspresident by proklamasie in die *Staatskoerant* vir een jaar op 'n keer verleng word: Met dien verstande dat 'n tweede of daaropvolgende verlenging slegs met die instemming van al drie Huisse van die Parlement geskied. 15

**Kort titel en inwerkingtreding**

5. (1) Hierdie Wet heet die Wet op Vrywaring, 1990, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal. 20

(2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

## INDEMNITY ACT, 1990

Act No. 35, 1990

subsection (1), in respect of the events specified in the said notice, and such person shall not be detained in terms of any law in respect of those events.

**Regulations**

3. (1) The State President may make regulations regarding any matter to which this Act relates if he considers it necessary or expedient so as to achieve the objects of this Act.

(2) Any regulation which results in expenditure from the State Revenue Fund shall be made after consultation by the Minister of Justice with the Minister of Finance.

**Saving**

10 4. (1) Any section of this Act shall, subject to the provisions of subsection (2), cease to have effect after the expiry of one year from the commencement of that section, but it shall not affect the previous operation of that section or any immunity or indemnity granted in terms thereof.

15 (2) The period referred to in subsection (1) may be extended by the State President by proclamation in the *Gazette* for one year at a time: Provided that a second or subsequent extension shall only take place with the concurrence of all three Houses of Parliament.

**Short title and commencement**

20 5. (1) This Act shall be called the Indemnity Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.