

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 from 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.