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**SUBMISSIONS OF THE AFRICAN NATIONAL CONGRESS TO CODESA WORKING GROUP NO. 1: AMNESTIES, INDEMNITIES, EXILES AND CITIZENSHIP**

1. The African National Congress is desirous of creating a free political climate in which all parties and individuals involved in the process jointly agree that no parties or individuals should suffer criminally or by way of civil suit for activities, while constituting offences in terms of South African Law, were undertaken for political purposes.
2. The African National Congress further submits that if all parties agreed to this it would enable all parties and individuals to participate on an equal footing in future political activity.
3. To this end the African National Congress believes that issues relating to indemnity, amnesty and citizenship require to be resolved.
4. The African National Congress from its experience to date submits that the present two-pronged approach through the Indemnity Act No. 35 of 1990 and the Memorandum of Understanding (MOU) as signed between the UNHCR and the South African Government is in the first place confusing and in the second place not necessarily always legally enforceable. Furthermore if enforceable in parts of South Africa, it is not enforceable in our Courts in all parts of South Africa (e.g. the TBVC areas).
5. The African National Congress further believes that the abovementioned two measures were created prior to the formation of Codesa and that these are issues which require all Codesa's participants to discuss and to create circumstances in which all parties and individuals are able to feel equally free to engage in legitimate and peaceful activity without fear of criminal or civil prosecution for past activities.
6. The African National Congress further submits that such arrangements can be arranged politically if there is bona fide intention on the part of all parties at Codesa to commit themselves to such free and equal political opportunities. If such concerted commitment is obtained, there appears to be no need for intricate and complex legal mechanisms subject to the jurisdiction of a whole range of institutions being implemented. The African National Congress submits that the preferable mechanism for providing such free and equal opportunity is to grant an amnesty to all organisations and individuals for



previously defined illegal or delictual acts with a cut-off date being (the date of inception of Codesa).

6.1 To this end the African National Congress wishes to make the following recommendations:

6.1.1 An Amnesty Bill should be drafted, then adopted and passed into legislation to be effective in all areas which constituted the Republic of South Africa at 31 May 1961;

6.1.2 All persons who have been granted either indemnity in terms of the Indemnity Act no 35 of 1990 or whose VRAF forms have been approved by the Government of the Republic of SA shall be deemed to have be applicants in terms of the new Amnesty Act;

6.1.3 Any person, or party, applying for amnesty in terms of the new legislation (the applicant) shall be granted a period of one year from the date of inception of the legislation to apply to the Amnesty Board for general amnesty for all political offences without specifying the details of any alleged offence;

6.1.4 The names of all persons referred to in 6.1.2. and 6.1.3. shall be published for general notice;

6.1.5. Any person who, or institution which objects to any applicant being granted amnesty for any offence whatsoever shall be given an opportunity for a period of 3 months from the date of publication referred to in 6.1.4 to place such objections before an Amnesty Board created by this legislation. This will include objections to offences which the objecting party may consider a non-political or a serious common law offence.

6.1.6 All applicants to whom there are no objections in terms of 6.1.5 shall at the expiry of the period of the three months period be granted full amnesty for all offences committed prior to the cut-off date.

6.1.7. All applicants shall be entitled not to be arrested or charged or detained in respect of any offences whatsoever committed prior to the cut-off date until such time as the Amnesty Board has disposed of their application.

6.1.8 Where an objection has been lodged in terms of 6.1.5. then the application and the objection shall be referred to the Amnesty Board who shall:

6.1.8.1 advise both applicant and objector that they may lodge with the Board any written submissions they wish; and

6.1.8.2 consider the application but not refuse it without allowing the applicant an opportunity to present oral argument to the board after viewing the written objection

6.1.8.3. and after considering the matter grant amnesty in respect those offences it considers political.



6.2 No applicant shall be liable for arrest or detention or prosecution for any offence committed prior to the cut-off date for so long as their application is not finally disposed of by the Amnesty Board and thereafter only in respect of those offences specifically listed by the Amnesty Board as those for which amnesty has not been granted.

6.3. The Amnesty Board shall:

6.3.1. consist of 7 persons of whom at least 4 shall be legally qualified persons and of at least 7 years professional experience;

6.3.2 hold its hearings in public save that it may afford applicants personal anonymity so that they are not personally identifiable as a perpetrator or potential accused in respect of any offence;

6.3.3. shall be appointed by CODESA;

6.3.4 have the final say in respect of all applications for amnesties for any offences committed prior to the cut-off date.

7. The African National Congress is further concerned that all individuals that have been caught up in the political inequalities of the past and for that reason have some or other way lost their South African citizenship or not been easily able to afford such citizenship to their spouses and children should immediately be given the opportunity, without restriction, to obtain such citizenship.
8. To this end the African National Congress recommends that legislation be passed permitting that for the period of the next five years all persons who have, or who at any previous time had South African citizenship or who are entitled to South African citizenship, either by birth or by naturalization, should automatically be entitled to claim such citizenship. This right will extend to their spouses and children and grandchildren for the period of the next five years.
9. The African National Congress commends the abovementioned recommendations to Codesa and requests that Working Group No. 1 consider them.

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