

CODESA 2
Working Group 1,130

SubGroup 1 (WGSG1)
Submissions
External Submissions

1. WGSG1 Package: External Submissions ,January - February 1992-Vol 1, Index:
 - 1.1 International Society for Human rights
 - 1.2 Lawyers for Human Rights(request to present verbal evidence to **WG1**)
 - 1.3 Meref: Clarification regarding political prisoners and hunger strikers in Boputhatswana

WORKING GROUP 1

SUBGROUP 1

EXTERNAL SUBMISSIONS

JANUARY - FEBRUARY 1992

VOL 1



CONTENTS:

1. IGFM
2. LAWYERS FOR HUMAN RIGHTS (VERBAL REQUEST)
3. MAREF: CLARIFICATION REGARDING POLITICAL PRISONERS AND HUNGER STRIKERS IN BOPHUTHATSWANA



IGFM

— International Secretariat —



Internationale Gesellschaft für Menschenrechte · International Society for Human Rights
Société Internationale pour les Droits de l'Homme · Sociedad Internacional para los Derechos Humanos
Международное Общество Прав Человека

INTERNATIONAL SECRETARIAT / D-6000 Frankfurt/Main, Kaiserstraße 72 (Germany)

Kwazi Twala
Federal Independent
Democratic Alliance

Fax 00 27 11 403 1557

International Secretariat / German Section:

D-6000 Frankfurt/Main - Germany
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IGFM has consultative status
with the Council of Europe

Frankfurt/M. 22.11.91

Dear Mr. Twala

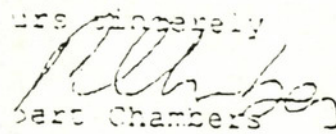
Thank you for fax letter of 20th November. We take on board your suggestions concerning the composition of our investigative team which we hope to be able to send to Southern Africa to visit existing and former ANC Camps. We expect that we would be able to invite 2 victims of these camps to be part of the team and we would seek your advice in regard to who at a later date. At the present we have in mind the Spring of 1992 (March or April) as a suitable date.

All this requires the co-operation of the ANC leadership, and the permission of the numerous Governments involved. The former would enable the second step but so far we do not even have approval in principle from the ANC. We have established contacts, however, to the ANC in Germany and directly in South Africa asking for approval in principle.

We have also published the information we have so far in our German language magazine "Menschenrechte" (Human Rights) and I have sent a copy to you today by post. We would very much appreciate having a direct contact address for more of the witnesses, especially those who returned to South Africa in August 1987 to "Spider" Mbulawa Robert Ndlovu, in order to get more statements for publication in the January edition of our newsletters. If you could send us any addresses we would write to them directly.

Looking forward to continuing co-operation

Yours sincerely


Robert Chambers
Secretary General
International Secretariat

Honorary President
143 Mainz, Germany
Attorney General, lat

International Council
President Dr. Reinhard Ditzel, Germany
Vice-President: Katerina Gredl, Austria

Honorary President: David Atkinson MP
Great Britain
Secretary General: Robert Chambers
Düsseldorf, FRG
CofM: Hatter von der Osten

National Sections: Argentina, Austria, Austria, Belgium, Canada, CEE, Ecuador, France, Great Britain, Greece, Israel, Italy, Mexico, Netherlands, Spain, Switzerland, USA
Alliance: Offices in the Soviet Union: Moscow, Leningrad, Vilnius, Riga, Baku, Nagorno-Karabakh
Affiliated groups: Finland, Cuba, Romania, Thailand, Moscow Georgia, Novosibirsk.

Expose ANC

WE congratulate the people of Zambia for having taken this decisive step in redressing the chaos that they have suffered for almost three decades.

We are also aware of the formidable task which is facing the new president. Lesser men would have been daunted by the task facing you and your government.

However, we believe that you will be able to surmount all the problems which you have inherited.

The previous totalitarian regime of Kenneth Kaunda not only brought your country to the brink of starvation and suffering but also aided and abetted the

criminal activities of the ANC in your country, both against its members as well as against the Zambian people.

The corrupt leadership of the previous incumbent was directly responsible for compromising the sovereignty of your country, by assisting one liberation organisation against others.

We appeal to you and your government to investigate crimes committed by the ANC against our people and which were simply covered up by the despotic Kaunda regime.

Please help us to expose the true nature of the ANC prison camps and the terrible deeds that were com-

mitted there.

In order to prosecute those who were responsible, extradition arrangements will have to be made with the South African government.

People like Cebekhulu, who is being held against his will, according to the reports we have received, should be brought back to South Africa.

They will then be able to give their evidence in an open South African court of law so that light can be shed and the South African and international community can know the truth about their disappearance.

MWEZI TWALA,
Johannesburg.



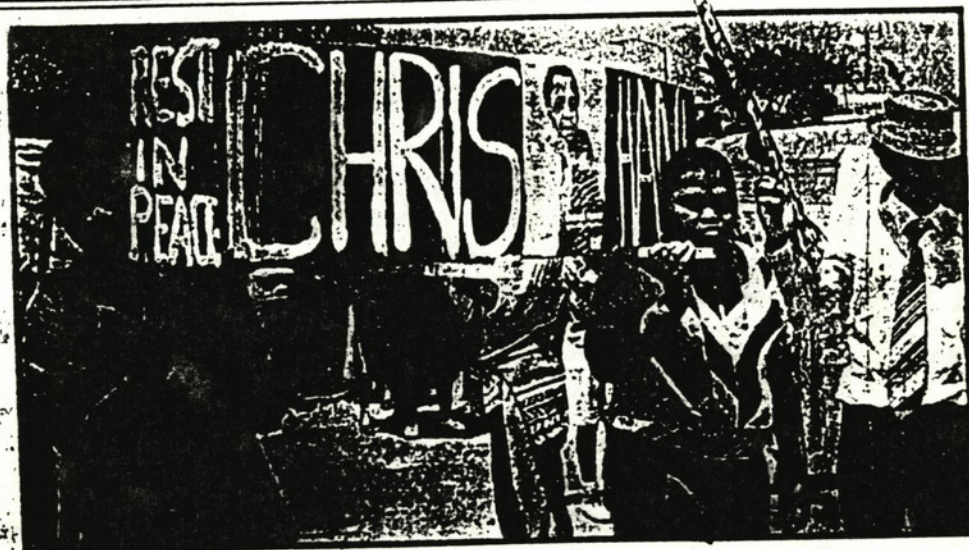
interest which accrues over the years. We are robbed because companies get the interest, lend the money for



Word of God

To the point...

FEBRUARY 9, 1992



ANC dissenters on the march to demand freedom for prisoners held in camps.

ANC dissenters demand probe into 'atrocities'

ABOUT 250 ANC dissenters, who claim they were held as prisoners and tortured in ANC camps, marched through the streets of Durban yesterday, demanding the release of remaining prisoners.

They also called for an independent inquiry into what they claimed were "atrocities carried out in those jails".

The group marched peacefully holding black coffins and grasping banners reading: "ANC Quatrogate scandal", and wielded cardboard AK47 rifles.

The group of disenchanted political exiles belong to an organisation, Return Exiles Committee for Peace and Justice in South Africa.

PROGRAMME OF ACTION

THE RETURNED EXILES COMMITTEE FOR PEACE AND JUSTICE IN SOUTH AFRICA

INTRODUCTION

These are people who have had their Human Rights infringed and trampled upon. These programmes therefore attempt to address the continuing detention without trial, torture, maiming, raping and utter murder in ANC prison camps.

AIMS AND OBJECTIVES

The Aims and Objectives are as follows:

- * To enlighten the South Africans and the International Community about the plight of the victims of the ANC in the prison camps
- * To work hard to ensure that the ANC observes the United Nations Human Rights Declaration
- * To ensure the release of the ANC prisoners and to resettle them back to their country of birth, programme and welfare
- * To mobilise funds for the returnees
- * To demonstrate and picket publicly

MODUS OPERANDI

To hold consultations with various organisations and individuals who, in the opinion of the committee, will actively contribute to the attainment of the above objectives,

To brief the press and the media on the disregard of Human Rights by the ANC and the plight of the prisoners of the ANC in its camps in exile,

To brief consulars and diplomatic corps in South Africa about the trampling of Human Rights by the ANC.

To send the ANC regular communiques and to request influential International Organisations to pressurise the ANC to observe the UN Human Rights Declaration.

To request International Organisations to negotiate both the release of the prisoners of the ANC and their resettlement in the country of their birth.

PROGRAMME COMPONENTS

- * Meetings with groups and individuals
- * Briefing sessions with the media, consular, diplomatic corps, etc.
- * Hold press and media conferences

All correspondence to be addressed to:
The Returned Exiles Committee
P.O. BOX 47005
Greyville
4000

Printed 9/1/77



NANKO amabhokisi omngcwabo abethwelwe ngababegqunywe ezinkanjini zenhlawulo e-Angola nase-Uganda. Lamabhokisi abethwelwe ngabebemasha bekhononda ngempatho abathi babephethwe ngayo ngabe ANC ekudingiswini. Lemashi ibisedolobheni lase-Thekwini bethi makuphenywe kabanzi ngalezizinkambu ze-ANC kukhishwe nalaba abasagunyiwe kulezizinkambu ze-African National Congress .

Abebemasha bathwale amabhokisi omngcwabo

XOLANI NXUMALO

ETHEKWINI:-Abantu ebebezozithengela edolobheni eThekwini, babambe ongezansi bebona imashi engejwayelekile lapho ebebemasha bethwelwe amabhokisi omngcwabo ebhalwe amagama abantu okuthiwa babulawa ekudingisweni kanye nabathintekayo ekufeni kwabo.

Lemashi ebingomGqibelo kusukela emini ngo 12, ibihlelwe yikomiti lababuya ekudingisweni ababevalcwe ezinkanjini ze-African National Congress (ANC) eQuartro Camp 32 e-Uganda, e-Agola naseTanzania. Ibiholwa ngabanye kwabangu 32 abasandakudedelwa kulezizinkambu base besungula i-Returned Exiles Committee for Peace and Justice.

Iqale ezinkundleni zemidlalo eCurries Fountain, yaze yayophelela eCity Hall. Usihlalo walcikomiti uMnuz. Pat Hlongwane, ufundele ebebelapha incwadi enezikhalo ebibhekiswe kuMongameli wezwe uMnuz. F.W. de Klerk. Uthe angayiqeda wase eyidlulisela esikhewini samaphoyisa uLt. Dees Dovender wase-C.R. Mart.

Kulamabhokisi omngcwabo abebhalwe amagama abafa ekudingisweni, njengoThami Zulu, kwelinye lawo bekubhalwe igama likaMnuz. Chris Hani, uMkhuzi woMkhonto weSizwe nonguNobhala-jikelele weSouth African Communist Party (SACP), kufakwe nesithombe sakhe. Bekukhona negama lika S. Phungulwa owadutshulwa eMtata esanda kubuya ekudingisweni.

Amanye amabhokisi abebhalwe ukuthi, 'communism', 'terrorists', 'Quatro camp 32', 'ANC-Xhosas' nu-

SUPPORT FOR THE PROGRAMME

THE RETURNED EXILES COMMITTEE
 PO BOX 4444
 DURBAN
 SOUTH AFRICA
 3302

28th July 1992

Mr. Kgondo
 111 Street
 Durban 3304
 Durban, SA

I have had the privilege of listening to you and re-
 sponding through our local news media and I request you
 to do the same, while I expound on another of Africa's "gr
 pains".

As Chairman of THE RETURNED EXILES COMMITTEE FOR PEACE
 AND JUSTICE IN SOUTH AFRICA, and on behalf of the committee
 I take the liberty of approaching you with "hat in hand".

We are suffering extensively. Many of our people are
 in detention in the AFRICAN NATIONAL CONGRESS prisons
 in various parts of the world. These people are
 criminals. The only "crime" was resisting injustice
 against humanity which was not only previously found in
 Africa but also in ANC camps at this very time of war.
 This must be brought to the attention of the
 International Community of the atrocities which have
 place and continue to take place in ANC controlled
 areas. Many of our people who have been released can bear witness
 to the horrific tortures and murders committed by the
 including myself.

The AFRICAN NATIONAL CONGRESS has refused to recognize
 our plight. We have no recourse to any assistance from
 other organisations. The problem of these unwanted
 has been laid squarely at our door.

For lack of funds, many of these men, women and children
 are destitute and suffering under harsh conditions.
 using all available means to re-introduce these people
 into society with the hope that they will become meaningful
 citizens. A baneful task when we live in
 retaliation from MKONTO WE SIZWE, the armed wing of
 the African National Congress.

BUDGET FOR THE PROGRAMME

Travelling Allowance.....	R500x12x12=R72 00	=R100 0
Stationary		
Publicity		
Press Conferences	R600x12	=R7 200
Meetings	R5000,00	=R5000
<u>Office</u>	R200x12	=R2 40
Rent	R5 000,00	=R5 00
Telephone p.a.		
<u>CONTINGENCY</u>	R1000,00	=R1000
<u>TOTAL</u>		=R147-

PERSONEL WELFARE BUDGET

CLOTHING ALLOWANCE	12xR3000,00	=R36 000
GROCERIES	12xR2000,00	=R24 000

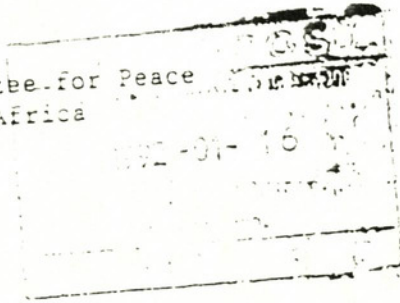


DURBAN CITY POLICE
DURBAN STADSPOLISIE

13 Old Fort Place / DU FORT PLACE
DURBAN 4001
P.O. BOX 1172 DURBAN 4000
ROSBUS
TELEPHONE 306-4422
TELEFOON
FAX (031) 305-7442

DCP 36

Pat Hlongwane
Chairman
Returned Exiles Committee for Peace
& Justice in South Africa
P.O. Box 47605
Greyville 4023



Ref: 11/2/1 920042
CX/dd/10d : 4985
Ext: 3224

1992-01-18

Dear Sir

MARCH C.B.D. 1992-01-18

I refer to your letter received 1992-01-13 in connection with the above and advise that, in terms of Section 2(ter) of the General Bylaws, permission is granted, subject to:

1. The march commencing at 12:30 and terminating by 13:30 on the 1992-01-18.
2. Any amplification systems used for crowd control only are to be toned down so as not to be a source of nuisance to the neighbourhood.
3. The procession not becoming a source of annoyance to the neighbourhood.
4. The requirements of the Road Traffic Act and City Bylaws being complied with.
5. The organisers accepting full responsibility for the rubbish and litter that may arise as a result of the event. In this connection you MUST contact the Keep Durban Beautiful Association (Tel. 376243) immediately on receipt of this authority, and comply with their requirements.
6. All instructions of the police being complied with.
7. Permission of the Magistrate, Durban being obtained by the organisers. A separate application is required in this regard.
8. No distribution of pamphlets taking place.
9. The following route being adhered to: Assemble and form up in Queen Street in the vicinity of the Cathedral, proceed along Queen Street, Grey Street, West Street to Church Walk between West Street and Smith Street.
10. The organisers

2.2.92

RETURN EXILES COMMITTEE
TO: MR. ZAC DEBEER
THE CHAIRMAN OF THE CODESA

RETURN EXILES COMMITTEE
P.O. BOX 47605
GREYVILLE
4023

TELEPHONE NO:

(0358) 791051 MR. MAKAMA OR
MR. FAT HLONGWANE OR RETURN
EXILES. (0310) 5091808

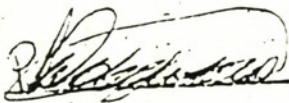
We are the A.N.C.EX. DETAINEES we have arrived in South Africa on 17.8.91 from
G NDA in the A.N.C. prison. So now we are preparing to go to Court with the A.N
as they call us enemy agents, we were held in different countries in Africa. So
our request is that you should also involve our case in the Multi Party Conf
as the people who want their voice to be heard in South Africa if you just
involve our case in you Conference we will be very happy. So if you have any
objectoin report back to us so we will be very glad if you can inform us early.

CHIRMEN: FAT HLONGWANE.
SECRETARY: SIPHO LALISO.
TREASURE : SIPHO NGEMA.

OTHER MEMBERS

SIPHO LOMBO
KEKE KHESWA
M. NOLA MAPU
JOHN BESTER
C ARLOM MAVUNDE
BORGANE NTSHANGACE
LINDA NTSHANGACE

SIGNED BY :



LANDDROSKANTOOR
MAGISTRATE'S OFFICE
DURBAN

Enquiries : E.J O'Neill

Mr Pat Hlongwane
Returned Exile Committee
P O Box 47605
GREYVILLE
4023

17 January 1992

Sir


APPLICATION FOR PERMISSION TO HOLD A MARCH : RETURNED EXILES

Your letter of 16 January 1992 refers.

Permission in terms of section 53(1) Act 74 of 1982 is hereby granted for the holding of a march on 18 January 1992 between the hours 12h30 and 13h30 along the following route:-

Assembling and forming up in Queen Street in the vicinity of the Cathedral, proceeding along Queen Street, Grey Street, West Street to Church Walk between West Street and Smith Street.

Yours faithfully


E.J LAUBSCHER
MAGISTRATE : DURBAN

RETURN EXILES COMMITTEE FOR PEACE AND
JUSTICE IN SOUTH AFRICA.

RETURN EXILE COMMITTEE
P.O. BOX 47605
GREYVILLE
4023
TEL. (031) 509 1800

TO: THE AMBASSY IN LONDON

We are the A.N.C. Ex-Prisoners, we have arrived in south africa on 17 August 1991. We were held in A.N.C. Camps in different countries in Southern Africa. We have different experiences about the situation in the A.N.C. hold camps in Africa. When we arrived in south africa we were a group of 17 from Namibia in Ubarara and Bokolets, actually we were kept in a secret place in Angola in the northern part of Angola, all of us were firstly tortured in Zambia in R.C. in Lusaka, smuggled to Angola the Central Prison in Luanda.

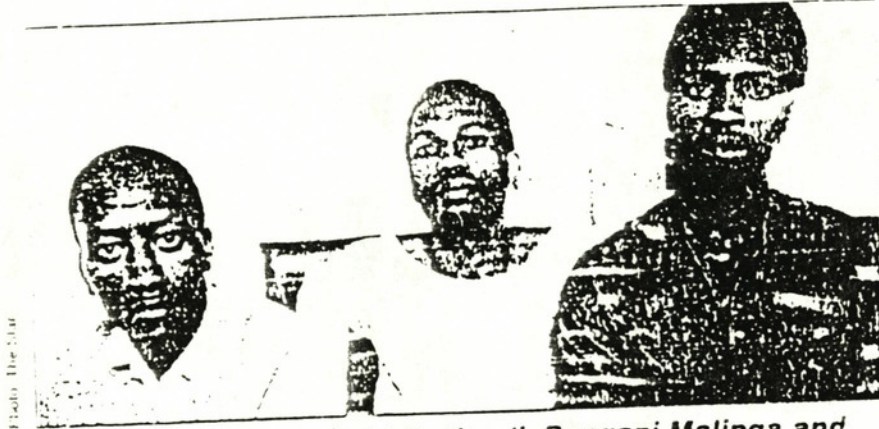
As we have been released by the A.N.C. through pressure from the International Community, and even hunger strikes in the A.N.C. Prison so now we decided to unite and take the A.N.C. to court, we have now a committee which is called RETURN EXILES COMMITTEE FOR PEACE AND JUSTICE IN SOUTH AFRICA, so when we came back in south africa the A.N.C. has to dump us. We have no clothes, no food, no place to stay, no place to hold meetings to address meetings where we will be able to inform people and tell them a truth about what is taking place within the National Executive Committee of the A.N.C. and tell all the atrocities they have committed in the A.N.C. Labour Camps in Angola, and all the crimes we want to tell them.

So please, if it is possible, organise for us all the addresses of the organisations that can sponsor people like us, and even the addresses of Human Rights Lawyers, and please send us money for the committee so we can buy something to eat, and soap to wash and clothes to wear, we need a clean hand. We are not aiming to vandalise the A.N.C. but we want to purify it to destroy it.

THE NAMES OF THE MEMBERS

CHAIRMAN: Patric Hlongwane
SECRETARY: Siphiso Laliso
TREASURER: Siphiso Ngesi
OTHERS : Siphiso Mazi Lembo
Keke Kheswa
Mandla Mapu
Linda Ntshangase
Bongani Ntshangase
Abet Langa
Chalton Mavundla

Commission of inquiry into detentions



Ex-detainees Samuel Motjuadi, Bongani Malinga and Alfeus Keke Mabuza

In August senior leaders of the ANC met 32 people who had just been flown back to South Africa after various spells in ANC detention centres. An agreement was reached in that meeting that there would be no public attacks against each other.

Subsequently, some of the people have used various platforms to launch attacks on the ANC. They constitute a minority in the group, ie 12 out of 32. The majority have preferred to keep to the agreement, and, the appointment of Commission of Inquiry by the president of the ANC, Nelson Mandela, will serve as a forum for them.

The lawyers seconded to this commission are Archie Skweyiya, Charles Nupen and Bridgette Mabandla. It will hear any complaints from the former detainees.

The feeling is that the majority, who have reaffirmed their membership of the ANC, will come forward to testify and settle whatever matter they feel still stands in the way of their full integration or participation in the affairs of the ANC.

It has also been stated that there may be others who were not necessarily members of this group but who may also want to use this platform and would be allowed to do so. There are those who have joined Gogotya's Fida and Inkatha and have from these platforms launched false and

scathing attacks on the ANC. Some have gone back to the ANC and the Askaris in order to launch physical or verbal attacks on the ANC.

What lies behind these attacks? It cannot be that they want their names to be cleared. They themselves have stated that confessions exist which were made and signed, although they now claim that this was done under duress. The likely answer they have deduced, and which has been told, that the confessions made recent on-the-spot are ghastly revelations made before-hand.

The Commission of Inquiry will, of course, be an ANC body intended for the purpose of having chosen to make their decisions internally.

Why is it not conducted in public?

SATISFACTORY

The ANC wants to have the matters clarified and to the satisfaction of those who have problems about their cases were handled. The treatment they received is the most important issue. The majority of the former detainees feel that this is the best way to handle the matter.

Making public the details of the case pertain to the case of Malinga, Dlongwana, and the others who have upon themselves to wage a campaign against the ANC. The ANC as neither side is necessary at this stage.

What matters must be made sure that those who are solving their problems in the ANC are given the opportunity.

The date for the commencement of proceedings has been set, but both sides are aware of the urgency of the matter.

RETURN EXILES COMMITTEE FOR PEACE AND
JUSTICE IN SOUTH AFRICA.

RETURN EXILES COMMITTEE
P.O. BOX 47605
GREYVILLE
4023
TEL. (031) 309 1800

TO: THE I.C.F.M. INTERNATIONAL SECRETARIAT.

We are the A.N.C. Ex. Prisoners, we have arrived in south africa on August 1991. We were held in A.N.C. Camps in different countries in Southern Africa. We have different experiences about the situation in the A.N.C. hell camps in Africa. When we arrived in south africa we were a group of 32 from Uganda in Mbarara and Bokoloto, actually we were in a secret place in Angola in the northern part of Angola, all of us were firstly tortured in Zambia in R.C. in Lusaka, smuggled to the Central Prison in Luanda.

As we have been released by the A.N.C. through pressure from the International Community, and even hunger strikes in the A.N.C. Prison, so now we decided to unite and take the A.N.C. to court, we have a committee which is called RETURN EXILES COMMITTEE FOR PEACE AND JUSTICE IN SOUTH AFRICA, so when we came back in south africa the A.N.C. tried to dump us. We have no clothes, no food, no place to stay, no place to hold meetings to address meetings where will be able to inform people about a truth about what is taking place within the National Executive Committee of the A.N.C. and tell all the atrocities they have done in the A.N.C. Labour Camps in Angola, and all the crimes we want to see them.

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THE NAMES OF THE MEMBERS

CHAIRMAN: Patric Hlongwane

SECRETARY: Siphiso Laliso

TREASURER: Siphiso Ngema

OTHERS: Siphiso Muzi Lombo

Kake Kheswa

Mandla Maphu

Linda Ntshangase

Bongani Ntshangase

Abeot Langa

Chalton Mavundla

John Besten

Bongani Malinga

SIGNED BY: Patric Hlongwane as a chairman

Internationale Gesellschaft für Menschenrechte • International Society for Human Rights
Défense Internationale pour les Droits de l'Homme • Sociedad Internacional para los Derechos Humanos
Международное Общество Прав Человека

International Secretariat: D-6000 Frankfurt/Main, Kaiserstraße 72, Germany

Mr. Twala
General Independent
Democratic Alliance

00 27 11 403 1557

International Secretariat / German Section:

D-6000 Frankfurt/Main - Germany
Kaiserstraße 72
Telephone: 069 - 23 69 71/72
Telex: 4 185 181 Ighm d
Telefax: 069 - 23 41 00

Bank Account:
Commerzbank Frankfurt/Main
Germany - No. 0224114
IGFM has consultative status
with the Council of Europe

Frankfurt/M., 22.11.91

Dear Mr. Twala

Thank you for fax letter of 20th November. We take on board your suggestions concerning the composition of our investigative team which we hope to be able to send to Southern Africa to visit existing and former ANC Camps. We expect that we would be able to interview 12 victims of these camps to be part of the team and we would seek your advice in regard to who at a later date. At the present we have in mind the Spring of 1992 (March or April) as a suitable date.

This requires the co-operation of the ANC leadership, and the permission of the numerous Governments involved. The former would enable the second step but so far we do not even have approval in principle from the ANC. We have established contacts, however, to the ANC in Germany and directly in South Africa asking for approval in principle.

We have also published the information we have so far in our German language magazine "Menschenrechte" (Human Rights) and I have sent a copy to you today by post. We would very much appreciate having a direct contact address for more of the witnesses, especially those who returned to South Africa in August to "Spider" Moulawa Robert Ndlovu, in order to get more statements for publication in the January edition of our newsletters. If you could send us any addressees we would write to them directly.

Looking forward to continuing co-operation

Yours sincerely,

Robert Chambers
Robert Chambers
Secretary General
International Secretariat

Secretary President
Frankfurt, Germany
Attorney General, etc.

International Council
President Dr. Reinhard Dietrich, Germany
1 Vice-President, Kateryna Guro, Austria

2 Vice-President, David Ashworth, UK
3 Vice-Presidents
Secretary General, Robert Chambers
Deputies, Heidi Grottel, Switzerland

National Sections: Argentina, Australia, Austria, Belgium, Canada, CDR, Ecuador, France, Great Britain, Greece, Israel, Italy, Mauritius, Mexico, Spain, Switzerland, USA, Nations: Ombudsman, Soviet Union, Moscow, Leningrad, Vilnius, Riga, Baku, Bujumbura, Karlsruhe. Affiliated groups: Finland, Cuba, Romania, Thailand, Moscow, Georgia, Novosibirsk.

Return Exiles Committee
To Mr ZAC Debeer The Chairman
of the CODESA

Return Exile Committee
P.O. Box 47605
Greyville

TELEPHONE NO:

(0350) 791061 Mr Makame

Mr Pat Hlongwane or
Return Exiles .

(031) 5091008

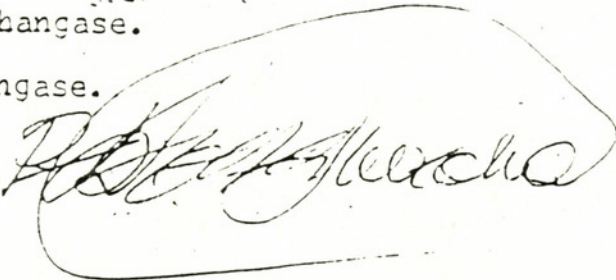
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A.N.C. as they call us enemy agents, we were held in different countries in Af
now our request is that you should also involve our case in the Multi Party
France as the people who want their voice to be heard in South Africa if you
can involve our case in your Conference we will be very happy. So if you have a
inspection report back to us So we will be very glad if you can inform us early

Chairmen : Pat Hlongwane .
Secretary: Siphho Laliso .
Treasurer : Siphho Ngema .

Other Members

1. Mkhize Lombo.
2. Mkhize Kheswa.
3. Mkhize Ndla Mapu.
4. Mkhize Bester.
5. Mkhize Mavundla.
6. Mkhize Ntshangase.
7. Mkhize Ntshangase.

SIGNED BY:



RETURN EXILES COMMITTEE FOR PEACE AND
JUSTICE IN SOUTH AFRICA.

RETURN EXILES COMMITTEE
P.O. BOX 47605
GREYVILLE
4023

FOR THE AMNESTY INTERNATIONAL

We are the A.N.C. Ex-Prisoners, we have arrived in south africa on 17 August 1991. We were held in A.N.C. Camps in different countries in Southern Africa. We have different experiences about the situation in the A.N.C. held camps in Africa. When we arrived in south africa we were a group of 32 from Uganda in Mbarara and Bokoloto, actually we were kept in a secret place in Angola in the northern part of Angola, all of us were firstly tortured in Zambia in R.C. in Lusaka, smuggled to Angola the Central Prison in Luanda.

As we have been released by the A.N.C. through pressure from the International Community, and even hunger strikes in the A.N.C. Prisons, to now we decided to unite and take the A.N.C. to court, we have now formed a committee which is called RETURN EXILES COMMITTEE FOR PEACE AND JUSTICE IN SOUTH AFRICA, so when we came back in south africa the A.N.C. has decided to dump us. We have no clothes, no food, no place to stay, no place to arrange meetings to address meetings where will be able to inform people and tell them a truth about what is taking place within the National Executive Committee of the A.N.C. and tell all the atrocities they have committed in the A.N.C. Labour Camps in Angola, and all the crimes we want to expose them.

So please, if it is possible, organise for us all the addresses of the organisations that can sponsor people like us, and even the addresses of Human Rights Lawyers, and please send us money for the committee so that we can buy something to eat, and soap to wash and clothes to wear, we need a hand. We are not aiming to vandalise the A.N.C. but we want to purify and to destroy it.

THE NAMES OF THE MEMBERS

CHAIRMAN: Patric Hlongwane

SECRETARY: Siphiso Laliso

TREASURER: Siphiso Ngema

OTHERS: Siphiso Muzi Lombo

Kake Khedwa

Mandla Mapu

Linda Ntshangase

Ekongeni Ntshangase

Abeot Langa

Chalton Mavundla

John Besten

SIGNED BY: Patric Hlongwane as a chairman

Ex Quatro prisoner says ANC out to kill freed agents

By Tony Mirling

MR PATRICK Dlongwana (37), one of 32 alleged South African agents released from ANC detention camps, says the ANC's security department is out to kill him and the others.

He said yesterday one of the group, who have been staying at the Springbok Hotel in Johannesburg, had gone for a walk on Tuesday and been held up at gunpoint by members of the ANC's security department.

Mr Dlongwana said Mr Bongani Malinga had been robbed of money given to him by the "boers" (the government) and told that he and his friends would be killed if they again spoke to the media.

Guarded

A Johannesburg police spokesman said last night he had no knowledge of the alleged incident. The Springbok Hotel was yesterday under guard by uniformed policemen.

Mr Dlongwana who said he supported Pan Africanism, said he was not and never had been a member of the ANC and did not feel himself bound by an agreement not to make statements to the media, reached at a meeting with Mrs Winnie Mandela and Umkhonto we Sizwe's chief of staff, Mr Chris Hani.

"I was, in fact, opposed to the agreement," he said.

He described the meeting with Mrs Mandela and Mr Hani as "an attempt to smooth things over" because the ANC knew that those who had returned with him could do the organisation harm by

speaking out about the treatment they had received.

"They have declared war against us he said.

"The ANC security are out there looking for us, and they will kill us."

Mr Dlongwana he had been an organiser for the Port Elizabeth Civic Organisation, PEPCO and had helped to organise a bus boycott in the city in 1983.

He and a number of other involved had been arrested, but he and a few others had later been released.

"This had caused suspicion against them.

"They thought we were sell-outs," said Mr Dlongwana.

He had experienced problems within Pepco, as a result of which he had decided to go and see the ANC in Lusaka in 1986.

He had been taken to the ANC's security centre in Lusaka, where he was interviewed by members of ANC security.

"They dismissed all of my statements and said I was a police spy," he said.

He had been accused of being involved in the disappearance of three "Port Elizabeth comrades".

Tortured

The ANC security officers had then tortured him, including beating him with iron rods, pouring hot water or tea on him, making him sleep in water on the floor of his "cell" and pouring fish oil and a tin of red ants on his head.

"Because I could not stand the pain of the torture anymore, I confessed but I still say I am not a South African agent," he said.

Mr Dlongwana said he had then been taken to an Angolan prison, before being taken to the ANC's prison camp, Quatro.

Beatings of the prisoners by warders had been continual. To his knowledge, two prisoners had died while he was there.

He said that because of the closure of ANC camps in Angola, he and other inmates had been secreted out of the coun-

try in April 1989 aboard a military aircraft and taken to an ANC prison in Uganda.

There, he had faced trial before an ANC military tribunal on what he called 43 "false" charges, and sentenced to 15 years' imprisonment.

In protest, he had gone on a 31-day hunger strike in February this year.

Hospital

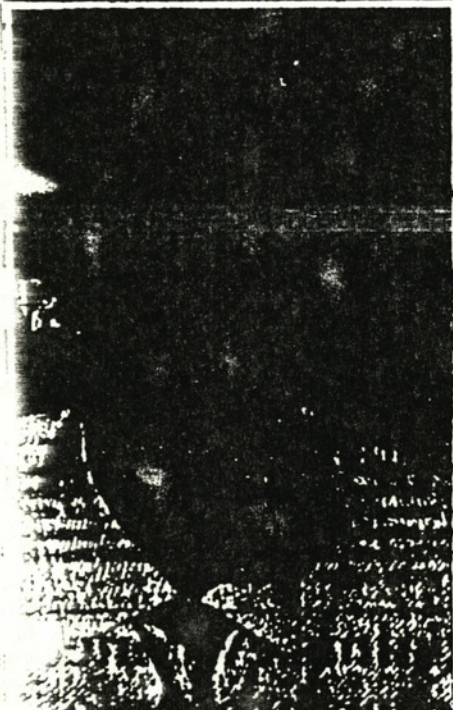
He had again been beaten up by prison warders.

On June 16, he had embarked on a second hunger strike.

After 29 days, he had collapsed and was taken to a Ugandan military hospital.

"Before I was taken to hospital the warders brought a spade to me and said I should dig my own grave. I told them that if I died, the world would know I had died on hunger strike."

It was shortly after this incident that he and 31 others had been released;

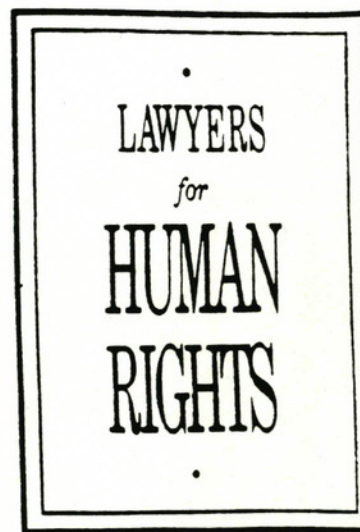


MR PATRICK DLONGWANA, who claims he was tortured by the ANC and that "ANC security" will kill him and others who talk about their experiences.

NATIONAL DIRECTORATE

713 Van Erkom Building
Pretorius St., Pretoria 0002
Telefax: (012) 325-6318
Telephone: (012) 21-2135

Our ref:
Your ref:
Date:



January 6, 1992

TO : MEMBERS OF CODESA WORKING GROUP ONE
RE : COMPLETION OF MATTERS RELATING TO THE RELEASE OF
POLITICAL PRISONERS

Dear Sir/Madam,

As an organisation we have been involved during the past year in the process relating to the release of political prisoners. We have, during this period, submitted numerous applications for pardon and release on behalf of a variety of prisoners, made representations to the Indemnity Committees and launched court applications where all else has failed. A significant number of our clients remain imprisoned.

In October this year we made submissions to the UN Committee against Apartheid and the Special Group of Experts on Southern Africa, and we have attached a copy of these submissions for your information.

There have been certain changes to the status quo since the publication of this document, and we will detail these briefly.

1. The situation in Bophuthatswana has to a large extent been resolved, with mass releases having taken place during December. A number of people remain imprisoned, including Timothy Phiri, but we understand that their release is expected soon.
2. In South Africa itself the release process has remained deadlocked since the publication of our report. During November and December there were a couple of releases (including two additional members of the Sharpeville Six, and the last Robben Island prisoner) However, the bulk of those persons detailed in the attached document, including the members of Umkhonto we Sizwe, remain in prison.

3. With the changes detailed above we would not estimate there to be approximately 280 - 300 prisoners who should be released in terms of agreements reached between the government and the ANC as well as precedents set through the pattern of releases thus far. We are unfortunately only in a position to estimate numbers, as we are not being provided with the relevant figures by the Departments of Correctional Services and Justice.
4. We would refer you to the section in the paper dealing with right wing violence, in which we predicted that the failure to resolve the political prisoner issue would of necessity result in an increase in right wing violence. Our theory in this regard was that perpetrators of this violence believe that they too will be regarded as political prisoners while there are still other political prisoners who have not been released, and that at some stage they will fall into a broad based general amnesty. Looking at recent events, our predictions sound a horrible note of truth.

We would urge all members of this Working Group to study the attached document with care. It appears bulky, but we believe it will provide those of you new to this process with an insight into the history of the problem now presented to you.

We believe that the solution to this problem is a relatively easy one and that you could dispose of it in a matter of weeks. We would request that a delegation from our organisation be permitted to make oral submissions to the Working Group on this issue, in order to elaborate on the information contained in the report submitted to the United Nations. We would be available to do this as soon as it is convenient to you.

Yours Sincerely



BRIAN CURRIN
NATIONAL DIRECTOR

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SUBMISSION TO THE UNITED NATIONS COMMITTEE OF EXPERTS
THE RELEASE OF POLITICAL PRISONERS

INTRODUCTION

In South Africa there are two major issues which continue to bedevil the political process, both of which have severe implications for the future of our country. The first is the issue of the release of political prisoners and the second is the ongoing violence and the role of the security forces within this.

The government has, over the past few months, expended great effort in attempting to persuade the international community that the political prisoner issue has in fact been resolved. Their motivation for this is reasonably straightforward - the continued imprisonment of political offenders has serious implications for the anti-sanctions lobby and for the government's relations with foreign countries. However, what I aim to show in this paper is that the implications of this issue are far greater - that in fact the inability of the government and the ANC to resolve this could derail the entire process of negotiations now underway.

The issue remains unresolved and I will attempt to identify the reasons for this in my paper. If I am to deal with the issue properly, it will be necessary for me to examine the history of the process in some length. I trust you will bear with me. I believe that this background is essential to your understanding of the severe implications a continued lack of resolution will have.

AGREEMENTS AND RESOLUTIONS

THE HARARE DECLARATION

In 1989 when the Harare Declaration was adopted by the African National Congress, one of the major preconditions was the unconditional release of all political prisoners and the safe return of exiles.

THE GROOTE SCHUUR MINUTE

Following the unbanning of the African National Congress and other liberation movements on 2 February 1990 the Groote Schuur Minute was entered into by the Nationalist government and the ANC [ANNEXURE A - GROOTE SCHUUR MINUTE]. The intent of this first agreement was to work towards the resolution of existing obstacles to constitutional negotiations and, in doing so, to establish a climate conducive to reconciliation and peace. In Paragraph 1 the parties agreed to the formation of a Joint Working Group to "make recommendations on a definition of political offences in the South African situation". It was envisaged, at that stage, that their discussions would be completed by 21st May 1990.

FIRST JOINT WORKING GROUP REPORT

The report of the Joint Working group established under Paragraph 1 of the Groote Schuur Minute was completed by 21 May 1990. [ANNEXURE B - REPORT OF THE WORKING GROUP ESTABLISHED UNDER PARAGRAPH 1 OF THE GROOTE SCHUUR MINUTE] This report formed the basis of the Government Gazette of November 7th and has therefore played a central role in the approach to this problem.

In brief, the most significant aspects of this report are as follows :

1. That the power to pardon or indemnify is vested solely in the State President by virtue of Section 6 of the Republic of South Africa Constitution Act 1983 and Section 69 of the Prisons Act 1959.
2. That the recommendations on a definition of political offences in the South African situation were based upon those used by Professor Norgaard in the Namibian situation. The Working Group proposed the use of these as guidelines to meet the South African situation, not criteria. These guidelines would be used in an assessment of certain common law offences (including murder) committed with political motive.
3. That the agreement would relate to those people already sentenced, subject to a suspended sentence, awaiting execution of a sentence or where the case is on appeal or review. In addition that it would apply to those liable to prosecution, awaiting or undergoing trial or in detention.
4. That the government may (in its discretion) consult other parties or bodies with a view to pardon or indemnity for offences and, if need be, the establishment of guidelines applicable to members of such organisations.
5. The creation of a mechanism to provide the executive with wise advice re. the granting of pardon or indemnity, in order to demonstrate that "the interests of all parties are being taken into account in as objective a manner as possible"

PRETORIA MINUTE

On 6th August 1990, the African National Congress and the government met again and committed themselves to what has become known as the Pretoria Minute [ANNEXURE C - PRETORIA MINUTE]. For our purposes, the most important aspects of this agreement are as follows :

1. That the abovementioned report of the Joint Working Group was accepted by both parties.
2. That the Consulting Bodies (as referred to in Paragraph 8.2 of the Report) would be constituted by 31 August 1990.
3. That the latest date envisaged for the completion of the total task as set out in the Joint Working Group Report would be completed by not later than 30 April 1991.

plan for the release of ANC related prisoners (Hereinafter referred to as Paragraph 2 Working Group)

5. That the ANC suspended all armed actions with immediate effect.

REPORT OF THE WORKING GROUP ESTABLISHED UNDER PARAGRAPH 2 OF THE PRETORIA MINUTE

This Working Group (which consisted of five members of the ANC and fourteen members of government) drew up a plan, inter alia, for the administrative release of ANC related prisoners [ANNEXURE D - REPORT OF THE WORKING GROUP ESTABLISHED UNDER PARAGRAPH 2 OF THE PRETORIA MINUTE] The report recommended the following :

1. That ordinary remission of one-third of determinate sentences be granted to all sentenced prisoners presently regarded as ANC related. [NOTE : Prior to this, political offenders, unlike criminal offenders, did not qualify for ordinary remission of sentences]
2. Special remission of one year was granted to all ANC related prisoners, in terms of the Prisons Act No. 8 of 1959 which gave the State President the power to authorise the release of any prisoner, either conditionally or unconditionally through the use of parole or remission.
3. That sentenced prisoners will be considered for release in terms of the adopted guidelines and the recommendations of the Consulting Bodies where appropriate, and that this process would commence on 1st October 1990.
4. That these consulting bodies would consist of a convenor with ad-hoc appointments from concerned groups, and would provide wise advice to the Executive when dealing with particular offences.
5. That all applicants for pardon and indemnity should provide the Office for Indemnity and Release with certain information regarding the nature of their offences and the motivation for regarding such offences as political.

The guidelines and information contained in the above agreements were later published in two separate Government Gazettes of November 7th and 9th 1990 [ANNEXURES E AND F RESPECTIVELY] with certain changes.

The Gazette of November 7th ratified the guidelines established by the first working group as well as the initial categories for unconditional indemnity. Of significance here is that the Gazette stated that "Recommendations relating to the identification of further categories may be made by interested parties and shall be considered by the Executive in accordance with the guidelines."

The Gazette of November 9th dealt with the establishment of Indemnity Committees, (aforementioned Consulting Bodies) and was based very loosely on ideas raised in both Joint Working Group Reports.

Of significance here is the following :

1. The fact that these bodies were established with the intention of ensuring representation of interested parties in the decision making process with regard to indemnity or pardon.
2. That the Gazette gave wide ranging powers to the State President (with regard to the appointment of Chairmen and the make-up of particular committees) and to the Chairmen themselves, subject of course to the President's powers.
3. That those participating in these committees should take an oath of secrecy before so doing
4. That the committee investigates matters referred to the committee by the State President or a Cabinet Minister and submits a written report and recommendation thereof to the State President. The decision to grant indemnity or pardon remains with the State president.

These various agreements and undertakings then formed the basis upon which political prisoners were to be released.

At the time that these agreements were being drawn up, Lawyers for Human Rights formed part of an ad hoc group of interested lawyers which commented on the agreements. A copy of the comment was submitted to the African National Congress and later directly to the government. [ANNEXURE G - MEMORANDUM JOHANNESBURG AD HOC LAWYERS GROUP].

In brief, our input at this stage was around the following provisions :

1. NEW CATEGORIES OF PERSONS WHO QUALIFY FOR UNCONDITIONAL INDEMNITY

Our recommendation here was for the range of categories to be substantially extended, with a focus less on the "events" and more on the category of persons.

We recommended that unconditional indemnity/pardon should be granted to :

- * all acts committed by persons upon the instructions of within the policy of the ANC or Umkhonto we Sizwe
- * those persons who have committed purely political offences, including treason, sedition, subversive terrorism and other offences under the Internal Security Act
- * persons who have participated in acts of civil unrest arising out of opposition to Apartheid, excluding the robbery and rape.
- * persons who have participated in unlawful gatherings

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- * persons who have committed breaches of Section 126A of the Defence Act
 - * persons who have incited others to commit any of the above, or who have attempted to commit any of the above.

We also looked at more specific categories, to deal in particular with the whole area of acts related to civil unrest where persons did not act under direct instruction from an organisation, and within this highlighted the following possibilities :

- * persons who committed acts of violence against town councillors
- * persons who committed acts pursuant to boycotts, strikes and stayaways
- * persons who committed acts pursuant to conflict within civilian areas with the security forces.

We believe that had these categories been adopted in November last year, the process of releases (and the return of exiles) would have been finalised by April this year, if not earlier. These categories were however not adopted.

2. PROCEDURES FOR INDIVIDUAL APPLICATIONS

We believe that the process of application and release was under the unilateral control of the government, with applications going to the Indemnity Office (staffed entirely by Department of Justice and Prisons officials) where a report was drawn up, then to the Minister of Justice and finally to the State President for a decision. If this application was rejected it was then referred to a consulting body and this was the first (and only) stage in the process where the ANC would be permitted some form of representation.

We recommended to the ANC that they negotiate representation within the Office for Indemnity so that the initial process of rejection of applications was not left entirely in the hands of government officials.

We believe that these initial agreements into which the government and the ANC entered were inadequate. However, as they represent the first stages of the negotiations process and the flaws contained within them were therefore inevitable. Notwithstanding these flaws and mistakes, we believe that the only way in which these agreements can be examined is within the intent of both parties.

The stated intent of both the Pretoria and Groote Schuur Minutes was a reconciliatory one. Both the government and the ANC committed themselves towards the "...resolution of the existing climate of violence and intimidation from whatever quarter as well as ... to stability and a peaceful process of negotiations." With specific reference to the release of political prisoners, the intent of the mechanisms established was, we believe, to ensure the speedy release of all political prisoners in order to open the way for substantive constitutional negotiations.

ected with criminal intent.

At around the same time, fifteen Umkhonto we Sizwe operatives and a number of "unrest related" prisoners were released, NOT in accordance with the Pretoria Minute or subsequent agreements but on parole in terms of the abovementioned one-third amnesty for first offenders.

Amongst those released were the following:

1. "Delmas 2" trialists - who had received multiple death sentences (later commuted to twenty five years) for a variety of activities resulting in the death of three people and serious injury to others.
2. Ronnie Maboia and Stephen Vilakazi (both Umkhonto we Sizwe operatives) who were convicted of three counts of murder following a bomb blast in which three civilians died.
3. Alan Mamba - convicted of the murder of a civilian who died after picking up a limpet mine placed outside a bank.

Their release in this manner was agreed to by members of the National Executive Committee of the African National Congress, in the belief that this may be the only way in which they could get the prisoners released. All of those released in this manner had had their applications for release/indemnity rejected by the Indemnity Committees.

It is interesting here to compare the cases of those members of Umkhonto we Sizwe who were released and those who remain imprisoned until today.

Umkhonto we Sizwe operatives still imprisoned are as follows :

ROBERT JOHN McBRIDE	Life sentence
MTHETHELELI MNCUBE	Death sentence
MZONDELELI NONDULA	Death sentence
SIBUSISO MASUKU	Thirty years

There are additional members currently awaiting trial, and I will return to them later. We believe that the case of Robert McBride (our client) is the case where the government has proved most recalcitrant during negotiations. I wish to compare his case to Ronnie Maboia and Stephen Vilakazi, released as part of the group of fifteen during July this year.

ROBERT McBRIDE

He was convicted in 1987 and sentenced to death - he spent four years on Death Row and his sentence was commuted in April this year to life. His convictions arose out of his activities as a member of Umkhonto we Sizwe and at all times he acted under their instructions. He was convicted of three counts of murder as a result of a bomb blast in which three (white) civilians were killed. In addition, he was convicted of Terrorism and Furthering the aims of the ANC. It is interesting here that one of the charges of Terrorism and Attempting to overthrow the State

The ANC entered into these agreements believing that they would achieve this. They would not have endorsed agreements or mechanisms which would have the net effect of keeping their members in jail. In this way, while we believe that the blame for the current impasse can be laid at the door of both negotiating parties, it is the government which has demonstrated bad faith throughout the process. We will motivate this later.

In Lawyers for Human Rights we involved ourselves fully in the implementation of these agreements, in an attempt to facilitate the process. We established (in December 1990) a Political Prisoner Release Programme staffed by two Attorneys with the aim of ensuring that all those who qualified for release would be in a position to apply. I have attached a short description of this project for your attention [ANNEXURE H - POLITICAL PRISONER RELEASE PROGRAMME].

The initial stages of our intervention were beset by problems caused by uncooperative government departments. We detailed these problems in a memorandum which we submitted to the Minister of Justice in a meeting held with him in Cape Town in March 1991. Amongst the problems we detailed were the following :

- * a three month delay by the Prisons Department in giving us permission to place notices in prisons explaining our programme and giving contact addresses.
- * In addition, we continued to be refused access to prisons in order for us to consult prisoners and assist in the filling in of forms. As late as the first week of April we were still experiencing problems in getting access to prisoners.
- * The government failed to supply us with lists of prisoners which it believed were eligible for release - we had to rely on information supplied by the Human Rights Commission and IDAF.

After the meeting with the Minister of Justice we established a joint Audit Committee which was to function as forum for comparison and exchange of information regarding lists of prisoners eligible for release. The Human Rights Commission, ourselves and Prison Department officials sat on this committee. While the committee had no decision making powers it was able to evaluate the various lists and numbers and exchange useful information. However, this committee was disbanded after an agreement was reached between the ANC and the government on the establishment of a Scrutiny Committee. The proposed function of this committee was to evaluate applications received and rejected by the office for indemnity - to date we have no information as to progress made in this committee.

In our meeting with the Minister we also raised some of the objections to the manner in which the agreements were being implemented. Here we highlighted the following problems :

- * Referrals to the Indemnity Committees - lack of information to the reasons for such referrals, and the failure of the government to gazette the names of the ANC nominees to the committees.

- 7
- * the problem of Death Row political prisoners in that the government was refusing to deal with their cases until such time as their sentences were commuted. This was not part of the original agreement - no distinction had been made between prisoners serving long sentences and those on Death Row.
 - * the failure of the government to extend the number of categories for unconditional release or indemnity.

We reached no finality on any of these issues in the meeting.

We followed up this meeting with further letters to the Minister of Justice and the State President detailing our concerns and as yet we have received no responses of any substance, other than acknowledgement of receipt.

On April 24th two Gazettes were published. The first dealt with an extension of categories for unconditional release to include a number of offences, excluding those where people were convicted of serious offences such as murder and assault with the intention to commit grievous bodily harm. [ANNEXURE I GOVERNMENT GAZETTES 24 APRIL 1991] While we welcomed these agreements and the provisions therein, we believe that the exclusion of offences involving murder and serious injury was unhelpful. There had been a number of people convicted of murder who had already been released in terms of the Pretoria Minute, and these cases could have been used to define categories for release.

In a memorandum handed to the Minister of Justice on June 24 1991, we reiterated our concern about this fact, and urged him to create further categories. This was not done. In the same memorandum [ANNEXURE J PROBLEMS EXPERIENCED BY LAWYERS FOR HUMAN RIGHTS IN THE POLITICAL PRISONER RELEASE PROCESS] we raised the problems we were experiencing with regard to the Indemnity Committees, Death Row prisoners and Bophuthatswana prisoners. None of these issues were resolved during our meeting.

With reference to the condemned prisoners, our contention was that there had never been any agreement to the effect that these prisoners would be dealt with any differently to other prisoners. If the government had interpreted such agreements to mean this, then it was within their power (the State President's in particular) to commute with immediate effect the death sentences of all those prisoners whose actions were political in nature. To date, this has not been done - we have two members of Umkhonto we Sizwe still on Death Row a year and two months after the Pretoria Minute. In their case, the matter has been with the State President since the failure of their Appeal in March this year and he has not yet extended clemency to them.

On raising the question of political prisoners in Bophuthatswana, we were informed that Bophuthatswana was an independent state and that the South African government therefore had no jurisdiction over its internal affairs. As you know, there are still 147 political prisoners being held in Bophuthatswana jails. We will return to this issue later.

The indemnity committees were established following a joint decision of the ANC and the government to create a mechanism which would demonstrate that in the consideration of certain cases "the interests of all parties were being taken into account in as objective a manner as possible". Those persons nominated

by the ANC to participate in these committees withdrew for a variety of reasons : that they were not prepared to take the oath of secrecy, that the government gazette of 9th November was an inaccurate reflection of the agreement reached with the ANC and that the cases they were being asked to examine fell so clearly within the guidelines that there was really no need for further discussion. While we appreciate their reasons for withdrawal many of our clients had to present further arguments to the non-representative committees and we believe that we had an obligation to ensure that they received a fair hearing. As a result we offered to nominate persons to sit on these committees (in fact we proposed myself, our National Chairperson Adv. Brown and Adv Mospuyé). We first proposed this in June this year and have followed this up since then. To date, we have received no response to our suggestion. The Indemnity Committees have been functioning as unrepresentative bodies, staffed only by three Judges Leon, Solomon and Steyn. In our opinion, this is inadequate and does not reflect the intent of the agreement reached. Following our presentation of argument in the case of one of our clients, we expressed our dissatisfaction with the manner in which his case was handled in a letter to the State President [ANNEXURE K LETTER TO THE STATE PRESIDENT DATED 13 JUN 1991] To date we have received no response to this letter other than an acknowledgement of receipt and a referral to the Minister of Justice.

THE PATTERN OF RELEASES AND THE CURRENT SITUATION

By the 30th April 1991, 933 releases had been authorised by the State President since February 2 1990. Of these, 623 had been authorised in April alone, demonstrating that the authorities were quite able to cut through red tape when it suited them. Since then the Department of Prisons has not furnished us with the number of people released in terms of the Pretoria Minute.

However, in July 1991 we were confronted by a different type of release. The State President announced on July 5th 1991 that there would be a one third amnesty for ALL first offenders - regardless of their crime. This enabled him to release thousands of criminal offenders (whose offences included assault, fraud, theft, rape and murder) within a matter of weeks. Literally hours after the State President made this announcement, a number of policemen, convicted of various counts of murder with criminal motive, were released. Four of these are noteworthy in that they were originally sentenced to death (two of them received double death sentences) and their death sentences were commuted in 1988 by the then State President PW Botha. They had served, in total, three and a half years of an effective twenty five year sentence.

I bring this to your attention for two reasons : the first is that it demonstrates the ease with which the government is able to release people from prison, and their willingness to do this for violent criminal offenders; the second is that this incident is probably the clearest indication of the bad faith that President de Klerk and his colleagues have shown on the issue of the release of political prisoners. They have made repeated pronouncements that they could not release murderers onto the streets as they need to protect society - the murderers they refer to are those whose political actions resulted in death. These pronouncements have come in spite of agreements reached

specifically related to the planting of the bomb which resulted in the deaths. He has now spent four and half years in prison.

RONNIE MABOA AND STEPHEN VILAKAZI

These two men were also Umkhonto we Sizwe operatives who acted at all times under the instructions of their superiors. They were convicted and sentenced in early 1990. They were convicted of three counts of murder as a result of a bomb blast in which three (black) civilians were killed. They were sentenced to an eighteen year term of imprisonment by a Judge who remarked during the judgement that he handed down this sentence having taken into account the changing political climate in South Africa and the need for reconciliation.

I wish here to make the following comments :

1. There are two differences between the two cases - the colour of the victims (which has played a major role in sentencing practices in our country) and the length of the sentences handed down. The difference in the race of the victims is one of the reasons that our client has had such a high profile in the media, and we would cite this as the reason for his continued imprisonment. The government (and I have been told this by members of the cabinet) is considering the reaction of their constituency to his release.
2. The life sentence given to Robert McBride was imposed on him by State President de Klerk - he commuted McBride's sentence in April 1991 and has the discretion to make that sentence as long or as short as he wishes. He chose the longest possible - a life sentence without parole, unless the Minister of Prisons or the State President interferes and alters such sentence. In the Mabo case, a year earlier, a Judge of the Supreme Court had taken into account the changing political situation - yet the State President, hailed as the instigator of that change, fails to do so.

We must also look at the cases of Mzondeleli Nondula and Mthetheleli Mncube, still on Death Row. They were both sentenced in 1988 following a series of landmine deaths in the Northern Transvaal and the death of a policeman as a result of an escape from custody. Earlier this year their Appeal against the death penalty failed and since March they have been awaiting clemency. As you know, the State President has the prerogative to grant clemency - he has to date chosen not to utilise this. Again, in the interests of reconciliation and peace, he would have been well advised to commute the sentences of these two men after the failure of their Appeal as this would have enabled him to proceed with plans for their release. He has failed miserably on this score.

In addition to the sentenced Umkhonto we Sizwe members, Dieter Gerhardt, who was convicted in 1983 of High Treason for his activities on behalf of the Soviet Union, remains imprisoned. His application for release in terms of the Pretoria Minute was rejected by the State President. We find it extraordinary that as the Cold War ends in the rest of the world, the South African government feels obliged to keep Mr Gerhardt in prison. His conviction of High T

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liberation movements to overthrow the State. His case is very clearly a political case, and Lawyers for Human Rights is in the process of preparing a court application for his release.

Currently there are four members of Umkhonto we Sizwe whose trials are ongoing or scheduled to start within the next month. Of these, SIPHO MABENA who is being held in Pretoria Local Prison, has not yet been granted bail. The other three, JOSEPH KOETLE, JACOB RAPHOLO and JEREMY SEEBER are all out on varying amounts of bail. They have all been refused indemnity from prosecution by the State President and their trials will proceed within the next month. Again, specific provision was made within the agreements between the ANC and the government for the indemnity provisions to apply to those people awaiting trial. Instead, more than a year after the signing of the Pretoria Minute, we will be faced with high profile political trials.

Apart from the identified Umkhonto we Sizwe trialists and prisoners and Dieter Gerhardt, there are a significant number of "unrest related" prisoners still behind bars. These are mainly young people who through their involvement in United Democratic Front (UDF) structures became involved in the internal uprising in South Africa during the eighties. We do not have as yet exact figures on the number of people in this category who remain in prison, as the government is refusing to release figures to us. As an estimate we would say there are approximately three hundred who remain in prison. Again, there are numerous mechanisms at the disposal of the government which would enable them to release these people. They choose not to use these mechanisms.

AFRICAN NATIONAL CONGRESS N.E.C. MEMBERS

While there are no NEC members imprisoned, it is of great significance that most of the people holding these senior positions in the ANC are in fact still here under temporary indemnity. The very people with who de Klerk and his cabinet are negotiating are still here at the government's whim. Looking at last year's incident where a senior NEC member Mac Maharaj was arrested and detained for many months under Section 29 of the Internal Security Act after entering the country under the same temporary indemnity, NEC members could justifiably feel insecure. From our perspective, we wonder what possible motive the government has in continuing to grant only temporary indemnity - at the beginning of this month this was again extended for another four months.

BOPHUTHATSWANA

There are currently 147 prisoners still being held in Bophuthatswana, whose offences would fall within the guidelines as gazetted on November 7th 1990. Of these, 120 were involved in the coup attempt which was effectively suppressed through the intervention of the South African Defence Force. An additional four are members of Umkhonto we Sizwe who were tried and sentenced in Bophuthatswana [FRANS MOKOMANE, RODNEY MORE, PETRUS MOTHUPI and JOHN PILANE]. The remainder are persons who were involved in various actions arising out of e.g. forced removals. On the 15th October one of these prisoners died in hospital, and we understand that this was largely as a result of neglect by prison and medical authorities. We have approached the South

African government on this issue, and they remain adamant that they are not able to interfere in the internal affairs of an independent state. The 'President' Lucas Mangope continues to insist that there is no such thing as a political prisoner in Bophuthatswana.

Our position in Lawyers for Human Rights (and we believe that this position is one shared not only by the major political organisations in our country but by foreign governments and international agencies as well) is that Bophuthatswana, like the rest of the 'homelands' is an illegitimate political entity. We also believe that as we move towards proper negotiations, Bophuthatswana must (and will) be reincorporated back into South Africa. The continued existence of separate and 'independent' states within South Africa remains the cornerstone of the Apartheid grand plan. While we recognise that the process of reincorporation will be a difficult one, we do require (at the very least) an unequivocal statement from the South African government that this is their intention. To date we have only been informed that the issue is subject to negotiations.

If the manner in which the Nationalist government has handled the issue of political prisoners in Bophuthatswana is an indication of their attitude towards reincorporation, the outlook is gloomy.

RIGHT WING PRISONERS

The current situation has been exacerbated by the presence of a new brand of prisoners - right wing, racist extremists who have carried out various actions (including mass murder) in opposition to moves towards a negotiated settlement. These people believe that they have the right to be treated in the same way as, for example, Umkhonto we Sizwe operatives and this expectation has been fed by the media attention granted to them.

We feel that the release of political prisoners arose out of negotiations between the ANC and the government and formed part of agreements on a number of issues, inter alia the suspension of the armed struggle. The Right Wing groupings in this country have not committed themselves to peaceful negotiations, and in demanding their release in terms of the Pretoria Minute they have merely extracted from that Minute a portion which is to their advantage. We regard this as politically opportunistic and unacceptable. The agreements reached between the two negotiating parties made provision for other groups to negotiate similar guidelines which could secure the release of their people. What has happened is that a number of right-wingers have in fact been released in terms of the Joint Working Group documents, and these prisoners have emerged from prison and continued to agitate for and involve themselves in violent, racist actions. We believe that if the release of any of these persons is even to be considered, their organisations should commit themselves fully to participation in multi party talks and become part of the peaceful negotiations process.

THE REASONS FOR THE FAILURE TO RESOLVE THE POLITICAL PRISONER ISSUE

It is apparent that the de Klerk government has failed to honour the intent of the agreements reached between itself and the African National Congress, and we can speculate as to why this is so.

On one level, the government has its own Security Force members and agents imprisoned in some of the Frontline states for acts of terror against the ANC and citizens of the various states. To our knowledge there are currently five South African agents being held in Zimbabwe (three of whom are on Death Row), four SADF members being held in Botswana and one person in Mozambique. We believe that some of the remaining prisoners in South Africa (particularly ANC members who have a reasonably high public profile) are being held hostage as a way of pressurising the ANC to use their influence over Frontline leaders to release South African agents.

In addition, as the release of all political prisoners was a precondition to constitutional talks the failure to resolve this issue inevitably delayed the start of such talks. As has been seen through the continuing violence, such delays have only served to enhance the prospects of the Nationalist Party in any future election. The delays have caused further confusion and disarray in the ranks of ANC supporters this disorganising the major opposition to the Nationalists.

We believe also that the way in which the government has handled this issue is also a clear indication of the way in which they perceive themselves. Our opinion is that they do not believe that as a country we are in a period of transition, they do not see themselves as a government on the way out. As time has passed since the 2nd February speech, it has become increasingly obvious that they have their sights set on winning the first non-racial election in this country. The agreements reached (with regard to the political prisoner issue) ensured that the decision making rested firmly in the hands of President de Klerk and his cabinet. At no stage did the ANC have anything remotely resembling joint decision making powers in this process. This is most clearly evidenced by the fact that those people who the government decides fall within the definition of a political prisoner have all been released - yet there remain in prison hundreds of people whom the ANC regard as political prisoners. Here the fault lies not only with the government, but with the ANC itself in allowing final decision making to rest solely with the present government.

As raised earlier in the paper, we believe that the government continues to pander to the wishes (or perceived wishes) of its white constituency, and is using the prisoner releases to do this. It therefore places its own political future far above the future of the country and need for reconciliation.

From the above, we believe that the government entered into these agreements in bad faith and abused the trust placed in it by its negotiating partner the African National Congress. Again, while the blame can be apportioned to both parties, the intention of the ANC was clearly to resolve the issue while the intention of the Nationalists was to control the issue. To put it quite simply, if they had negotiated in good faith they would have asked the ANC for a full list of all those people they regarded

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as political prisoners and released such persons. They have the mechanisms to do this (as shown by their release this year of thousands of criminals) and it could have been resolved many months ago. As an alternative they could have created categories of offences covering a much broader spectrum, and released persons in terms of these categories.

The media, right wing organisations and government have created the perception that right wing prisoners are worthy of the same treatment as anti-apartheid fighters. With increasing right wing violence in our country it is not an appropriate time to release right-wingers, and we believe that this is a further factor delaying the resolution of the problem. The release of political prisoners is being delayed to prevent a right-wing outcry if they are released while right wingers remain inside.

THE CONSEQUENCES OF THE FAILURE TO RESOLVE THE POLITICAL PRISONER ISSUE

In Lawyers for Human Rights we believe that the consequences of the current impasse are many and frightening.

As long as the debate about political prisoners continues in South Africa we will have what we would term a "political prisoner psychosis". Within this, right-wingers will continue to commit acts of terror in the belief that one day, somehow they will be part of a general amnesty and/or prisoner swap. This needs to be discouraged at all costs. Until this issue is resolved the "political prisoner psychosis" will continue, enabling every person (from the Left or the Right) who commits violent actions with some kind of political motive, to believe that they will be indemnified or released. The only way to end this kind of psychosis is to clear the jails of all those persons who are imprisoned as a result of their actions (violent or otherwise) in the struggle against Apartheid. If the government wishes to enter into some arrangement with the Right Wing organisations, that they can do. The Right Wing issue should not however be allowed to delay the release of those people whose organisation entered into the Groote Schuur Minute and subsequent agreements.

We know that much of the membership of these right wing organisations is drawn from disaffected Security Force members. They have immense potential to cause irreparable harm to the political process and this should not be underestimated. This potential is only increased by the failure to resolve the prisoner issue and the failure of the government to draw right-wing groupings into talks.

Earlier this year following the "Inkathagate" scandal, the National Executive Committee took a decision that the government was now the main obstacle to a peaceful transition. This has meant that the obstacles (as detailed in the Harare Declaration and following statements) have in effect been downgraded. This has a number of important spin-offs. The government now more confidently expresses the view that the political prisoner issue has been resolved, and they are able to state (as they have done in recent months during media briefings) that they have won this round. However, more importantly this decision could well have a negative impact amongst the support base of the African National Congress. To the ANC membership the remaining

and fellow Umkhonto we Sizwe members are extremely unhappy that all political prisoners will not be released. This will have the effect of further dividing and weakening the organisation, something which may well be to the advantage of the government but is unhelpful to the political process.

There is a deep sense of frustration amongst prisoners and we fear that they will resort to desperate actions - hunger strikes being the least of these. Such actions will inflame emotions and cause further turmoil in a country already torn apart by the terrible violence. We have already seen in Bophuthatswana the terrible consequences of hunger strike action. If such action was to take hold in South African jails, the consequences would possibly be worse as the political prisoners inside have a higher public profile, particularly amongst the membership of the ANC. These prisoners have been awaiting their release since February 2 1990. They have spent that time in prison seeing criminals released, seeing their fellow prisoners (with identical charges) released and being told early last year by their leadership that they too would be released within a matter of months. We fear that the frustration has finally become too much for them to bear. This could have tragic consequences.

CONCLUSION

I have presented this lengthy submission with the intention of informing you that this issue remains not only unresolved but highly volatile. We became involved in this issue as a way of playing a positive role in ensuring that obstacles were overturned and the parties concerned could get down to substantive negotiations. As an organisation we are deeply concerned that at this late stage the parties have not succeeded in resolving what is essentially a simple issue. This does not give us a great deal of hope for the future pattern of negotiations.

Be that as it may, there is a simple solution. As pointed out earlier, the government has at its disposal numerous mechanisms through which it could effect the remaining releases - whether such mechanisms fall within or without the political agreements reached. They are not using these mechanisms and their failure to do so is creating unnecessary tensions. Their public pronouncements on the issue are dominated by legalistic and bureaucratic justifications for the fact that there are no political prisoners left and that the issue is resolved. They know, and they express this privately, that the issue is not resolved and that they have not fulfilled the intent of the Groote Schuur and Pretoria Minutes.

It has become obvious that more pressure is needed on the government to ensure that the issue is resolved, and sadly we believe that the ANC is unable to do this on its own. Within this, we believe that you should encourage the national leadership of the African National Congress to participate more forcefully in the resolution of the problem. Without their pressure on the government, the issue will not be resolved. It is here that the international community has a vital role to play. If the international community, as represented by bodies like your own, accepts the government's assertion that the issue is resolved, we believe that this would represent an abandonment of the disenfranchised people of South Africa. As we have pointed out, and we hold no

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political brief here) there are a substantial number of political prisoners in prison, both here and in Bophuthatswana. This assertion is backed up by the liberation movements within the country, other Human Rights Monitoring bodies and interested parties. If the government feels that it has succeeded in persuading foreign governments that the issue is indeed resolved, it is able to ignore calls from within the country for the release of the remaining prisoners. We need your assistance.

With special reference to the Bophuthatswana issue, we have found for example the United States insistence that all political prisoners have been released in South Africa quite extraordinary (even by their own very limited definition) given the fact that they do not recognise the independence of the 'homelands'.

The issue we face is political in nature, not legal. Attempts to seek legalistic solutions will not help us, we require political intervention and we require it as a matter of urgency.

BRIAN CURRIN
LAWYERS FOR HUMAN RIGHTS
October 17, 1991

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 a commitment to stability and a peaceful process of negotiations.

Following 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 permit.
 - (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 and to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activity.
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.

REPORT

ANNEXURE B

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 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 establishment of a working group. The ANC nominated as its representatives the working group, Messrs Zuma, Maduna, Nkomo, Pabed, Phosa and Ndlovu members on the Steering Committee). The Government nominated as representatives Minister Coetsee, Deputy Minister Meyer and Messrs Van 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 African situation;
 - / discussing, in this regard, time scales; and
 - (advising 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.
3. It is recognised that in terms of the Groote Schuur Minute, the category of persons involved only in offences set out hereunder have already been catered 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 Sizwe).
4. Persons in the above category are entitled to be dealt with in terms of provisions set out in paragraphs 6.2 and 6.3 hereof, as the case may be.

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

FINING POLITICAL OFFENCES IN THE SOUTH AFRICAN SITUATION:

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:

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.

Persons who may be liable to prosecution, or who are awaiting or undergoing trial.

Persons in detention

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.

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.

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.

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 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 of policy or to overthrow the Government).
 - (iv) The legal and factual nature of the offence, including its gravity (e.g. a minor offence 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 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.

6.6.1 The Working Group endorses the principles and factors set out in paragraph 6.5.2 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 or 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.

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The Government and the ANC have held discussions at the Presidency, Pretoria, today 5 August 1990.

1. The Government and the ANC have again committed themselves to the Grootse Schuur Minute.
2. The final report of the Working Group on political offences dated 21 May 1990, as amended, was accepted by both parties. The guidelines to be formulated in terms of the Report will be applied in a phased manner. The Report makes provision for formulation of guidelines which will be applied in dealing with members of all organisations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed. The meeting has instructed the Working Group 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. 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 the Working Group will be constituted by 31 August 1990.
 - * The further release of prisoners which can be dealt with administratively will start on 1 September 1990.
 - * Indemnity which can be dealt with in categories of persons and not on an individual basis will be granted as from 1 October 1990. This process will be completed not later than the end of 1990.
 - * In all cases where the body or bodies to be constituted according to paragraph 8.2 of the Report of the Working Group will have to consider cases on an individual basis, the process will be expedited as much as possible. It is hoped that this process will be completed within six months, but the latest date envisaged for the completion of the total task in terms of the Report of the Working Group is not later than 30 April 1991.

This programme will be implemented on the basis of the Report of the Working 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. ?
 Natal
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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.X

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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.

3. 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 negotiations on a new constitution. Exploratory talks in this regard will be held before the next meeting which will be held soon.

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PRETORIA

6 August 1990

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

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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 Duma, Mlambila, Paha, 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 McInyre and Munro. The Working Group met on 17 and 18 August and agreed on the undermentioned plans which will be submitted to the principals of members.

A. PLAN FOR THE RELEASE OF ANC-RELATED PRISONERS

1. 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.

2. REMISSION OF SENTENCE

According to existing Prison Regulations remission of sentence of 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. All prisoners will benefit immediately.

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4. CONDITIONAL RELEASE (PAROLE)

Conditional release (parole) implies that a prisoner is released subject to specific conditions that he must adhere to. Parole can 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, stipulates 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 progressive

CONFIDENTIAL

8. Where a person is sentenced on more than one count and it is ordered that the sentences should run concurrently and indemnity is 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.

3. 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.

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.

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 34 of 1955).

CONFIDENTIAL

12.3 Should the aforementioned indemnity be granted it would not 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, which guidelines will be drawn up in consultation with the Steering 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 Groen Schuur Minute, the consulting body or bodies (infra) may 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.

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12.5 Should there be any doubt in a particular case as to whether a person concerned falls within the category of certain events 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 on 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) 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 Compensation, c/o the Department of Justice, Private Bag 31, Pretoria, telephone number 3239302 x 2142 or 2144; telex number: 012-260991).

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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 organisation(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 in 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.

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13.4.8 A motivation for his application, setting forth reasons why he is of the opinion that his acts should 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 this 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 application of the Minister of Justice and the State President. Any queries 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 it is necessary in the discretion of the State President, the matter shall be referred to the consulting body to advise the State President on the matter. The Government shall also submit its comment regarding such an application to the consulting body.

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13.6 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.

ANNEXURE E

REPUBLIC OF SOUTH AFRICA



REPUBLIEK VAN SUID-AFRIKA

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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. 128

GOVERNMENT NOTICE

GOEWERMENSKENNISGEWING

DEPARTMENT OF JUSTICE

DEPARTEMENT VAN JUSTISIE

No. R. 2625 7 November 1990

No. R. 2625 7 November

- 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

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

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

VIR ALGEMENE KENNISNAME WORD DIE INLEIDING HIERONDER IN VERBAND MET BOVENMELDE AANGELEENTHEDE GEPUBLISEER

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

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

INTRODUCTION

INLEIDING

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

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 verband tydskaal te bespreek; en om te adviseer rakende norme en meganismes ten einde die vrylating van politieke gevangenes en die verlening van vryheid 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 volkenreg nie. Wat egter algemeen aanvaar word, is dat beginsels wat ontwikkel het op die terrein van die reg insluitende uitwasing, relevant is by die onderskeid tussen "politieke oortredings" en "gewone oortredings". Die reg en gebruike van state toon aan dat daar nou aansienlike mate van konsensus bestaan, sowel as tot die soort oortreding wat in beginsel as "politieke" k

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-

sifiseerbaar is, as oor die soort faktore wat in aanmerking geneem behoort te word wanneer besluit word of 'n oortreding "politiek" is al dan 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 opsigte 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 ooreg mag pleeg oor die verlening van begenadiging of vrywaring ten opsigte 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) Gevonnise persone, insluitend persone wat 'n vonnis uitdien, persone onderhewig aan enige opgeskorte vonnis, persone wat die tenuitvoering van 'n vonnis af wag, of waar die saak op appèl of hersiening is.
- (b) Persone wat vervolgd kan of staan te word of wat verhoorafwagend 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 opsigte van reeds gevonnise 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

Handwritten notes in the bottom left corner: "Partie", "Commission", "Special", "Mission".

cluded 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. 8 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 was 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 ingevolge hierdie riglyne geregtig sal wees op verdere oonweging ingevolge artikel 69 van Wet No. 8 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 magsverening is vervat in artikel 2 van die Wet op Vrywaring, 1990. Artikel 6 van die Strafproseswet, 1977, maak voorsiening vir die stoping 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 saarvaar 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 feitlike 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 gerig 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.

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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 ooglopend 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 beginsels en omdemings 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 Begnadiging of vrywaring ten opsigte van 'n spesifieke oortreding of 'n kategorie van oortredings, is 'n uitvoerende regeeringsfunksie. Raadplegingsliggame word by die meganisme ingesluit 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, alternatiewelik 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

8.1 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.

8.2 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 bespoedig, 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 prosessee.

7.5 Indien die Staatspresident 'n aansoek om vrywaring sou weier, is die applikant geregtig om te versoek dat sy aansoek aan die raadplegingsliggaam voorgeleë 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

8.1 Die proses soos uiteengesit in hierdie nlyne 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 verhoor of in die loop van enige verngtinge, of by die beëindiging daarvan, sy bevoegdhede 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 jurisdiksionele bevoegdheid van die Prokureurs-generaal en die geregshowe.

8.2 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 voorgeleë 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 voorgeleë 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 guide-lines 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 gerig 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 ngyne bekendmaak aangaande die prosedure wat gevolg moet word ten opsigte van persone wat na die Republiek wil terugkeer.

ANNEXURE F.

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

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Government Gazette Staatskoerant

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Regulation Gazette
Regulasiekoerant

No. 4588

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

Vol. 305

PRETORIA, 9 NOVEMBER 1990

No. 12838

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. R. 2633

9 November 1990

INDEMNITY ACT, 1990

REGULATIONS IN RESPECT OF INDEMNITY COMMITTEES

The State President has under the powers vested in him by section 3 of the Indemnity Act, 1990 (Act No. 35 of 1990), made the regulations contained in the Schedule hereto.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates —

"committee" means an indemnity committee established under regulation 2;

"official" means an official designated under regulation 7;

"the Act" means the Indemnity Act, 1990 (Act No. 35 of 1990).

Establishment of indemnity committees

2. The State President may establish one or more indemnity committees to perform the functions referred to in regulation 4 (1) subject to these regulations and in accordance with such directions as the State President may issue generally or with respect to a particular case.

Constitution of committees

3. (1) A committee shall consist of a chairman and such number of other members as the State President may determine: Provided that if the State President so determines a committee may consist of a chairman as the only member of the committee.

(2) The chairman and members of a committee shall, as often as it may become necessary, be appointed by the State President subject to subregulation (3).

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GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN JUSTISIE

No. R. 2633

9 November 1990

WET OP VRYWARING, 1990

REGULASIES MET BETREKKING TOT VRYWARINGSKOMITEES

Die Staatspresident het kragtens die bevoegdheid hom verleen by artikel 3 van die Wet op Vrywaring, 1990 (Wet No. 35 van 1990), die regulasies vervat in die Bylae hiervan uitgevaardig.

BYLAE

Woordomskrywing

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken —

"beampte" 'n beampte kragtens regulasie 7 aangewys;

"die Wet" die Wet op Vrywaring, 1990 (Wet No. 35 van 1990);

"komitee" 'n vrywaringskomitee ingestel kragtens regulasie 2.

Instelling van vrywaringskomitees

2. Die Staatspresident kan een of meer vrywaringskomitees instel om die werksaamhede in regulasie 4 (1) bedoel, behoudens hierdie regulasies en ooreenkomstig die voorskrifte wat die Staatspresident in die algemeen of met betrekking tot 'n bepaalde geval mag uitreik, te verrig.

Samestelling van komitees

3. (1) 'n Komitee bestaan uit 'n voorsitter en die getal ander lede wat die Staatspresident bepaal: Met dien verstande dat indien die Staatspresident aldus bepaal, 'n komitee uit 'n voorsitter as enigste lid van die komitee kan bestaan.

(2) Die voorsitter en lede van 'n komitee word, so dikwels as wat dit nodig mag word, behoudens subregulasie (3) deur die Staatspresident aangestel.

(3) No person shall be appointed chairman of a committee unless he is a person who by virtue of his qualifications is entitled to be admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and who, after obtaining such qualifications, was involved in the application of the law for a period of at least ten years.

(4) The chairman or a member of a committee shall hold office as chairman or as member, as the case may be, during the State President's pleasure.

(5) The chairman of a committee may co-opt one or more persons approved by the State President as *ad hoc* members of the committee to assist, in accordance with the directions of the chairman, the committee in the performance of its functions with respect to a particular matter: Provided that the State President may with respect to any particular matter to be dealt with by a committee, direct the chairman of that committee to co-opt a person designated by the State President as an *ad hoc* member of the committee for the purposes of such matter.

(6) No person except the chairman of a committee or a member or an *ad hoc* member of a committee in the full-time service of the State shall take his seat as a member or an *ad hoc* member of the committee unless he has taken the oath or made a declaration of secrecy in terms of regulation 5.

Duties, powers and functions of committee

4. (1) The functions of a committee shall be to investigate a matter relating to the exercise by the State President of a power conferred on him in terms of the Act which the State President or a Minister of the Cabinet refers to the committee, and to submit a written report and recommendation in respect thereof to the State President.

(2) A committee may —

(a) in an investigation in terms of subregulation (1) into a specific matter —

(i) receive, take down or hear written statements, evidence or arguments or, if the chairman consents thereto, oral statements, evidence or arguments relating to that matter;

(ii) through its chairman administer an oath to or accept an affirmation from a person who gives evidence before the committee or submits a document or anything else to the committee; or

(b) for the purposes of such investigation —

(i) subject to any other legal provision peruse any court records or records in the possession of the Criminal Record Centre of the South African Police in connection with the said matter or any other official records in the possession of the State which the Minister of Justice makes available;

(ii) obtain information relating to such matter; or

(3) Niemand word as die voorsitter van 'n komitee aangestel nie tensy hy iemand is wat uit hoofde van sy kwalifikasies daarop geregtig is om kragtens die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), toegelaat te word om as advokaat te praktiseer en wat na die verwerwing van sodanige kwalifikasies vir 'n tydperk van minstens tien jaar by die toepassing van die reg betrokke was.

(4) Die voorsitter of 'n lid van 'n komitee beklee sy amp as voorsitter of lid, na gelang van die geval, so-lank dit die Staatspresident behaag.

(5) Die voorsitter van 'n komitee kan een of meer persone deur die Staatspresident goedgekeur as *ad hoc*-lede van die komitee koöpteer om die komitee by die verrigting van sy werksaamhede met betrekking tot 'n bepaalde aangeleentheid ooreenkomstig die voorskryfte van die voorsitter behulpsaam te wees: Met dien verstande dat die Staatspresident met betrekking tot 'n bepaalde aangeleentheid waarmee 'n komitee moet handel, die voorsitter van daardie komitee kan gelas om 'n persoon deur die Staatspresident aangewys as 'n *ad hoc*-lid van die komitee vir doeleindes van daardie aangeleentheid te koöpteer.

(6) Niemand behalwe die voorsitter van 'n komitee of 'n lid of *ad hoc*-lid van 'n komitee wat in die heeltydse diens van die Staat is, neem sitting as lid of *ad hoc*-lid van die komitee nie tensy hy die eed of verklaring van geheimhouding ingevolge regulasie 5 afgelê het.

Pilgte, bevoegdhede en werksaamhede van komitee

4. (1) Die werksaamhede van 'n komitee is om 'n aangeleentheid in verband met die uitoefening deur die Staatspresident van 'n bevoegdheid ingevolge die Wet aan hom verteen wat die Staatspresident of 'n Minister van die Kabinet na die komitee verwys, te ondersoek en 'n skriftelike verslag en aanbeveling daarvoor aan die Staatspresident voor te lê.

(2) 'n Komitee kan —

(a) by 'n ondersoek ingevolge subregulasie (1) na 'n bepaalde aangeleentheid —

(i) skriftelike verklarings, getuienis of argumente of, indien die voorsitter toestemming daartoe verleen, mondelinge verklarings, getuienis of argumente in verband met daardie aangeleentheid ontvang, afneem of aanhoor;

(ii) deur middel van sy voorsitter aan iemand wat getuienis voor die komitee aflê of 'n geskrif of iets anders aan die komitee voorlê, 'n eed op lê of van hom 'n bevestiging aanneem; of

(b) vir doeleindes van so 'n ondersoek —

(i) behoudens enige wetsbepaling, insae verkry in enige hofrekords of in rekords in besit van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisie in verband met bedoelde aangeleentheid of in enige ander amptelike rekords in besit van die Staat wat die Minister van Justisie beskikbaar stel;

(ii) inligting in verband met bedoelde aangeleentheid inwin; of

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(iii) by written notice signed by the chairman, which is served in accordance with subregulation (3), direct any person to appear before the committee at a time, date and place mentioned in the notice and to give evidence relating to the said matter or to submit to the committee any document or anything else on which or in which information in his possession or custody or under his control and which is mentioned in the notice is in any manner whatsoever contained or embodied.

(3) A notice under subregulation (2) (b) (iii) shall be served—

(a) by handing over a copy thereof to the person upon whom it is to be served;

(b) by leaving such copy at the usual or last known place of residence or business of that person; or

(c) by sending such copy through the post to the usual or last known place of residence or business of that person.

(4) A committee shall convene at the time, date and place determined by the chairman.

(5) The manner in which a committee performs its functions, including the procedure at and quorum for a meeting of the committee, shall, subject to these regulations, be determined by the chairman of the committee in general or in respect of a specific case.

(6) (a) No person shall attend the proceedings of a committee except with the permission of the chairman or pursuant to a direction under subregulation (2) (b) (iii).

(b) The chairman may order that any permission granted to any person by him under paragraph (a) shall not be valid unless such person has taken the oath or made a declaration of secrecy under regulation 5.

(7) Where any person gives evidence or submits a statement to a committee in terms of the provisions of these regulations and for the purposes of indemnity, answers questions which may incriminate him or, where he is to be tried on a criminal charge, may prejudice him at such trial, no evidence regarding these questions or answers thereto or any other aspect regarding such proceedings in respect of which the Act is applicable shall be admissible in any judicial proceedings.

(8) No person shall, without the prior consent of the State President, disclose any particulars of—

(a) the proceedings of or before a committee, including the contents of any evidence or statement given before a committee or submitted to a committee; or

(b) a committee's report or recommendation on any matter referred to the committee under regulation 4 (1),

(iii) by skriftelike kennisgewing deur die voorsitter onderteken en ooreenkomstig subregulasie (3) beteken, iemand aansê om, op 'n tyd, datum en plek in die kennisgewing vermeld, voor die komitee te verskyn en om in verband met bedoelde aangeleentheid getuieis af te lê of 'n geskrif of iets anders waarop of waarna inligting op watter wyse ook al vervat of vasgeleë is wat in sy besit of bewaring of onder sy beneer is en in die kennisgewing vermeld word, aan die komitee voor te lê.

(3) 'n Kennisgewing kragtens subregulasie (2) (b) (iii) word beteken—

(a) deur 'n afskrif daarvan te oorhandig aan die persoon aan wie dit beteken moet word;

(b) deur so 'n afskrif by die gewone of jongsbekende woonplek of sakeplek van daardie persoon te laat; of

(c) deur so 'n afskrif deur die pos na die gewone of jongsbekende woonplek of sakeplek van daardie persoon te stuur.

(4) 'n Komitee vergader op die tyd, datum en plek wat die voorsitter bepaal.

(5) Die wyse waarop 'n komitee sy werksaamhede verrig, met inbegrip van die prosedure by en kworum vir 'n vergadering van die komitee, word behoudens hierdie regulasies deur die voorsitter van die komitee in die algemeen of met betrekking tot 'n bepaalde geval bepaal.

(6) (a) Niemand mag die verrigtinge van 'n komitee bywoon nie, behalwe met verlof van die voorsitter of uit hoofde van 'n aansegging kragtens subregulasie (2) (b) (iii).

(b) Die voorsitter kan gelas dat enige verlof deur hom kragtens paragraaf (a) aan iemand verleen, nie van krag word nie tensy so iemand die eed-of verklaring van geheimhouding ingevolge regulasie 5 afgeleë het.

(7) Waar iemand ingevolge die bepalinge van hierdie regulasies getuieis aflê of 'n verklaring aan 'n komitee voorlê en vir die doeleindes van vrywaring vrae beantwoord wat hom kan inkrimineer of, waar hy op 'n strafregtelike aanklag moet teregstaan, hom kan benadeel by so 'n verhoor, is geen getuieis betreffende hierdie vrae of antwoorde daarop of enige ander aspek rakende sodanige verrigtinge waarop die Wet betrekking het toelaatbaar by enige geregtelike verrigtinge nie.

(8) Niemand mag sonder die vooraf verkreeë toestemming van die Staatspresident enige besonderhede van—

(a) die verrigtinge van of voor 'n komitee, met inbegrip van die inhoud van enige getuieis of verklaring wat voor 'n komitee afgeleë of aan 'n komitee voorgelê is; of

(b) 'n komitee se verslag of aanbeveling oor 'n aangeleentheid wat kragtens regulasie 4 (1) na die komitee verwys is.

except in so far as this may be necessary for the proper carrying out of these regulations.

(9) No person shall, without the approval of the chairman of a committee, peruse—

(a) any records of the committee, including any recordings of any proceedings of or before the committee; or

(b) any document or anything else in the custody or under the control of the committee on which or in which information is in any manner whatsoever contained or embodied, while such a document or anything else is under the control or in the custody of the committee.

except in so far as this may be necessary for the proper carrying out of these regulations.

(10) The disposal of and dealing with—

(a) any records of the committee, including any recordings of any proceedings of or before the committee; or

(b) any document or anything else in the custody or under the control of the committee on which or in which information is in any manner whatsoever contained or embodied.

shall be in accordance with the directions which the State President may issue in general or in a specific case.

(11) Any person who—

(a) fails to comply with a direction under subregulation (2) (b) (iii); or

(b) contravenes a provision of subregulation (8), shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Secrecy

5. Any person referred to in regulation 3 (6) or 4 (6) (b) shall take and subscribe before the chairman of the committee in question an oath or declaration of secrecy in the following form:

I, A.B., hereby declare under oath/affirm and declare that I shall honour the prohibition on the disclosure of information contained in regulation 4 (8) of the regulations promulgated under Government Notice No. R. dated and shall not act in contradiction thereof.

Remuneration

6. A member or an *ad hoc* member of the committee who is not in the full-time service of the State shall be paid the remuneration and allowances in respect of his services as such a member or *ad hoc* member as determined by the Minister of Justice with the concurrence of the Minister of Finance.

Administrative staff

7. The administrative work incidental to the functions of the committee shall be performed by officials designated by the Director-General of Justice for that purpose.

openbaar maak nie, behalwe vir sover dit vir die benoortike uitvoering van hierdie regulasies nodig mag wees.

(9) Niemand mag sonder die goedkeuring van die voorsitter van 'n komitee insae verkry—

(a) in enige oorkondes van die komitee, met inbegrip van enige opnames van enige vermgtinge van of voor die komitee, nie; of

(b) in enige geskrif of iets anders in die bewanning of onder die beheer van die komitee waarop o waann inligting op watter wyse ook al vervat o vasgelê is, terwyl so 'n geskrif of iets anders onder die beheer of in die bewanning van die komitee i nie.

behalwe vir sover dit vir die behoortike uitvoering va hierdie regulasies nodig mag wees.

(10) Beskikking oor en hantering van—

(a) enige oorkondes van die komitee, met inbegrip van enige opnames van enige vermgting v. of voor die komitee; of

(b) enige geskrif of iets anders in die bewanning onder die beheer van die komitee waarop of wa in inligting op watter wyse vervat of vasgelê is.

geskied ooreenkomstig die voorskrifte wat die Sta: president in die algemeen of in 'n bepaalde geval n uitreik.

(11) Iemand wat—

(a) versuim om aan 'n aansegging krag subregulasie (2) (b) (iii) te voldoen; of

(b) 'n bepaling van subregulasie (8) oortree.

is aan 'n misdryf skuldig en by skuldigbevinding : baar met 'n boete van hoogstens R4 000 of me: vangenisstraf vir 'n tydperk van hoogstens 12 ma: of met sowel sodanige boete as sodanige gevang : straf.

Geheimhouding

5. 'n Persoon in regulasie 3 (6) of 4 (6) (b) b: moet 'n eed of verklaaring van geheimhouding volgende vorm voor die voorsitter van die be komitee afile en onderteken:

Ek, A.B., verklaar hierby onder eed/beve: verklaar hierby dat ek die verbod op die baarmaking van inligting, vervat in regu (8) van die regulasies afgekond Goewermentskennisgewing No. R. g: sal eerbiedig en nie in stryd daa: handel nie.

Vergoeding

6. 'n Lid of *ad hoc*-lid van die komitee wat n heeitydse diens van die Staat is nie, word ten van sy dienste as so 'n lid of *ad hoc*-lid die ver en toelaes betaal wat die Minister van Justisie instemming van die Minister van Finansies va tyd bepaal.

Administratiewe personeel

7. Die administratiewe werk verbonde aan saamhede van die komitee word vermg deur t wat die Direkteur-generaal van Justisie vir aanwys.

MEMORANDUM

ANNEXURE 9

By

JOHANNESBURG AD HOC LAWYERS GROUP LIAISING WITHANC WORKING GROUPGENERAL RECOMMENDATIONS

We are a group of lawyers representing political prisoners and exiles whom you have asked for assistance with the implementation of the indemnity procedures. After consideration of the documents which you have provided us with, and after consulting with our clients, we feel that it would assist you if we were to provide a written appraisal and critique of the situation regarding the indemnity. We set out below some specific recommendations which we believe would be useful to the working Group. It is our opinion that without the implementation of some of these recommendations, the operation of the indemnity process will become vexed and tardy.

We deal only with the legal questions that are raised by the current status of the indemnity. We do not deal with "political" considerations such as the cut-off date, the death row problem, the time scale for offences involving violence and the problem raised by paragraph 4.2 of the Government Notice 12834 of 7th November 1990 ("the notice") which links the indemnity to the pace of the negotiations.

As you are aware, the notice has caused problems amongst both political prisoners and exiles. Although some of these problems are frequently the result of misperceptions, the underlying problem is that the current procedures do not provide potential applicants with sufficient legal certainty in respect of indemnity or release.

In our opinion the indemnity has been under-negotiated as at this stage. There are areas where both substantive and procedural aspects still need to be established or clarified. In other areas existing provisions need to be amended in order for the indemnity to work more satisfactorily.

1 NEW CATEGORIES OF PERSONS WHO QUALIFY FOR THE INDEMNITY UNCONDITIONALLY

Paragraph 6.1 of the notice provides for unconditional indemnity for persons who left South Africa without being in possession of valid travel documents or from a place other than a recognised port of embarkation. This is the only category of persons who, at this stage, qualify for unconditional indemnity.

Paragraph 6.2 envisages that interested persons may propose new categories for such unconditional indemnity. It is clear that in order for those seeking indemnity to have greater certainty as to their future as many persons as possible should be able to qualify for unconditional indemnity. At the heart of the present process is the State's discretion whether to grant the indemnity. This is partly a consequence of the necessity for any applicant to

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establish that the events/offence performed by him are "political" as defined. It is this aspect of the process which requires that persons "confess" (as many see it) to the events committed by them. In our view the offensive nature of this process could be removed if:

- (a) There was a greater range of categories of automatic indemnities and concomitantly less discretion (no need to investigate the veracity of the individual averments) on the part of the State;
- (b) The indemnity focused less on the "events or acts" in respect of which indemnity was required and more on the category of persons.

In this regard we believe an indemnity, unconditional, in respect of all acts committed by persons - pursuant to or consequent upon their membership of, or, upon, the instructions of, and within the policy or campaigns of, the ANC or MK would go a considerable way in expediting the indemnity process. The ANC would be required only to confirm membership etc. The State or another person could subsequently attempt to prosecute persons but would bear the onus of proving that, on the one hand the acts, or on the other hand the person, fell outside the indemnity.

In regard to other persons, e.g. those whose membership is or was uncertain or unclear, their position could be significantly

improved by the creation of categories of automatic indemnity such as :

- 1.1 Persons who have committed purely political offences including treason, sedition, subversion, terrorism and other offences under the Internal Security Act;
- 1.2 Persons who have participated in any act of civil unrest (suitably defined) arising out of opposition to apartheid policies including intimidation, public violence, assaults, unlawful gatherings, and malicious injury to property, but excluding theft, robbery and rape.
- 1.3 Persons who have participated in unlawful gatherings as defined;²
- 1.4 Persons who have committed breaches of section 126A of the Defence Act; and
- 1.5 Persons who have incited others to commit any of the above, or who have attempted to commit any of the above.³

¹ The term "purely political offences" is a widely recognised term which refers to offences which are undeniably "political" and are recognised as such by all parties. This refers to both common law and statutory offences.

² Under laws which include the Internal Security Act No 83 of 1982, and the Demonstrations in or near Court Buildings Prohibition Act no 71 of 1982.

³ Including the offences of incitement to public violence and attempt, conspiracy and inducing another to commit an offence in terms of chapter 111 of the Riotous Assemblies Act No 17 of 1956

In respect of all of the above unconditional categories of persons, the procedure should be streamlined. The current application for indemnity or release does not provide for persons falling into new categories of unconditional indemnity, and accordingly it would have to be amended.⁴ At each return point, there would have to be credentials personnel from the ANC present to assist those returning.

With regard to political prisoners we set out in section 4 below a list of recommendations as to how these prisoners should be located and their applications processed. This would include awaiting trial prisoners, detainees, convicted prisoners and sentenced prisoners. There is of course a third category of persons which would include unconvicted persons who are either awaiting trial on bail or on their own recognisances, or who are underground.

2 PERSONS WHO DO NOT FALL WITHIN THE UNCONDITIONAL CATEGORY DISCUSSED ABOVE

We envisage a number of categories of persons here. In the first instance, it might well be that the Government will not accept all the unconditional categories proposed above, particularly in the

⁴ We suggest that the form should include at least three categories :

- (i) The categories in terms of which indemnity is sought without disclosing the facts underlying these offences.
- (ii) Acceptance and endorsement by a credential committee of the individual's organisation; and
- (iv) proof of qualification for residence in South Africa.



the unconditional categories proposed above, particularly in the areas of public violence, civil unrest and intimidation. If these categories of persons cannot be successfully motivated as automatic and unconditional categories, we would submit that they could become the basis of the categorisation of "events" that are envisaged in the individual applications. Other examples that we have thought of in this area are :

- 2.1 Persons who have committed acts of violence against town councillors;
- 2.2 Persons who have committed acts pursuant to boycotts, strikes and stay aways; and
- 2.3 Persons who have committed acts pursuant to conflict within civilian areas with the security forces.

With regard to the procedure in respect of these applicants, we refer to section 3 below.

3 PROCEDURE FOR THOSE WHO DO NOT FALL WITHIN THE UNCONDITIONAL CATEGORIES OF INDEMNITY

At present, there are no rules in respect of the application. The notice envisages that the application is forwarded to the office for Indemnity, Immunity and Release in Pretoria. It appears that the Department of Justice will process the applications, and that these will then be referred to the State President (section 7.4).



If the State President should 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".

We, as lawyers, are critical of these provisions. They do not provide for the rules of natural justice to be applied, and in particular, for the right of the applicant to be heard and represented (*audi alteram partem*). The process as a whole is viewed as a purely administrative process, such as the granting of a privilege to a prisoner. It appears to grant no rights to applicants.

One problem is that the ANC does not have representation in the Office for Indemnity, Immunity and Release. We recommend that the ANC should negotiate over the composition of this Board, for example, by requiring the appointment of lawyers of international repute. Direct ANC nominees, however, would pose a problem with regard to non-ANC applicants.

If the Board is not able to grant indemnity on the basis of the written application, it should be required to grant to the applicant the right to be heard and to be represented before the Board. Standard rules of procedure for appearance in front of such tribunals could be implemented, provided that the process is

not "legalised" to the extent that the process becomes bogged down.

If the Board is of the view that the application for indemnity should not succeed, it will so recommend to the State President, who in most cases, will no doubt, follow the recommendation of the Board. We think that it would be preferable for the Board to have to communicate its view to the applicant, and that the applicant should be entitled to review the Board in the Supreme Court, prior to the decision being referred to the State President.

We have looked through the Gazette of the 9th November 1990 which sets out the provisions in relation to the "consulting bodies".

As matters stand, the second notice of the 9th November 1990 sets out the main function of the consulting body as the investigation of any matter referred to it by the State President. There is no automatic referral of any indemnity application that is turned down by the State President. The function of the consulting body is therefore restricted to the advice only in respect of those matters that are referred to it.

We will not embark on a detailed critique of the provisions in relation to the consulting body in this memorandum. Suffice it to say that the consulting bodies have no teeth, and will merely be used as a sounding Board by the State President when and if he chooses to do so.

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1 AN ACTION GROUP

We as a group of lawyers involved in this area have met with you on a number of occasions. You have indicated that you require assistance which we willingly offer and accordingly we advise as follows:

- 4.1 An office has been set up with the endorsement of Lawyers for Human Rights and Nadel at the corner of Schubert and Pretorius Streets, in Olivetti House, within the offices of attorney Jody Kollapin. Mr Alan Lephoko has been employed specifically to process applications.
- 4.2 You have indicated that you will give endorsements where required. The method of obtaining endorsement in the most streamlined manner will probably be worked out between ourselves, Mr Lephoko and your offices in Johannesburg.
- 4.3 Mr Lephoko has already embarked upon the process of locating political prisoners in the various prisons. Members of our task force have been and will continue to go out to these prisons, together with yourselves, to distribute indemnity forms and to explain the process to the prisoners. This has happened in most areas.
- 4.4 Attached is a draft letter which you requested from Fink Haysom and which may assist us in introducing the process.

4.5 We must advise you that many prisoners have experienced some dissatisfaction in that the process does not meet their expectations of early release and have requested that ANC personnel visit and consult with them about the indemnity. We understand the tremendous pressure of work upon your office but recommend that a number of your staff be assigned to this task.

4.6 We suggest that a further meeting be held with you in January, so as to enable you to inform us of the latest developments, and so that we can give you feedback from our clients.

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POLITICAL PRISONER RELEASE PROGRAMME

Political Prisoner Release Programme was established in December 1990 with the

Facilitating in the process of release of political prisoners envisaged in the Groote Schuur and Pretoria Minute.

Facilitating the granting of amnesty to trialists in political trials.

We set out briefly the activities of the programme during the past six months:

Prisoners

Letters were sent to about 700 known political prisoners and considerable delays occurred by the Department of Correctional Services we were allowed to place notices in all prisons informing prisoners of the programme. We visited the following prisons for the purposes of both explaining the release process and assisting prisoners completing the application for release documents:

Western Cape Province

Robben Island

C Steyn

Boedemoed (Aliwal North);

St Albans (Port Elizabeth)

Fort Giamorgan (East London)

Orange Free State

Kroonstad Prison

Grootvlei Prison (Bloemfontein)

Transvaal

Pretoria Diepkloof

Bethal Barberton

Witbank Baviaanspoort

Krugersdorp Leeukop

Modderbee Delmas

Neispruit Middelburg

Zonderwater Vereeniging

Regional Lawyers for Human Rights offices provided valuable assistance in undertaking visits to prisons within their area to assist in the process.

Approximately 500 applications were processed through our offices and assistance was provided to over 600 other prisoners during the course of visits and correspondence exchanged. There was liaison with numerous law firms involved in the process as well as organisations such as the HRC, the International Red Cross, IDAF, The Association of Ex-Political Prisoners etc.

We participated in the Audit Committee (with Correctional Services) with the aim of exchanging information on political prisoners. We found this a useful exercise until it was prematurely and unilaterally terminated by the Government.

We arranged and attended two meetings with the Minister of Justice to address concerns we had regarding delays in the process of release and the need for the creation of further categories. We believe that the creation of a new category on 24 April 1991 may in some way be ascribed to our efforts in this regard. At the present time we are assisting prisoners in the preparation and submission of arguments to Indemnity Committees.

Awaiting Trialists

We liaised with the Justice Department and through our offices and those of the HRC we encouraged attorneys to submit applications on their clients' behalf. In certain cases we provided assistance to attorneys in the completion and submission of applications.

General

We believe that the programme was successful in reaching all prisoners envisaged in terms of the Pretoria and Groote Schuur Minutes, and ensuring that they submitted applications for release.

We are obviously dismayed that not all political prisoners have been released given the fact that we are now about two and a half months beyond the deadline date. We believe it is necessary to con-

tinue pressuring the Government to comply with the spirit of the Pretoria Minute while at the same time we should continue, within the confines of our available resources, to make our assistance available to prisoners and others who require it.

ANNEXURE

REPUBLIC OF SOUTH AFRICA



REPUBLIEK VAN SUID-AFRIKA

Government Gazette Staatskoerant

Selling price - Verkoopprijs
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Vol. 310

PRETORIA, 24 APRIL 1991

No. 13202

GOVERNMENT NOTICE

GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE

DEPARTEMENT VAN JUSTISIE

No. R. 936 24 April 1991

No. R. 936 24 April 1991

NOTICE OF THE ACTING STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
NOTICE OF INDEMNITY UNDER THE INDEMNITY ACT, 1990 (ACT NO. 35 OF 1990)

KENNISGEWING VAN DIE WAARNEEMEND STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA
KENNISGEWING VAN VRYWARING KRAGTEN DIE WET OP VRYWARING, 1990 (WET NO. 35 VAN 1990)

Under the powers vested in me by section 2 (1) of the indemnity Act, 1990 (Act No. 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to any person -

Kragten die bevoegdheid my verleen by artikel 2 van die Wet op Vrywaring, 1990 (Wet No. 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaringsbedeel in artikel 2 (2) van genoemde Wet aan enige persoon -

(a) who is a member of the African National Congress, or who, if he is not such a member, subscribed in Section E of the Application Form for Indemnity contained in Annexure A to Government Notice No. R. 2825 of 7 November 1990 to the principles of peaceful solutions and developments;

(a) wat lid van die African National Congress is wat, indien hy nie so 'n lid is nie, die beginsels van vreedsame oplossings en ontwikkeling in Afdeling van die Aansoekvorm om Vrywaring vervat in Bylae by Goewermentskennisgewing No. R. 2825 van November 1990, onderskryf het;

(b) who has furnished in full the information required in Sections A, C and F of the Application Form for indemnity referred to in paragraph (a) above in accordance with the said Government Notice; and

(b) wat die inligting vereis in Afdelings A, C en F van die Aansoekvorm om Vrywaring bedeel in paragraaf (a) hierbo ooreenkomstig genoemde Goewermentskennisgewing volledig verstrek het; en

(c) who before 12:00 on 8 October 1990 committed with political motives as defined in Government Notice No. R. 2825 of 7 November 1990, any act mentioned in the Annexure,

(c) wat voor 12:00 op 8 Oktober 1990 met politieke motive soos omskryf in Goewermentskennisgewing No. R. 2825 van 7 November 1990, enige handeling vermeld in die Bylae verrig het.

in respect of any such act, provided that in so far as it relates to an act referred to in paragraphs (iii) and (iv) of the Annexure, no person was injured or killed as a result thereof.

ten opsigte van enige sodanige handeling, mits, sover dit 'n handeling bedeel in paragrawe (iii) en (iv) van die Bylae betref, geen persoon as gevolg daarvan beseer of gedood is nie.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Twenty-fourth day of April, One thousand Nine hundred and Ninety One.

Geees onder my Hand en die Seel van die Republiek van Suid-Afrika te Kaapstad, op hede die Vier-en-twintigste daag van April, een duisend negenhonderd en negentien.

R. S. ...

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ANNEXURE

BYLAE

(i) Convened a gathering after it had been prohibited in terms of section 46 (1) (i) or (3), read with section 57 (1), of the Internal Security Act, 1982 (Act No. 74 of 1982), encouraged the attendance thereof, presided thereat, in any way announced or advertised it, or attended it or attempted or threatened to commit any such act.

(ii) Held a gathering contrary to a condition contained in a direction issued in terms of section 46 (1) (ii), read with section 57 (2), of the Internal Security Act, 1982 (Act No. 74 of 1982), or attended a gathering so held, or attended a gathering to which such a direction related where such attendance constituted a contravention of such a condition or attempted or threatened to commit any such act.

(iii) Committed arson or any public violence or maliciously damaged another person's property or attempted or threatened to commit any such act.

(iv) Intimidated any person contrary to the provisions of section 1 (a) or (b) of the Intimidation Act, 1982 (Act No. 72 of 1982), or attempted or threatened to intimidate such a person.

(v) Committed any act or attempted or conspired to commit an act, which constitutes or might constitute high treason or which is or might be contrary to the provisions of sections 13 (1) (a) (iv) or (v), read with section 56 (1) (a), and 54 of the Internal Security Act, 1982 (Act No. 74 of 1982), unless such act also constitutes murder, culpable homicide, rape, indecent assault, robbery, fraud or assault where a dangerous wound has been inflicted.

(vi) Committed any act which constitutes or might constitute attempted murder, provided that a dangerous wound was not inflicted on any person as a result thereof.

(vii) Was in possession of an arm contrary to the provisions of sections 2 and 32 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969).

(viii) Was in possession of ammunition contrary to the provisions of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969).

(ix) Kept or stored an unauthorized explosive or was in possession thereof contrary to the provisions of section 5 (1) of the Explosives Act, 1956 (Act No. 26 of 1956).

(x) Without the permission of the lawful occupier of any land or any building or part of a building or of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person, entered or was upon such land or entered or was in such building or part of a building contrary to the provisions of section 1 of the Trespass Act, 1959 (Act No. 8 of 1959).

(i) 'n Byeenkoms, nadat dit kragtens artikel 46 (1) (i) of (3), saamgelees met artikel 57 (1), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), verbied is, beleë het, die bywoning daarvan aangemoedig het, daarby voorgesit het, dit op enige wyse bekendgemaak of geadverteer het, of dit bygewoon het of gepoog of gedreig het om enige sodanige handeling te verrig.

(ii) 'n Byeenkoms in stryd met 'n voorwaarde vervat in 'n lasgewing wat kragtens artikel 46 (1) (ii), saamgelees met artikel 57 (2), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), uitgereik is, gehou het, of 'n byeenkoms wat aldus gehou is, bygewoon het, of 'n byeenkoms waarop so 'n lasgewing betrekking gehad het, bygewoon het waar sodanige bywoning in stryd was met so 'n voorwaarde of gepoog of gedreig het om enige sodanige handeling te verrig.

(iii) Enige brand gestig het of openbare geweld gepleeg het of 'n ander persoon se saak opsetlik beskadig het of gepoog of gedreig het om enige sodanige handeling te verrig.

(iv) Enigiemand in stryd met die bepallings van artikel 1 (a) of (b) van die Wet op Intimidasie, 1982 (Wet No. 72 van 1982), geïntimideer het of gepoog of gedreig het om so 'n persoon te intimideer.

(v) Enige handeling verrig het, of gepoog of saamgeweer het om 'n handeling te verrig, wat hoogverraad uitmaak of kan uitmaak, of wat in stryd met die bepallings van artikels 13 (1) (a) (iv) of (v), saamgelees met artikel 56 (1) (a), en 54 van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), is of kan wees, behalwe as sodanige handeling ook moord, strafbare manslag, verkragting, onsedelike aanranding, roof, bedrog of aanranding waar 'n gevaarlike wond toegedien is, uitmaak.

(vi) Enige handeling verrig het wat poging tot moord uitmaak of kan uitmaak, mits 'n gevaarlike wond nie as gevolg daarvan aan enige persoon toegedien is nie.

(vii) In stryd met die bepallings van artikels 2 en 32 van die Wet op Wapens en Ammunisie, 1969 (Wet No. 75 van 1969), in besit van 'n wapen was.

(viii) In stryd met die bepallings van artikel 36 van die Wet op Wapens en Ammunisie, 1969 (Wet No. 75 van 1969), in besit van ammunisie was.

(ix) In stryd met die bepallings van artikel 5 (1) van die Wet op Ontploffbare Stowwe, 1956 (Wet No. 26 van 1956), 'n ongemagtigde ontploffbare stof gehou, geberg of in besit daarvan was.

(x) In stryd met die bepallings van artikel 1 van die Wet op Oortreding, 1959 (Wet No. 6 van 1959), sonder die toestemming van die wettige okkupeerder van grond of 'n gebou of deel van 'n gebou of van die eienaar van of die persoon wat toesig het oor grond, of 'n gebou of deel van 'n gebou wat nie deur iemand wettiglik geokkupeer word nie, sodanige grond betree het of daarop was, of sodanige gebou of deel van 'n

ANNEXURE J (58)

PROBLEMS EXPERIENCED BY LAWYERS FOR HUMAN RIGHTS
IN THE POLITICAL PRISONER RELEASE PROCESS

MEMORANDUM :

June 24, 1991

In previous meetings and correspondence with yourself, we have raised a number of issues which remain unresolved. For the sake of clarity we will detail these issue in this memorandum in an attempt to reach some kind of conclusion.

It is important to note here that while we raise these problems, we do so in the knowledge that the ANC and the government continue to meet on this issue and may well come to a resolution which renders this memorandum redundant. We would like to express the hope that this is indeed the case - but until we have clarity on that, we will continue to raise those problems which we believe obstruct the just resolution of the issue of the releases.

1. INDEMNITY COMMITTEE REFERRALS

- 1.1 These committees were established by the Government Gazette of November 7th in order to investigate applications for release referred to them by either the Office for Indemnity or the State President, in order to provide the Executive with wise advice where appropriate.
- 1.2 For this purpose, in addition to the committee perusing court records and other documents in the possession of the state, we understand that an applicant will be informed that her case is being reviewed by the committee, thus giving her (or her legal representative) the opportunity to prepare additional submissions.

1.3 In many cases (REFER : Correspondence with Justice Leon - Attached) matters have been disposed of without the knowledge of either the Applicant or his legal representative. Recommendations have been made to the State President in the absence of any further argument or submission by the applicants. As you are aware, a number of the issues to be examined by the Indemnity Committees were not examined at the trial court - for this reason further submissions are essential to this process. We believe that if the system of Indemnity Committees is to retain any credibility whatsoever, the applicants should be afforded the opportunity of presenting in full their arguments for release.

1.4 In addition to this, (REFER : Our letter dated 21.6.1991 - attached) when representations are requested the letter is sent directly to the prisoner without his legal representative being informed. This issue is dealt with more fully in our letter, but we believe that it raises serious questions about the commitment of the government towards ensuring a just consideration of serious applications for release.

1.5 In the light of the above we wish to recommend the following :

- a. That ALL applicants whose cases are referred to the Indemnity Committees be given the opportunity to prepare arguments for submission to such committees.
- b. That the notification letter of referral is sent to the applicant him/herself and to the relevant legal representative.
- c. That if representations/submissions are not received by the Indemnity Committee, they inform Lawyers for Human Rights of this fact to enable us to assist the prisoner where possible.

2. COMPOSITION OF INDEMNITY COMMITTEES

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2.1 The stated intention of the formation of Indemnity Committees was to "demonstrate that the interests of all parties are being taken into account in as objective a manner as possible." Under the present circumstances, where the ANC nominees have withdrawn from the committees for reasons known to the Minister, these committees are not fulfilling the above stated intention. (REFER : our letter dated June 10 1991 - attached) Thus, applicants are being prejudiced when their cases are considered.

2.2 We would therefore like to propose that while the Indemnity Committees continue to form a part of the process under discussion, new nominations are put forward of people acceptable to the African National Congress. In this way, we could ensure that those people whose cases are referred to the committees are not prejudiced by the absence of people representing their interests.

3. CATEGORIES OF OFFENCES

3.1 We have raised this issue in our previous meeting with the Minister as well as in subsequent correspondence. We also recognise that this continues to be an item of discussion between yourselves and the African National Congress. We would however, like to take this opportunity to stress that it is our belief that the solution to the problem facing us lies in the creation of further categories. Such categories should cover cases which resulted in either murder or serious injury. This has been dealt with in our letter dated 10.6.199 (attached) as well as in our previous memoranda on the subject.

3.2 We see no reason for the cases of all those people convicted of murder or aggravated assault to have their cases dealt with on an individual basis. Precedents of releases thus far could be used to create the abovementioned categories. This would be well within the procedures set out in the gazettes of 7th and 9th November.

4. DEATH ROW PRISONERS

4.1 We raised this problem in our letter to you dated May 16th 1991 (attached), to which we have received no response. As an organisation we are deeply involved with all prisoners under sentence of death, and this category of persons is therefore of particular concern to us.

4.2 As stated in the above letter, there was never any agreement reached whereby prisoners condemned to death would be treated any differently to those serving any other kind of sentence. In fact, there has never been agreement that the sentence of a prisoner will have any bearing on the outcome of his application for release.

4.3 Further, the Gazette of November 7th does not make the commutation of a death sentence a precondition for consideration of a condemned prisoner's application for release.

4.4 In recent public statements you have identified 19 condemned prisoners as somehow falling outside of the list of prisoners eligible for release. In the light of the above, we find this unacceptable.

4.5 We would therefore like to suggest that the cases of condemned prisoners be dealt with in exactly the same way as those of other prisoners. The fact of their being sentenced to death should not play a part in the consideration of their application for release. We may point out here that prisoners previously under sentence of death have in fact already been released.

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5. BOPHUTHATSWANA/ CISKEI

5.1 We have received a number of queries and requests for assistance from prisoners currently imprisoned in the abovementioned homelands. We regard their requests seriously and believe that this issue must be addressed by those involved in the negotiation process.

5.2 With the scrapping of Apartheid legislation such as the land Act, Population registration Act and Group Areas Act, and the pronouncements that Apartheid is dead, the question of the homelands has to be addressed.

As Lawyers for Human Rights is not a political grouping party to the negotiations process, we cannot determine either the Agenda or outcome of such talks. What we can do however, is urge the parties to these talks to give serious consideration to the position of political prisoners in these areas as they cannot be excluded from the final resolution to this problem. In the eyes of the international community these people are South African political prisoners and must be dealt with as such. We think you will agree that in Bophuthatswana in particular where prisoners are being held for their involvement in the coup attempt, South Africa played a direct role in the suppression of the coup and the arrest of the perpetrators.

6. DIETER GERHARDT

6.1 Lawyers for Human Rights is assisting in the efforts to secure Mr Gerhardts release, and in this regard we would like to point out the following. Mr Gerhardt was indicted and convicted of High Treason - he was not tried for Espionage or under the Official Secrets Act.

6.2 The reason given by yourself for the rejection of his application was that his motivation was personal, in that it involved financial gain.

6.3 In the Report of the Working Group established under Paragraph 1 of the Grootte Schuur Minute the following was stated :

" (a) Certain offences are recognised as "purely" political, e.g. Treason directed solely against the State and not involving a common crime such as murder or assault. "

(b) 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. : "

It is therefore our submission that in terms of your own agreement, the guidelines detailing the motive of the offender, the nature of the offence etc. are only to be applied to common law offences. They are not to be applied to those offences classified as purely political, into which category Mr Gerhardt's offence falls.

Thus, his motivation is not up for discussion here as his release is automatic in terms of the Agreement reached with the ANC. While we would dispute your interpretation of his motivation, we believe that such dispute falls outside the scope of the discussion. However, if such discussion is regarded as relevant, it would be appropriate to refer to the charge sheet against Mr Gerhardt, which stated as follows :

" ..(1) During 1962 - 63 Accused Number One's opposition to the policies of the South African Government led to his decision to supply a foreign state, to wit the Union of Soviet Socialist Republics (hereinafter referred to as the U.S.S.R.) with information in order to bring about a new social dispensation in the Republic. "

(64)

He was indicted on a charge of High Treason and convicted solely on this charge. The State proved the fact that he owed allegiance to the Republic of South Africa and that he had acted with hostile intent against this state in an attempt to " overthrow or coerce the Government of the State or to disturb or impair or endanger the security of the State. "

- 6.3 We raise this individual case as we believe that if the Agreement reached with the African National Congress is to be utilised correctly during this process, it should be applied evenly and honestly. In addition to this, in your recent press release you stated that all those persons serving sentences for a number of offences (which included High Treason) had been released from custody. This is not the case.
7. As Lawyers for Human Rights and the Political Prisoner release programme we participated in the Audit Committee. We found this a useful and productive process, but have since learnt that it has been disbanded. We would like to discuss this issue in the meeting with the Minister.

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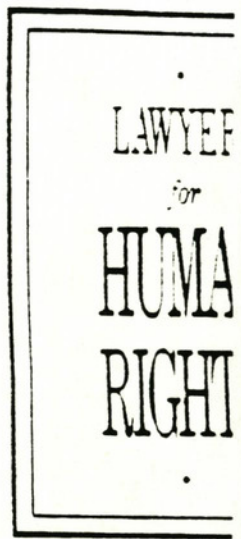
ANNEXURE K.

(65)

NATIONAL DIRECTORATE.

113 Van Erkom Building
Pretorius St. Pretoria 0002
Telex: 012 325-6318
Telephone: 012 21-2135

URGENT
DRINGEND



Curr ref: L15
Your ref: 13 June 1991
Date:

The Honourable State President
Mr F W de Klerk
Tuynhuis
CAPE TOWN.

FAX: [021] 461-4987

Dear Mr State President,

On the 12 June 1991 the National Chairperson of Lawyers for Human Rights, in his capacity as such and the writer, both representing the said organisation, appeared before the Indemnity Committee in Bloemfontein on behalf of Mr Robert McBride. We argued our committed belief that Mr McBride, in spite of the grave nature of his offence, is a political prisoner as defined by the guidelines duly negotiated by your Government and the African National Congress. In the spirit of the Pretoria Minute, we argued that Mr McBride's release will make a constructive contribution towards peaceful political change and the administration of justice in South Africa.

Our understanding is that the African National Congress will not enter negotiations on a future Constitutional dispensation as long as political prisoners remain incarcerated. There is no doubt in our minds that when the relevant agreement was negotiated, the African National Congress felt confident that the release process which would follow, would result in the unconditional release of all political prisoners, including those in the category of Mr McBride, whose offences resulted in either death or serious injury to others. We have taken note of statements made by the Minister of Justice and have also listened carefully to the way in which the Indemnity Committee is interpreting the guidelines which were gazetted in relation to political prisoners. From the above our prima facie conclusion is that certain political prisoners may not be released. It seems to us therefore that your Government and the African National Congress are heading for a deadlock on those prisoners who would be regarded as problematic and contentious.

In expressing this concern, we are not trying to put undue pressure on you but rather expressing an objective assessment which we believe to be a reality. Of course, there is far more at stake than a mere breakdown in potential negotiations. The writer recently briefed a wide range of Embassy personnel on the whole

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question of political prisoner releases. The Americans and others expressed concern over the apparent deadlock in view of the respective Governments' desire to terminate sanctions, which they seemingly cannot do until political prisoners have been released. For reasons which amount to our unflinching commitment to the establishment of peace, prosperity, democracy and justice in the future South Africa, we urge you Mr President to meet with the writer and our Mr Browde SC as a matter of urgency in order to discuss this pending deadlock and its inevitable catastrophic consequences. When you receive this letter you may not as yet have received recommendations from the Indemnity Committee in relation to Mr McBride's application and may feel that a request for a meeting is premature. Our motivation is that we would like to exchange views with you about the whole political prisoner release process and the so-called contentious case before you take a final decision on, among others, Mr McBride's case, irrespective of the recommendations which you receive from the Indemnity Committee.

With kind regards
Yours sincerely



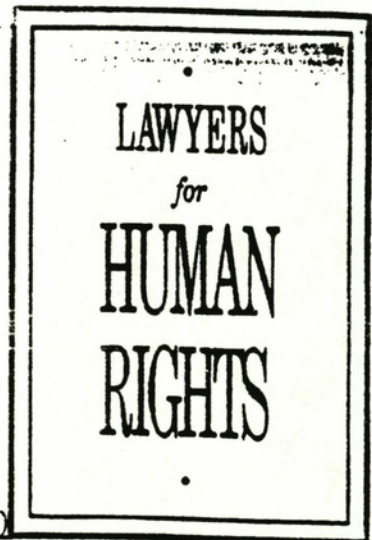
BRIAN CURRIN
NATIONAL DIRECTOR.

NATIONAL DIRECTORATE

713 Van Erkom Building
Pretorius St., Pretoria 0002
Telefax: (012) 325-6318
Telephone: (012) 21-2135

Our ref:
Your ref:
Date:

DECLARATION OF INTENT (DRAFT LEGISLATION PROPOSALS)



We, in the LAW REFORM PROJECT, part of the LAWYERS FOR HUMAN RIGHTS, a renowned neutral and independent human rights organisation;

REAFFIRMING our support and belief in the role of CODESA toward the goal of achieving peace and justice for all in our country;

STRESSING our faith in the respect and honour for fundamental freedoms and equality for all regardless of race, colour, sex, nationality, religion or ethnic origin;

CONSCIOUS of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the noble aspirations of the South African people;

INSPIRED by the role which law as an instrument of social and political change can play in a "New South Africa";

PERTURBED by the fact that in spite of all the government promises to eradicate apartheid, there is still a myriad of laws in our statute books which offensively violate fundamental freedoms;

CONCERNED that the existence of the aforesaid laws constitutes a threat to our national peace and security;

RESOLVED to make available to CODESA a DECLARATION OF INTENT designed to serve as a guideline in respect of some laws which we feel ought to be repealed or done away with, on the grounds that they violate fundamental freedoms or are repugnant to what is considered to be fairness in the

exercise of a legislative function or administration of justice. We do not claim that the list is exhaustive at all.

The LAW REFORM PROJECT will be conducting an extensive research on some of these laws with a view to providing some recommendations in the form of draft legislation proposals.

1. LAWS WHICH VIOLATE FUNDAMENTAL FREEDOMS

1. Local Government Franchise Act 117 of 1984

The Act regulates the voting rights in respect of local government bodies. In terms of Section 2 only whites, indians and coloureds are entitled to be registered as voters and can vote in any election for the local government body established for the area (wherein his registered address is situated where his ratable property is situated).

Comment: Offensive as it stands. Also in view of the fact that under a "New South African" constitution there will be new local government structures based on non racial and democratic principles, a statute of this nature will be a negation of the new spirit and a violation of fundamental freedoms.

2. Electorial Act 45 of 1979

Regulates the registration of voters and the election of members of Houses of Parliament. Section 3 classifies votes into whites, coloureds and indians in respect of the three Houses of Parliament i.e. the House of Assembly, House of Representative and the House of Delegates respectively. Blacks are totally excluded.

Comment: Bad as it is, also considering that in a future democratic constitution, all will have the right to vote and that the three houses of parliament will be abolished. This legislation will have to be replaced by a new one.

3. Referendum Act 108 of 1983

Provides for the holding of referendum in order to ascertain the views of voters in the Republic. In terms of Section 2 the State President may declare the holding of a referendum to ascertain the views of voters

or a category of voters. It is whites, coloureds and indians who can vote and as such no blacks' views can be ascertained through a referendum.

Comment: Statute needs to be amended in so far as it excludes blacks in the holding of a referendum.

4. Defence Act of 1957

Provides for the defence of the country. Every citizen is liable for training and service in terms of this Act. However Section 2 states categorically that the Act is not applicable to persons who are not white.

Comment: An amendment to include all South Africans.

5. Social Pension Act 37 of 1973

This Act consolidates and amends laws relating to pensions and allowances for aged, blind and disabled persons. In terms of Section 18 the State President may assign the administration of the provision of this Act in respect of persons belonging to a specified population group defined by him to any minister. Section 19 excludes the application of this Act to coloured persons.

Comment: Statute ought to be replaced by a general pension act which will apply to all South Africans.

6. General Pensions Act 29 of 1979

It regulates pension matters generally. In terms of Section 16 it is presumed that any white, coloured or indian person who immediately before the 26/10/76 complied with all the requirements of laws relating to citizenship or residence in the Republic such person shall be deemed to be a South African resident. The Act is silent on blacks.

Comment: The Act should be replaced by a new one which will also reflect the envisaged change in the South African Citizenship legislation.

7. Prevention of illegal squatting Act 52 of 1951

This Act provides for the prevention and control of illegal squatting on public or private land. Although the Act does not refer explicitly to racial groups, its provisions are only applicable to blacks as there was never a single incident of white squatters.

Comment: Repeal Act to apply to all groups. However it is important to appreciate that squatting is a social problem which cannot be completely divorced from government responsibility.

8. Coloured Persons Education Act 47 of 1963

Provides for the control of education of coloured persons by the House of Representatives (coloured House of Parliament).

Comment: Act to be completely done away with and replaced by a general education legislation for all South Africans.

9. National Education Policy Act 39 of 1927

Provides for the general policy to be pursued in respect of education for white persons in South Africa to the exclusion of other race groups as classified in the Population Registration Act.

Comment: Act to be completely done away with and replaced by a general education legislation for all South Africans.

10. Black Administration Act 38 of 1927

The Act provides for the better control and management of black affairs. The Act is foreign to whites or other race groups and applies to blacks only.

Comment: Act to be completely done away with and replaced by a general education legislation for all South Africans.

11. Education and Training Act 90 of 1982

It provides for the control of education for blacks by the Department headed by a white Minister in the white House of Assembly and it is the same Minister in consultation with the Council whose members are appointed by him that policies in this regard are made. The Council is entirely white.

Comment: Act to be completely done away with and replaced by a general education legislation for all South Africans.

12. Black Local Authorities Act 102 of 1982

Provides for the establishment of local authorities, committees, town councils, city councils and town committees for black persons in specified areas by the Administrator of the Province in which such local authority is situated. The administrators are all white.

Comment: To be done away with and replaced by one common Local Authorities Act applicable to all groups.

13. Black communities Development Act 4 of 1984

Like the above Act this one also applies to blacks. It provides for the purposeful development of black communities by the board established by the Minister of Constitutional Development and Planning.

Comment: Should be replaced by one single act designed for the development of all communities.

14. Excision of Released Areas Act 54 of 1988

Provides for the excision of certain land from the defined released areas and transfer of same to the Administrator of the Province for the administration and control thereof and rendering of services to the residents of the said land, in this instance Soshanguve and Letlhabile black townships.

Comment: To be done away with and replaced by an appropriate local government legislation designed to address the issue of land distribution on an equal and non racial basis.

15. Self-Governing Territories Constitution Act 21 of 1971

The Act provides for the establishment of legislative Assemblies and executive councils in black areas. The Act is only applicable to blacks to the exclusion of coloureds, indians and whites who have their "Assemblies" in the House of Representatives, House of Delegates and the House of Assembly respectively. It is in these respective Houses that different race groups exercise their voting powers on separate voter's rolls.

Comment: There will be no need for this Act in view of the envisaged new constitution.

16. Indians Education Act 61 of 1965

Provides for the control of indian education to the exclusion of other race groups.

Comment: Act should be done away with since there will be one uniform system of education under the new constitution.

17. Indians Advanced Technical Education Act 12 of 1968

Provides for the establishment of Technikons for indians, their control, administration and regulation of same.

Comment: There will be no need for this statute in view of the fact that technikons will in the future be open to all groups.

18. Housing Development Act 4 of 1987

This Act provides for a Board and Fund in order to effect or promote the acquisition and alienation of land for the purposes of indian townships development for instance, the granting loans to enable indians to acquire land and buildings.

Comment: The Act should become part of a future legislation which will deal with housing development based on non racial and democratic principles.

19. Republic of SA Constitution Act 110 of 1983

Section 41, 42 and 43 provides for three Houses of Parliament and each being for whites, indians and coloureds respectively. In terms of Section 14 matters dealt in the Parliamentary constituted under this constitution are divided into own affairs and general affairs. Own affairs are matters affecting a particular population group in relation to the maintenance of its identity and the upholding and furtherance of its way of life, culture, traditions and customs.

Comment: Offensive as it stands and will be dealt with under the envisaged new constitution.

20. Community Welfare Act 104 of 1987

This Act provides for the establishment of a Community Welfare Advisory Council and of regional welfare boards and of certain committees for making regulations relating to certain private hospitals and institutions where certain medical activities are performed. This Act is an own affair matter in the House of Representatives i.e. for the coloured racial group to the exclusion of other race groups.

Comment: Act should be repealed so that it can address community issues on non-racial basis.

21. Probation Services Act 98 of 1986

It provides for the rendering of welfare services in respect of accused and convicted white persons and their families. It is also an own affair matter in the House of Assembly (for whites only) to the exclusion of other race groups.

Comment: Act should be repealed so that welfare services for accused and convicted should be available to all groups.


22. Promotion of Constitutional Development Act 86 of 1988

It provides among other things the affording to Black South African citizens of a voice in the process of government. In furtherance of this Act's purpose a Council, whose other members are elected by blacks only is constituted.

Comment: Because the law is intended to maintain apartheid structures it has to be completely done away with, and same applies to the following statutes:-

- Part Appropriation Acts 649, 650 and 657 for whites, coloureds and indians respectively.
- Pension Benefits for Councillors of Local Authorities Amendment Act 1144 of 1991 (blacks).
- Development Aid Laws Amendment Act 152 of 1991 (blacks).
- Local Government Affairs Council Amendment Act of 1991.
- Local Authorities Rating Ordinance Amendment Act 806 of 1991 (whites).
- Suid Afrikaanse Akademie vir Wetenskap en Kuns Amendment Act 800 of 1991 (whites).
- Town Planning and Township Ordinance Amendment Act 805 of 1991.
- Local Government Ordinance Amendment Act 804 of 1919 (whites).
- Local Authorities Capital Development Fund Ordinance Amendment Act 677 of 1991 (whites).
- Transvaal Board for the Development of Peri-urban Areas Ordinance Amendment Act 676 of 1991 (whites).

PROFESSOR C.M. JOZANA
DIRECTOR



SELLO RAMASALA
RESEARCH OFFICER

LAW REFORM PROJECT

2. STATUTES MILITATING AGAINST FREE POLITICAL ACTIVITY

1. Prohibition of foreign financing of political parties Act 51 of 1968. The Act prohibits the receipt of financial assistance by political parties from sponsors abroad.

Comment: This act serves to cripple parties financially so as to make them less effective compared to the ruling party (Government) which uses the taxpayer's money.

2. Secret Services Account Act 56 of 1978

Moneys are made available in the account for services of a secret nature determined from time to time by the Minister of Finance.

Comment: In a democratic state there should not be secret accounts because these are susceptible to abuse of the tax payer's money as it is happening with the present government. The act should be scrapped entirely.

3. Internal Security and Intimidation Amendment Act 138 of 1991.

Section 29 still provides for detention without trial for a period of ten days, which period can be renewed by a judge on application by the commissioner of the police. 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.

Comment: Section 29 must be repealed and Section 50 of the Criminal Procedure Act take its ordinary course. Section 4 must also be repealed as it is totally against democratic principles of freedom of expression and association that a political party should be banned.

4. Disclosure of foreign funding Act 26 of 1989

The Act provides for the declaration of certain organisations or persons as reporting organisations or persons whose duties amongst others will be to furnish the Registrar of the amount of the money and the purpose for which the money was provided by the supplier.

Comment: This Act is clearly intended to stifle extraparliamentary organisations of their financial resources and in a country where civil society is encouraged, this act has no place and therefore must be totally scrapped.

5. Demonstrations in or near court buildings prohibition Act 71 of 1982

The Act prohibits all demonstrations and gatherings in any building in which a court room is situated or at any place in the open air within a radius of five hundred metres from such buildings, unless so permitted by the magistrate.

Comment: The Act can be amended to allow demonstrations outside court buildings as the people have a right to protest against a miscarriage of justice.

6. Affected Organisations Act 31 of 1974

The Act provides for the prohibition of the receipt of money by certain organisations and for confiscation of such moneys already possessed by such organisations which have been declared as affected ones.

Comment: This Act was meant to render extraparliamentary organisations in operation and as such must be scrapped.

7. Gatherings and Demonstrations Act 52 of 1973

The Act prohibits certain gatherings and demonstrations in a defined area, in the city of Cape Town without the permission of the Chief Magistrate of Cape Town.

Comment: Gatherings and demonstrations as long as they are peaceful should not be disallowed or left to the discretion of a public servant.

8. Admission of persons to the Republic Regulation Act 59 of 1972.

The act regulates amongst others admission into and removal from the country of certain persons. Section II ousts the court's jurisdiction in determining whether one is a prohibited person or not. Section 13 lists amongst prohibited persons one who is unable to read and write any European language.

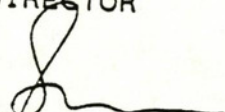
Comment: These two sections must be repeated. Ousting the court's jurisdiction heads to abuse of the process by those presiding officers. The language barrier is obviously affecting the so called non-europeans.

9. Criminal procedure Act 51 of 1972.

Section 205 is being used by the Police to compel journalists to act contrary to their ethics by disclosing the sources of their information.

Comment: The interpretation of this section to this effect must be discouraged as it is clear that this section is being abused by the police.

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LAW REFORM PROJECT

TO: CODESA WORKING GROUP 1
 (CREATING A CLIMATE FOR FREE POLITICAL ACTIVITY)
 FROM: MAFIKENG ANTI-REPRESSION FORUM (MAREF)

CLARIFICATION REGARDING POLITICAL PRISONERS AND HUNGER STRIKER
IN BOPHUTHATSWANA

Due to conflicting reports regarding political prisoners and hunger strikers in Bophuthatswana, Maref would like to make the following points:

- (1) There are four prisoners in Bophuthatswana prisons who, it could be argued, fall under the category of political prisoners, though the Bophuthatswana government disputes this. They are:
 1. Christopher Makgale
 A member of the Bafokeng Action Committee, sentenced to a fifteen year prison sentence on the 8th October 1991 for murder of Clad Mokgale on the 9th December 1990.
 2. Timothy Phiri
 The only remaining Bophuthatswana Coup prisoner, sentenced to an imprisonment term of 18 years for High Treason.
 3. Petrus Mothupi
 The African National Congress operative (MK) sentenced on the 30th July 1986 Charged under the Internal Security Act, (attempted murder) and serving a 15 year sentence.
 4. Boy Diale
 Co-accused of Christopher Makgale, serving a 12 year sentence for murder.

Two of these prisoners are on hunger-strike

a) Christopher Makgale

Maref has had accurate information regarding Christopher Makgale;

1. Held at Odi prison.
2. In a cell on his own.

3. Medical condition:

Normal body weight 69kg, present weight (20/02/1992), 47kg.
 Speaks softly, suffocates at intervals, and suffers from

continous headaches coupled with dizziness, and pains all over the body and body tremous.

- 4. He received 2 pints of glucose at the end of January, and was made to sign a form of acceptance without understanding the contents thereof. He demanded that the drip be taken off.
- 5. Before and since has received no feeding or medication and takes only water.

b) Petrus Mochupi

- 1. Cramps all over the body, swollen feet and backache.
- 2. He has signed a living will that if he lapse into a coma he should not be resuscitated or be given any medical assistance.

CONCLUSION

Maref strongly urge CODESA Working Group 1 to intervene in this situation, aspecially to secure the release of hunger strikers.

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21 Feb 1992

