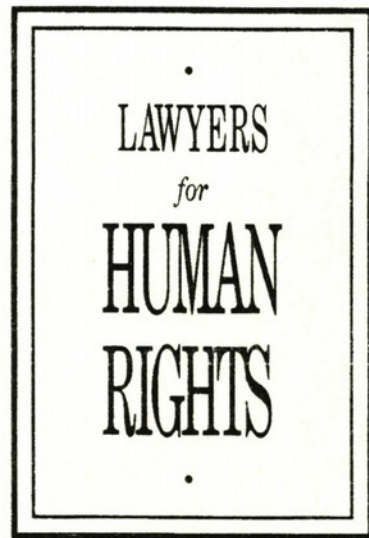


NATIONAL DIRECTORATE

713 Van Erkom Building
Pretorius St., Pretoria 0002
Telefax: (012) 325-6318
Telephone: (012) 21-2135
LRP 2/CS

Our ref:
Your ref: 14TH FEBRUARY 1992
Date:



THE CHAIRMAN
MANAGEMENT COMMITTEE, CODESA
C/O MR GORDHAM
P.O. BOX 507
ISANDO
1000

Dear Sir

RE: LAW REFORM PROJECT: DECLARATION OF INTENT

Please find enclosed herewith a copy of our Declaration of Intent (draft legislative proposals) together with some information relating to the aims and policy of the Law Reform Project.

It must be pointed out that the Declaration of Intent is an ad hoc informative document designed to inform you and in particular CODESA about the offensive statutes which still remain in our statute books.

We are in the process of preparing final draft recommendations to be submitted to CODESA or future INTERIM GOVERNMENT as the case may be.

We shall be pleased to maintain our working relationship with you, and we hope that you will find both documents helpful.

Professor C.M. Jozana (Project Director)
Sello Ramasala (Research officer)

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)

LAWYERS
for
HUMAN
RIGHTS

We, in the LAW REFORM PROJECT, part of the LAWYERS FOR HUMAN RIGHTS, a renown 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 inspite 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 existance 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.

PROFESSOR C.M. JOZANA
DIRECTOR


SELLO RAMASALA
RESEARCH OFFICER

LAW REFORM PROJECT