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**POSITION PAPER TO BE DELIVERED BY THE GOVERNMENT AT SUB-WORKING GROUP 1 ON 11 FEBRUARY 1992.**

**THE FINALISATION OF MATTERS RELATING TO THE RELEASE OF POLITICAL PRISONERS AND POLITICAL TRIALS.**

**BACKGROUND**

1.1 Prior to the meetings at Groote Schuur and Pretoria, the Government had created a mechanism to facilitate the process of indemnity or release, namely the relevant legislation.

1.2 At the meetings of the Working Group established in terms of the Groote Schuur Minute, (Working Group 1), it was accepted that no internationally accepted definition exists for the terms "political offence" and "political prisoner". Regard was had to the work done by the United Nations special advisor in Namibia, Professor Norgaard who had reached the same conclusion.

1.3 As was done by Professor Norgaard, the representatives decided to take cognisance of precepts pertaining to extradition to arrive at acceptable definitions for these concepts.

1.4 This resulted in a number of factors and principles being identified, that should be taken into account when considering whether a specific offence should be regarded as a political offence. These factors and principles have become known as the Norgaard Principles and formed the basis of South African guidelines to be formulated.

1.5 The Report of Working Group 1 was accepted on 6 August 1990 at Pretoria. The State President set 8 October as the cut-off date for political offences.

1.6 The Working Group was then instructed to draw up a plan for

the release of political prisoners and the granting of indemnity to persons both inside and outside the Country. The plan was submitted to the respective principals on 31 August 1990 and was immediately accepted by the Government. The ANC informed the Government of their acceptance on 24 September 1990.

1.7 According to the plan, better known as the Report of the Working Group established in terms of paragraph 2 of the Pretoria Minute (Working Group 2), certain remissions of sentence would be granted, resulting in administrative releases. In addition to this procedure, provision was made for prisoners to be released in terms of guidelines to be formulated in terms of the Report of Working Group 1. These guidelines, which were published in the Government Gazette of 7 November 1990, in some respects went even further than the Norgaard Principles. These guidelines, after being studied by for instance persons from the United States of America, were said to be very liberal and would result in the granting of indemnity or release to persons who would not be regarded as political prisoners in the United States or many other Western Countries.

1.8 The process, it was envisaged, would commence on 1 October 1990, and if possible be concluded by 30 April 1991. Applications



were initially received at a very slow rate, as is demonstrated by the following figures:

Month	Number
September 1990	9
October 1990	10
November 1990	190
December 1990	2 455
January 1991	792
February 1991	1 323
March 1991	725
April 1991	<u>2 003</u>
	7 507

1.9 Eventually, more applications were received after 30 April 1991 than the total number received before. To date a further 8 751 applications have been received and applications are still being submitted to the Office for Indemnity, Immunity and Release.

#### THE RELEASE OF POLITICAL PRISONERS

2.1 In terms of the Report of Working Group 2, all sentenced prisoners regarding their offences as being political, could apply for release.

2.2 6602 applications for release were received. Of this figure 5183 applications were received after 30 April 1991. As stated

before, these applications were also processed. The applications were dealt with as follows:

APPLICATIONS FOR RELEASE

Applications received		6602
Applications finalized	6298	
Offences committed after the Cut off date	97	
Still being processed	<u>207</u>	
	6602	6602

2.3 The 207 applications still being processed have already been checked and according to the initial indications, fall outside the guidelines. However, a Scrutiny Committee was created on which the ANC is represented to reconsider these cases before a final decision is taken. Response from the ANC is outstanding in approximately 150 of these cases.

2.4 A large number of applications for release related to offences which could not, by any stretch of the imagination, be regarded as political. These cases were discussed with representatives of the ANC who agreed that they fall outside the guidelines. Consequently they were refused.

2.5 A total of 1221 security and security related prisoners were released in terms of the guidelines or administratively.

2.6 On 30 June 1991 the Government and the ANC signed an agreement to the effect that for the purposes of their mutual endeavour in regard to the release of prisoners, it is deemed that finality in the process had been reached and that the **results were accepted**, provided that in any case in which the Government advised that release was not warranted, this would not infringe on the right of the individual to request further advice from the Advisory Committees. This, however, was not to be construed as extending or delaying the finality of the agreement.



2.7 According to a report in "Business Day" of 29 July 1991 Mr Maduna of the ANC said at a meeting with Justice Officials that the ANC needed time to engage in broad consultations on the cases of individual prisoners, but that almost all the clearly political cases had been resolved.

2.8 The ANC on 13 June 1991 provided the Department of Correctional Services with a list containing 462 names of persons claimed to be political prisoners. In verifying this list, the following was found:

* Names duplicated	-	7	
* Names not verifiable in official records	-	<u>193</u>	
<b>Sub Total</b>			200
(Note : 32 of the 200 appear to have been dealt with by courts of neighbouring States)			
* Persons already released	-	159	
Prisoners sentenced for serious common law crimes and still in custody		<u>103</u>	
<b>Sub Total</b>			262
<b>TOTAL</b>			462

2.9 The following offences were committed by the offenders

remaining in prison:

Attempted Murder	:	5
Murder	:	72
Theft	:	6
Robbery	:	11
Culpable Homicide	:	5
Rape	:	<u>4</u>
<b>TOTAL</b>		103

2.10 Various discussions that were held with the ANC since 28 November 1991 resulted in Mr Phosa of the ANC undertaking to furnish the Department of Justice with a final list of political prisoners on or before 19 December 1991, containing all the names of persons who were not released and who, according to the ANC, were political offenders.

2.11 Lists containing a total of 90 names were submitted. Two names were however duplicated. According to the records, the situation regarding these names is as follows:

* Prisoners in custody that did not apply for release	:	1
* Released (without application)	:	3
* Released after applying	:	11
* Refused	:	27
* Pending	:	7
* Under consideration by the Scrutiny Committee	:	27
* Unknown	:	12
* Duplicated	:	2
<b>TOTAL</b>		<u>90</u>

2.12 The position of the South African Government regarding the release of political prisoners is that all prisoners falling within the agreed guidelines have been released. A number of disputed cases remain. Mechanisms to address these disputes exist. The



release of political prisoners should therefore not be an issue.

Should any person or organisation be of the view that any prisoner, other than the disputed cases which are known to the Government, falls within the agreed guidelines and should be released, the Government, upon being furnished with full particulars of such case, will investigate the facts and deal with the matter as expeditiously as possible.

### "POLITICAL TRIALS"

3.1 At the time when the agreements were concluded and after these dates, a number of persons were being tried for offences committed with a political motivation.

3.2 In practice, virtually all cases, where the accused had applied for indemnity, were postponed pending the outcome of the applications for indemnity. After the publication of the last category of offences on 24 April 1991, a large number of cases were withdrawn.

3.3 The present position is that the ANC has made reference to only 4 persons still awaiting trial for offences which they regard as political.