



WORKING GROUP 1
SUBGROUP 1
INTERNAL SUBMISSIONS
APRIL 1992
VOL 4

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

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LABOUR PARTY'S RESPONSE TO A CODESA REQUEST TO THE SA GOVERNMENT TO EXTEND THE MORATORIUM ON EXECUTIONS

SUBMISSION TO WORKGROUP 1 (SUBGROUP 1) TO BE TABLED ON THE 31 MARCH 1992

1. SUPPORT FOR A REQUEST FOR AN EXTENSION ON A MORATORIUM ON EXECUTIONS

The Labour Party of South Africa fully supports the request made by Codesa participants to the South African government that, in view of the current political negotiations, the moratorium made applicable on executions, be extended.

The Labour Party holds the view that such an extension must continue until such time that the people of South Africa and a new constitutional dispensation clearly spell out a future course of action.

2. THE BRUTALISING EFFECT OF EXECUTIONS

It has been shown, throughout the world, that executions brutalise those involved in the process of executions. Having regard to the brutalising effect of apartheid and its legacy, the Labour Party submits that the continuation of the application of the death penalty has no special power to humanise a society. This is not saying that nothing should be done to reduce violence in the society, whether from political or criminal intentions.

The death penalty does not provide South Africa with a splendidly unique protection that will benefit the total society, but is a unique punishment - cruel in the extreme and totally irrevocable.

3. THE INVIOLABILITY OF FUNDAMENTAL HUMAN RIGHTS

The Labour Party further submits that Codesa has a correlative responsibility, in conjunction with others, to heal and humanise the society and ensure that the fundamental human rights remain inviolable. At the same time, it must rededicate itself to affirm respect for human life and dignity.

The Labour Party also undertakes to put on the agenda of Codesa that in the embryo stages of setting a course for a new South Africa, it should not fall into the trap of believing that urgent social or political problems can in any way be solved by the executions of prisoners.

The world has recognised and South Africa needs to take stock that such a terrible and final punishment sometimes tend to be inflicted on the vulnerable members of society, the poor, the mentally disturbed and members of political, racial religious or ethnic minorities.

The Labour Party is totally committed to the idea that a state cannot believe that it has no limit to what it wants to do to a human being. State terror and persecution have never ever been accepted as civilising influences on life.

Therefore, in full accord with the U N Declaration of Human Rights, Codesa and the S A Government need to recommit themselves to promote fundamental rights as the very foundation of freedom, justice and peace.

-END-

NATIONAL PEOPLE'S PARTY OF SOUTH AFRICA

WOMEN AT CODESA

FROM THE HUMAN RIGHTS POINT OF VIEW, THE RIGHT TO PARTICIPATION IN POLITICS, AND STEERING THE ECONOMY BELONGS TO WOMEN AS WELL AS MEN. IT IS TRUE THAT THERE IS NO LEGAL IMPEDIMENT TO WOMEN'S PARTICIPATION AT ALL LEVELS OF GOVERNMENT AS WELL AS IN THE WORK SPHERE AND THE PROFESSIONS. HOWEVER IN CERTAIN COMMUNITIES ESPECIALLY BLACK WOMEN SUFFER MANY DISABILITIES AND FRUSTRATIONS WHICH STEM FROM THEIR TRADITIONAL POSITION IN THE FAMILY STRUCTURE, WHICH IS ONE OF SUBSERVIENCE TO THE MALE. IF WOMEN ARE TO BE ALLOWED TO GO BEYOND THE FAMILY STRUCTURE TO PARTICIPATE IN THE LARGER COMMUNITY THERE HAS TO BE POSITIVE ACTION AIMED AT MAKING THIS HAPPEN.

EXISTING WOMENS ORGANISATIONS SHOULD BE GIVEN THE OPPORTUNITY OF SENDING MORE WOMEN DELEGATES TO CODESA SO THAT THEY MAY STIPULATE NOT ONLY FOR THEIR OWN BENEFIT BUT ALSO ADVISE ON MATTERS IN WHICH THEY HAVE A PERCULIAR INSIGHT.

WOMEN SHOULD BE INVOLVED IN DECISION MAKING AS MOTHERS AND WIVES MAY BE HARNESSSED FOR EFFECTIVE IMPLEMENTATION OF SUCH POLICIES. VIABLE ECONOMIC POLICIES ARE OFTEN FOUND TO BE THOSE THAT INTEGRATE GENDER ISSUES. THE WORLD BANK FOUND THAT PROJECTS AND POLICIES WHICH DID NOT TAKE COGNISANCE OF GENDER ISSUES DID NOT HAVE THE SAME MEASURE OF SUCCESS AS THOSE THAT DID.

WOMENS CARING AND ^{NURTURING} ~~NURTURING~~ QUALITIES MAKE THEM GOOD ARBITRATORS IN SITUATIONS OF CONFLICT.

IT IS OUR VIEW THAT ALL RECOGNISED WOMENS ORGANISATION BE REQUESTED TO SEND A DELEGATION TO MEET WITH THE EXECUTIVE OF THE D M C TO IRON OUT THEIR PARTICIPATION.

WG1/SG1 31/1/92



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PRESS STATEMENT BY MR KOBIE COETSEE MP, MINISTER OF JUSTICE

Opinions regarding the death penalty differ substantially. There are those who feel that the death penalty is a cruel and inhuman form of punishment. Others are of the opinion that it is in some extreme cases the community's only effective safeguard against violent crime and that it gives effect in such cases to the retributive and deterrent purposes of punishment.

The Government is not insensitive to the divergent views on the imposition and execution of the death penalty. In recent times, therefore, far reaching statutory reforms have in fact been implemented to ensure that -

- * the sentence of death should not be compulsory,
- * the death penalty is imposed by the courts in their discretion, exercised only after consideration of all relevant extenuating and aggravating factors,
- * the death sentence is imposed only if it is the only proper punishment in the particular circumstances of the case,
- * the death penalty is not carried out unless an automatic review by the Appellate Division of the Supreme Court, of the sentence imposed by the trial court has taken place,

* the death penalty is not carried out unless the question of clemency has been considered by the State President whether so requested by the convicted person or not.

Only those death sentences, therefore, which have have been imposed in the most extreme cases of violent crime and which have been confirmed by both the highest judicial and executive authorities of the State, are carried out.

In its Interim Report on Group and Individual Rights of October 1991 the South African Law Commission proposed that the matter of the death penalty be depoliticized and be dealt with by a future Constitutional Court in accordance with legal criteria as may be laid down in a negotiated Bill of Rights. Settling the issue of the death penalty on constitutional principles is a valid option that should be properly considered. Another option is the status quo, leaving matters as they stand, in the hands of Parliament to deal in its wisdom with the issue from time to time in the light of the prevailing public opinion. A third option is to abolish the death penalty and to prevent its reinstatement by way of a prohibitive clause in the Bill of Rights. There may also be other options.

The Government accepts that the issue of the death penalty, sensitive as it is, is a matter that should be dealt with in the negotiation process, particularly in view of the fact that a Bill

of Fundamental Rights will be one of the main features of the new Constitution.

The Government is on record that it favours the retention of the death penalty and the present safeguards which I have already referred to, to ensure that it is only applied in absolute extreme cases. This is also the position which the Government will take at the negotiation table.

It is the Government's conviction that the present policy is both morally and legally sound and gives proper effect to the duty of the State to safeguard the fundamental individual rights of its citizenry in respect of their right to life, their right to a safe community life and their right to the protection of their physical integrity. It also remains the Government's view that proper safeguarding mechanisms should be included in a Bill of Fundamental Rights.

In view of the progress that has already been made, particularly during the past week, in obtaining acceptance for the principle of a Bill of Fundamental Rights already in the transitional stage of constitutional reform, the Government has deemed it fair and reasonable to temporarily suspend the execution of death sentences which have not been commuted, pending the outcome of discussions on an interim Bill of Fundamental Rights which discussions will necessarily deal with all the possible options in this respect.

It is also put on record that the process of consideration of death sentences by the State President with a view to possible reprieves will in the interim continue, because it would be grossly unfair to keep prisoners who may benefit from a reprieve on death row.

In this process decisions will inevitably also be taken in the most extreme cases under the present law not to commute sentences of death. This fact underlines the urgency of reaching consensus on an interim Bill of Fundamental Rights in the shortest possible time, in order to settle the question of the death penalty along constitutional lines.

The Government is sensitive to the plight of those prisoners whose death sentences are not commuted as well as the trauma of their next of kin. The Government, therefore, wishes to see a speedy and humane settlement of the constitutionality of this form of punishment through negotiation.

ISSUED BY THE LIAISON SECTION OF THE MINISTRY OF JUSTICE

CAPE TOWN

26 MARCH 1992

DRAFT RESOLUTION OF THE DEMOCRATIC PARTY DEALING WITH THE PROCEDURE TO BE FOLLOWED BY SG1 OF WG1 IN COMPLETING ITS TASK IN TERMS OF PARAGRAPH (C) OF ITS TERMS OF REFERENCE.

That,

Since SG1 of WG1 has reached informal consensus, with reservations expressed by the SA government and NP, that :

1. This Subgroup 1 of Working Group 1 recognises that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa and
2. The process of democracy requires that all participants in the political process should be free to participate peacefully in that process without fear and on an equal footing and on the basis of equality with other participants.

This SG hereby adopts the following procedure to be adhered to in its work in terms of paragraph (c) of its terms of reference :

- (a) In the first place, SG1 will agree on the general principles which should regulate free political activity during the period leading up to the general elections in terms of a final non-racial constitution
- (b) Secondly, SG1 will agree on a mechanism or procedure for the review of administrative and legislative acts which may inhibit free political activity during the period referred to in (a);
- (c) Thirdly, SG1 will examine individual legislative measures which may infringe upon the general principles agreed to in (a) and recommend the repeal and /or amendment of such measures ;
- (d) Fourthly, SG1 will recommend measures for the implementation of decisions taken in (a), (b) and (c) to WG5.

31/3/1992.