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FOR DISCUSSION PURPOSES ONLY

member of the ANC irrespective of colour, creed or sex.

b) Members of the NEC must be able to give all-round political leadership and direction to the Movement.

c) They must be experienced and tested revolutionaries.

and should be well grounded in the politics, policies and principles of the Movement.

d) Members of the NEC shall be elected by conference and shall remain in office for five years. Every member shall be eligible for re-election.

CODE OF CONDUCT**African National Congress Code of Discipline****Introduction**

'All shall be equal before the Law'

No one shall be imprisoned, deported or restricted without a fair trial;

No one shall be condemned by the order of any government official;

The courts shall be representative of all the people; Imprisonment shall only be for serious crimes against the people, and shall aim at re-education, not vengeance;

The police force and army shall be open to all on an equal basis and shall be the helpers and protectors of the people;

All laws which discriminate on the grounds of race, colour or belief shall be repealed.

From The Freedom Charter

The ANC is the instrument created by the people of South Africa to achieve their goal of a just and democratic society, to build a world in which all our people live together as equals, countrymen and brothers.

In fighting for justice in our land, we must ensure at all times that justice exists inside our own organisation — our members, the people of South Africa, and the people of the world must know and feel that for us justice is not merely an ideal but the fundamental principle that governs all our actions. Accordingly, we must at all times act justly in our own ranks, train our people in the procedure of justice and establish the embryo of the new justice system we envisage for a liberated South Africa.

Justice in a revolutionary organisation has two interconnected dimensions: it means defending the revolutionary process, defending the integrity of the organisation which leads it, and it means defending the rights of individual members. There should be no contradiction between the two. The ANC is an organisation of people who, out of common desire for liberating our country and building a new society, have voluntarily joined together and accepted a common discipline. The basic rights and duties of our members are therefore set out in the basic documents of the organisation, and their enforcement is essentially achieved by political methods and not by disciplinary proceedings. This document must therefore be seen as complementing and reinforcing rather than replacing or modifying any of the fundamental principles of the organisation.

The ANC is fighting for people's power, and in the last analysis, it is the same power of the people that all the organs of the ANC, including the judicial organs, express. The people want justice and the

people want to be protected both against external exploiters and against abuses within their own ranks. Accordingly, the people want proper institutions to guarantee the just exercise of their power.

The judicial function has a specialised sphere with its own specific mode of operation and rules, but it takes its place alongside and acts in harmony with, rather than against, all the other organs of the ANC, and to achieve the same objective.

The ANC is a political organisation, the spearhead of a people's movement, it is not a state, nor is it a government, nor is it yet a political organisation that directs and inspires a government. We do not have the vast apparatus of a state, nor is it correct that a political organisation should try to act like a mini-state.

At the same time, the nature of our struggle calls upon us to exercise in appropriate forms, some of the functions of an embryonic state. We have our army, we have our security, and the time is ripe for us to have proper instruments to guarantee justice in our ranks.

In developing our own internal legal system, in strengthening revolutionary legality in our ranks, we certainly do not look to the judicial apparatus of the apartheid state as a model. Only when the people have established their power will the conditions exist for the true exercise of justice in our country, and only then will it be possible to give real content and meaning to the many principles of justice which exist on paper but which are mocked by the daily practice of the apartheid legal system.

We know from harsh experience that despite its immense formalism and technicality, apartheid justice is no justice at all; that it is not neutral; that it is used to divide, oppress and exploit our people; that it defends privilege; that it legitimises the theft of our land and of the fruits of our labour; that it protects the unjust and punishes the just; that it is used by the rich against the poor, so that whoever can afford the best lawyer is the one who can expect to win; that it condones torture and violence, and demands the blood of our noblest and most courageous fighters. Its style of operation, its atmosphere, are all part of a system designed to perpetuate injustice and maintain the colonial and dominated nature of our society. The fact that there are individuals within the system who may be honest in no way alters the basic character of the racist legal system, since it is not they who determine its basic functioning, it is not they who are in control.

Our norms, our personnel, our procedures, our style of work, our relationships are not only not a copy of those in the society from which we have come — they

are the exact opposite. While racist justice is prejudiced, dishonest, cruel, elitist, pompous, ultra-technical and dedicated to serving the interests of the minority, our justice must be fair, humane, honest, comradely, democratic, accessible, popular, equal for all members, and dedicated to serving the interests of the people as a whole. We do not take our standards from the enemy; we do not simply turn the glove inside out; we create our own standard within the traditions of our struggle and in the light of our goals for the future.

This document sets out a number of principles and procedures which correspond to the needs of our organisation at this stage. These principles and procedures grow out of a long tradition of popular and democratic ways of settling disputes which apartheid society has never managed to stamp out amongst our people; they grow out of the thinking and styles of work of revolutionary and democratic lawyers who have fought and died in our ranks and of those who are still dedicating all their energies and skills to the liberation of our country; and, above all, they grow from the practical experience we have had in recent years in dealing with problems of justice and discipline.

This document represents the first step in codifying our experience. We must keep it constantly under review, making the necessary amendments as we gain experience. In the meanwhile, it is a document which by its nature needs to be studied and understood by the whole membership, for in the last resort, it is the high political consciousness and the voluntary assumption of rights and duties by the members, which lies at the heart of all discipline.

Classification of Offences and Penalties

Grave Crimes Against the Struggle

1. Any offence aimed at the integrity of the organisation and at destroying its personnel, its material or its fighting capacity shall be considered a 'grave crime'.
2. A grave crime shall be committed by any person who, inter alia:
 - a) With intent to destroy the integrity of the organisation, its personnel, its material or its fighting capacity:
 - i) Sabotages the activities of the organisation;
 - ii) Impedes its proper functioning;
 - iii) Creates divisions within its ranks;
 - iv) Attacks or threatens to put in jeopardy its personnel or its property;
 - v) Or does any other act calculated to undermine its effectiveness as a liberation organisation.
 - b) Infiltrates the organisation acting on behalf of or in collaboration with:
 - i) The racist regime;
 - ii) The intelligence services or other organisations or groups of other countries; in other words, infiltration into the organisation even on behalf of a friendly country would be a grave offence.
 - iii) Any person or group who wishes to destroy the organisation or prevent it from fulfilling its mission as the liberation of South Africa.
 - c) Being already a member of the organisation,

establishes or maintains contact with any of the above bodies.

3. Article 2(c) above shall not apply to any person who maintained such contact with the knowledge and approval of the responsible organs of the ANC with a view to securing the interests of the organisation.

4. It shall be a defence for anyone mentioned in paragraph 2(c) above to prove that he/she took the first opportunity to reveal the contact to the appropriate organs of the ANC and to reduce any possible damage that may have been caused.

5. It shall be a mitigating circumstance, to be considered when weighing the appropriate penalty, for any accused person to prove that he/she has taken steps in collaboration with the organisation to reduce the damage caused by his/her collaboration with the enemy and demonstrated his/her patriotism even at a later stage.

Penalties for Grave Crimes Against the Struggle
The penalties shall be one or more of those set out in the Schedule of Penalties.

Serious Offences

1. Any violation of the principles of the organisation and standards of behaviour expected of members, which seriously threatens the safety, property or good name of the organisation, or which substantially impedes its good functioning, or which creates or is calculated to create disunity and demoralisation amongst the members, shall be considered a serious offence.

2. Such offences shall include:

- a) Acting in a way that exposes members to serious physical harm or death;
- b) Deliberately destroying the property of the organisation, or recklessly exposing it to danger;
- c) Behaving dishonestly in relation to the property of the organisation;
- d) Carelessly passing on information that might be of substantial use to the enemy, or failing to keep documents under proper control;
- e) Behaving corruptly in seeking or accepting any kind of illicit reward for performing or not performing any task on behalf of the organisation;
- f) Abusing office by using one's position to obtain material or sexual or other undue advantage from members or others;
- g) Fighting or behaving in a grossly disorderly and unruly way;
- h) Racketeering in cars, drugs, food, clothes or other items;
- i) Persistently sowing racism, regionalism or tribalism in the organisation;
- j) Behaving in such a way as to provoke serious divisions and a breakdown of unity in the organisation;
- k) Sexually assaulting or in any other way seriously offending the dignity of members;
- l) Persistently and without just cause undermining the respect for or impeding the functioning of the structures of the organisation;
- m) Engaging in organised factional activity that goes

outside the recognised norms of free debate inside the organisation and threatens its unity;

n) Committing any breach of the laws or standards of good behaviour of a host country so as to bring the ANC into disrepute.

3. Any person committing a serious offence shall be liable to any of the penalties mentioned in the Schedule of Penalties under Articles 2, 4, 5, 6 and 7, save that in relation to Articles 2 and 4 the maximum period shall not exceed two years.

Violations of Discipline

a) Any person who acts in an uncomradely way and breaches the standard of conduct normally expected of a member, and whose behaviour is not so serious as to constitute a Grave or Serious Offence, shall be guilty of a Violation of Discipline.

2. In addition to all the forms of misconduct mentioned in the Section of Offences, Violation of Discipline shall include:

- a) Rowdy and aggressive behaviour;
- b) Drug taking;
- c) Excessive drinking;
- d) Abusive and disrespectful behaviour to other comrades;
- e) Carrying or possessing unauthorised dangerous weapons;
- f) Gossiping maliciously so as to set comrade against comrade;
- g) Disrupting meetings and interfering with the orderly functioning of the organisation;
- h) Carelessness in relation to documents of the organisation, or carelessly talking about the organisation in any way that could be useful to the enemy;
- i) Negligent driving or careless use of organisation transport;
- j) Any negligent behaviour that harms or threatens to harm the organisation, especially when persisted in;
- k) Unauthorised use of the organisation's property for personal advantage;
- l) Behaving in a manner calculated to bring the organisation into disrepute.

3. The penalties for Violation of Discipline shall be those set out in Articles 5, 6 and 7 of the Schedule.

General Guiding Principles for Classifying Breaches/Violation of the Disciplinary Code

1. The difference between a Grave Offence and a Serious Offence shall lie in the degree to which the offender's conduct is directed towards destroying, subverting or neutralising the effectiveness of the organisation. Such objective will be presumed when the offender is acting on behalf of or in collaboration with the enemy. In considering whether an offence should be classified as 'grave', weight should be given both to the seriousness of the actual or potential consequences of his/her conduct.

2. The difference between a Serious Offence and a Disciplinary Violation shall lie in the degree of intent of the offender, the extent of the actual or potential harm to the organisation, the extent of repetition, and the degree of shock which the conduct produces in

fellow comrades.

Standards

3. In evaluating the evidence and deciding on their finding, the tribunal shall apply the standards of ordinary highly disciplined comrades, neither demanding conduct that is totally pure and heroic nor tolerating conduct that might be excusable in other situations but which is below that required of a good comrade.

Omissions

4. Failure, refusal or omission to perform an act in circumstances where a good comrade would have acted, shall be treated as 'conduct' for the purposes of deciding whether an offence or violation has been committed.

Offences

5. The tribunal should apply the principles of the organisation in the light of the general experiences of the organisation and using their common sense, in determining whether in any particular case the existence of special circumstances, such as necessity, self defence or complete accident, constitutes a complete defence to the allegations, whether it reduces the gravity of the offence, or whether it constitutes a mitigating circumstance with regard to penalty only.

Host Country

6. Offences which have an element involving a host country, should be dealt with in a manner agreed upon between the organisation and the relevant authorities of that country. In all other cases, the holding of hearings and the carrying out of sentences should be done with due sensitivity to the sovereignty of the host country.

Schedule of Penalties

1. Maximum Penalty

In exceptionally serious cases, where no other penalty would be appropriate, maximum punishment may be imposed. In considering whether or not to impose this penalty, Tribunal shall recall the traditions of humanity of the ANC and its long-standing opposition to capital punishment. The Tribunal shall in particular consider the following factors:

- a) The seriousness of the threat posed by the accused's actions to the organisation;
- b) The degree of collaboration, if any, with the enemy including the seriousness of training given, the carefulness of the steps taken to infiltrate the accused, the degree of corruption involved, and generally his/her skilfulness and value to the enemy;
- c) The extent to which the accused has demonstrated a willingness and capacity to reduce the damage he/she has caused and make a contribution in the future to the liberation struggle;
- d) Any personal factors which may be relevant, such as threats or blackmail by enemy or persuasion by others already in the organisation.

Poverty and the need to support a family are no mitigating circumstance. The Tribunal shall weigh

these factors cumulatively in relation to each other, forgetting neither the need to be firm in defence of the organisation, nor the importance of maintaining the principles of humanity that have characterised the struggle.

Review of Maximum Penalty

No maximum penalty shall be carried out until fully reviewed by the competent review body. Only the most extreme circumstances, such as impossibility of a review in battlefield conditions, can justify any departure from this rule. A full report must be made thereafter, and post factor ratification sought as soon as possible. The reviewing body shall take into account, inter alia, all factors mentioned above, in deciding whether to confirm or alter the death sentence, but may also take into account wider political factors, such as need at any particular moment to show special firmness or clemency, the possibility of exchange of prisoners, problems that may be caused with host countries if the sentences are carried out, and, to some extent, the general feelings of the membership.

2. Deprivation of Liberty

a) In case of deprivation of liberty, the offender shall be confined for a specified period within a designated area or place for the purposes of serving his/her term of such confinement.

b) A senior political authority of the area of place duly appointed as supervisor, shall monitor and observe the activities, work and behaviour of the offender and shall, in terms of more than three (3) months, submit written quarterly reports to the Secretary General's Office which reports shall, amongst other things, reflect the offender's general behaviour and attitudes towards the struggle.

c) The written quarterly reports filed with the Secretary General's Office may be used against the offender in subsequent expulsion proceedings which may be instituted against him/her.

d) Rights and privileges of confined persons shall be as defined in the regulations and based on the humanist tradition of the ANC.

e) The maximum period of deprivation of liberty in respect of grave offences shall be 15 years and for serious offences it shall be five years.

3. Recommendation of Expulsion

Recommendation of expulsion lies within the power of the Regional Disciplinary Committee, while the power of expulsion rests within the NEC.

a) The Secretary General or his Deputy shall, in writing, notify the respondent person of the NEC decision to expel him/her; in such notice reasons for expulsion shall be given.

b) The respondent person shall then be called upon to appear in person with an adviser, if any, before the supreme governing body on a date to be fixed, to show cause, if any, why he/she shall not be expelled from the organisation with forfeiture of membership rights.

c) The NEC shall have the right to readmit an expelled person.

4. Suspension

When a member is suspended the organ suspending him/her shall state the period and conditions of such suspension. In respect of serious offences the period of suspension shall not exceed two (2) years.

5. Public Reprimand

Normally reprimands shall be in public, in the presence of as many fellow members as possible and here the information media of the organisation should be mentioned if appropriate. The objective of the reprimand shall not be to humiliate the person concerned, but to remind him/her and the whole membership of the standards expected of members, and to reinforce the sense of unity and shared values in the organisation.

6. The Performance of Useful Tasks

This should be the normal penalty for less serious offences. The Tribunal should specify the nature of the work to be done, its duration, and the kind of supervision necessary. This work should not be performed in substitution for normal tasks of the organisation, but in addition to them.

7. Forfeiture of Privileges

In appropriate cases, especially where relevant to the nature of the offence, privileges such as rations of tobacco, cinema money etc may be withdrawn.

8. Further penalties for breaches/violations of the disciplinary code are those of demotion and redeployment.

9. The penalties mentioned in Articles 4, 5, 6, 7 and 8 may be combined.

Disciplinary Committees and Procedures

Section A: National People's Tribunal

1. There shall be established a disciplinary organ of the ANC to be known as 'The National People's Tribunal' (hereinafter referred to as 'the Tribunal').

2. a) The Tribunal shall consist of five (5) members appointed by the NEC to act as judges for a period of three (3) years.

b) Three members of the Tribunal shall constitute a quorum.

c) Members shall be eligible for re-appointment.

d) Any member may resign or be withdrawn from the Tribunal for reasons of re-assignment or manifest unfitness.

3. The Chairman of the Tribunal shall be appointed by the President from among the members of the Tribunal on the recommendation of the Working Committee of the NEC.

4. a) The members of the Tribunal shall be chosen according to the following criteria:

i) Dedication to the principles and policies of the organisation.

ii) Personal integrity and correct personal behaviour.

iii) Political maturity, including capacity to handle difficult matters with dignity and serenity.

b) The Tribunal as a whole should have a core of experienced members, but should, as far as possible, be representative of the best qualities of the general

membership in terms of age, sex, sphere of activity, and experience.

c) The Tribunal shall act as a collective body and, where consensus is not reached, decision shall be by a majority vote, the Chairman having a casting vote in case of a tie.

d) The Tribunal shall:

i) Conduct its proceedings in terms of the provisions of this Code;

ii) Collaborate as closely as possible with all the relevant structures of the organisation in order to achieve the best result;

iii) Make its determination on the basis of the collective wisdom of its members, who, in the performance of their judicial function, shall be answerable only to their revolutionary conscience, free of any undue pressures.

5. There shall be a Presenter, who shall be an officer of the Tribunal with responsibility for formulating the indictment and presenting the case against the accused in the proceedings.

Section B: Officer of Justice

1. An Officer of Justice shall be appointed by the NEC.

2. It shall be the responsibility of the Officer of Justice, acting in collaboration with the President's Officer and under the overall supervision of the NEC to:

a) Maintain the principles of legality in the organisation;

b) Supervise investigations when they reach the stage that charges are being contemplated against members;

c) Prepare the documents for the proceedings;

d) Ensure that all the necessary testimony, written or oral, is made available to the Tribunal;

e) Ensure that exhibits are properly looked after and made available to the Tribunal;

f) Appoint a Presenter to outline the charges, present the evidence, question the witnesses and assist the Tribunal in any way required;

g) Where necessary appoint an Adviser to assist the accused in his or her defence;

h) Prepare and submit an independent report on the proceedings, raising any matter deemed to be relevant for consideration by the Review Body (See Chapter IV);

i) Ensure that no person in the custody of or under investigation by offices of the organisation is treated in a cruel, inhuman or degrading way;

j) Make regular inspections of the way persons deprived of their liberty are treated, with a view to ensuring that the purposes of re-education rather than vengeance are fulfilled;

k) See to it that no undue delay takes place between completion of investigations and the date of the trial;

l) Ensure that the number of persons awaiting trial is not allowed to become unduly large;

m) Take all necessary steps to minimise the period

of waiting;

n) Generally, ensure that the principles of justice and revolutionary legality are constantly maintained at all levels in the organisation;

o) To order that the accused person be served with a copy of the indictment personally, not less than 14 days before the date of the trial, to enable the accused person to study such indictment and prepare his/her defence. On receipt of such indictment the accused may request further particulars.

Section C: Investigation

1. Investigation of grave crimes shall primarily be the responsibility of Security.

2. It is the duty of all members to assist Security in every possible way, both by giving relevant information when enquiries are being made and by respecting all the general rules of security.

3. All normal and reasonable methods of investigation may be used in the course of investigation.

4. Torture or any form of cruel, inhuman or degrading treatment of a detainee or a person on trial is forbidden.

Section D: Procedure

1. The presenter will outline the nature of the allegations and the kind of evidence to be led.

2. The Accused will then be called upon to give his or her general response to the allegations, in particular where he or she:

i) Admits or denies them in whole or in part;

ii) Admits the facts but wishes to offer an explanation which justifies the conduct; or

iii) Admits the facts but wishes to offer an explanation in mitigation.

3. The Presenter will thereafter present all such evidence, written or oral, as may be necessary in support of the allegations and all relevant surrounding circumstances including the motivation and general conduct of the accused.

4. a) The Adviser shall at all stages consult and cooperate with the accused in representing his or her interests and ensuring a just result;

b) The Adviser shall be free to make any statement or ask any questions intended to assist the Tribunal to obtain a balanced picture of the issues and reach a decision consistent with justice;

c) The Adviser shall also bring to the attention of both the Tribunal and the Officer of Justice any irregularities which may have been committed in the course of investigations or the proceedings;

d) The defence shall be conducted in a dignified manner within the spirit of the principles enunciated in the Freedom Charter and this Code;

e) The Adviser, while free to conduct the defence forcefully as may be necessary, shall not invent spurious defences or make assertions before the Tribunal which he or she knows to be false or has reason to believe are true;

f) In cases where guilt is established, the Adviser shall have a particularly important function in assisting the Tribunal to arrive at a just penalty.

5. The Presenter shall place before the Tribunal all evidence relevant to the issues in the trial proceedings, including such information or facts as may be favourable to the accused.

6. a) The accused shall have the right to put questions to witnesses on the evidence given against him or her;

b) After the Presenter's evidence has been led, the accused shall have the right to give evidence and present or call for the production of witnesses or documents;

c) The accused shall not be obliged to testify, but failure to do so will normally be considered as admitting the allegations not directly rebutted by him or her;

d) The Tribunal may at any stage question the accused as to whether he or she admits or denies, in whole or in part, evidence which has been led by the Presenter;

e) In deciding whether or not to accede to a request by the Presenter or the accused to call any particular form of testimony, the Tribunal will weigh the potential evidential value of the testimony and its importance for arriving at a just result, against the practical possibility or impossibility of calling such evidence, the disruption it might cause to the prosecution of the struggle, security considerations and any other factor similarly relevant. If any such evidence is not called, and there are reasonable grounds for believing that it might have been favourable to the accused, due allowance must be made for such fact in the final deliberations of the Tribunal;

f) The Tribunal shall take an active role in the proceedings, asking such questions and calling for such evidence as it might deem fit in the interests of a just result;

g) The Chairman of the Tribunal, or in his absence, the person appointed to preside in any particular case, shall ensure that the proceedings are conducted in a fair, orderly, dignified and calm manner, and shall make any order which the Tribunal considers necessary for a just result.

7. Where possible, a Recorder should be appointed to keep a verbatim record of the proceedings. Where this is not possible, the Tribunal shall ensure that an accurate record of all essential aspects of the proceedings is made, and in any event, that all relevant documents and exhibits are properly preserved.

8. a) Where the accused admits all the essential facts alleged and offers no justification, the Tribunal may proceed directly to hearing evidence and argument in relation to the appropriate penalty;

b) The Tribunal shall at all times be attentive to the necessity to ensure that any confession or admission is genuine and that its content can be relied upon, and should normally not make a finding of guilty without some external and substantial form of corroboration.

9. a) The Tribunal shall receive every and any kind of evidence relevant to the allegations, but may refuse to hear evidence that is too remote or indirect to have a bearing on the issues;

b) The Tribunal shall take into account all the infor-

mation placed before it at the proceedings, as well as any information of a non-controversial nature which is well known to the membership generally, and shall give such weight to any piece of information, including confessions, as it thinks fit;

c) The Tribunal will record the essential findings of facts on which it bases its decision;

d) The Tribunal will only convict when it is sure of the guilt of the accused. Any reasonable or substantial doubt which it might have, must go to the advantage of the accused.

10. a) If, on hearing the evidence, the Tribunal is satisfied that the accused is guilty of any charge, it shall so declare;

b) If it is satisfied of the innocence of the accused, it shall so declare;

c) If it feels itself unable to make a firm determination either of innocence or guilt, it may make a finding of 'Not Proven' and order that the matter be postponed for further evidence, or make any other order it regards as appropriate.

11. a) The proceedings shall be conducted in a language which the accused understands reasonably well, and, wherever possible, in the language of preference of the accused. The Tribunal will, in this regard, make interpretation available, save that it will refuse to do so if it is satisfied in making the request the accused is motivated by a desire, not to ensure a better comprehension, but to delay or obstruct the proceedings.

b) The record of the proceedings shall be in English.

Section E: Regional Disciplinary Committee

1. In each Region there shall be established a Regional Disciplinary Committee (RDC) consisting of five (5) members, of whom three (3) shall constitute a quorum.

2. a) The members of the RDC shall be chosen by the RPC for a period of two (2) years, subject to the names being confirmed within thirty (30) days at a special general meeting called for the purpose. In the event of one or more of the names being rejected, the general meeting shall, by a two-thirds majority, make the necessary substitution.

b) At least one, but not more than two of the five members of the RDC shall be chosen from the members of the RPC.

c) Members shall be eligible for re-election.

d) Any member may resign or be withdrawn from the RDC for reasons of re-assignment or manifest unfitness, in which event the RPC shall appoint a substitute, subject to ratification at the next ordinary general meeting.

e) The Chairman of the RDC shall be chosen by the Chief Representative on the recommendations of the RPC.

3. a) The members shall be chosen according to the following criteria:

i) Dedication to the principles and policies of the organisation;

ii) Personal integrity and correct personal behaviour.

b) The RDC shall as far as possible reflect the compo-

sition of the membership in terms of age, sex, work and experience.

4. a) The RDC shall in its discretion appoint a Presenter and an Adviser, taking into account the following factors:

- i) The seriousness of the allegations;
- ii) The complexity of the case;
- iii) The capacity of the accused to understand the issues and make an effective defence;
- iv) The availability of suitable persons to fulfil the roles.

b) Where no investigation officer is available in the area to investigate and prepare the case, the RPC may appoint someone ad hoc to do the necessary investigations, to take statements and submit such statements to the Presenter or directly to the RDC if no Presenter is appointed.

5. a) Hearing shall normally be open to all members.
b) Every effort should be made to ensure the presence of members. The decision shall be that of the RDC alone, but members present shall be encouraged to ask questions and contribute information and opinions with a view to helping the RDC arrive at a speedy and just result.

6. Subject to the aforementioned provisions, the principles and rules set out in the sections on investigation and procedure shall apply.

Section F: The Hearing of Violations

1. Violations shall normally be investigated by the persons responsible for discipline and security at the level of the relevant unit, residence or work structure to which the accused belongs and the full membership of such body shall hear the matter.

2. The body concerned will determine its own procedure within the principles of giving the accused every reasonable chance to make his or her defence, raising the general consciousness of everyone present, maintaining a spirit of objectivity and comradeship, and not tolerating or being afraid to condemn bad behaviour.

Jurisdiction and Review

Section A: Jurisdiction (Grave and Serious Crimes)

1. National People's Tribunal
The National People's Tribunal shall be competent to try any Grave Crime wherever it might have been committed.

2. Regional Disciplinary Committee
The RDC shall be competent to try any Serious Offence committed in the area falling under the Regional Political Committee of its area.

Section B: National Review Committee

1. There shall be a National Review Committee (NRC) established by the NEC and consisting of five (5) members.

2. The membership of the NRC shall not overlap with that of the Tribunal.

3. All findings made and penalties imposed by the Tribunal shall be communicated to the NRC, which

shall be furnished with the full record of the proceedings in the case to be reviewed.

4. a) The NRC shall confirm, overrule (or set aside) in whole or in part any such finding or penalty, or refer the matter back for further hearing;

b) Whenever it feels a penalty is too severe, it may reduce such penalty;

c) In very exceptional cases, where it feels that the penalty is manifestly too lenient, the NRC may substitute a more severe sentence, save that it may not impose the maximum penalty where such was not imposed by the Tribunal;

d) The NRC shall be guided not only by legal rules, but also by political and humanitarian considerations.

Section C: Regional Review Committee

1. There shall be a Regional Review Committee (RRC) consisting of the Chief Representative and two persons chosen by the RPC from its members, but not including any current member of the RDC.

2. All findings of and any penalty imposed by the RDC shall be forwarded to the RRC, which shall have access to the full record and shall have the power to confirm or overrule, in whole or in part, any such finding or penalty, or refer the matter back for further hearing.

3. The decision of the RRC shall be final, save that any order of suspension exceeding six (6) months and any order of deprivation of liberty exceeding three (3) months shall be subject to automatic review by the National People's Tribunal, which shall take into account any representation submitted by the accused.

Section D: Review in Respect of Violations

Findings or penalties in respect of Violations shall be reported to the RPC in the case of unit hearings, and to the responsible senior structures in all other cases, for confirmation, attention or referral for re-hearing.

Section E: General

1. If any of the disciplinary bodies at the three levels referred to forms the opinion that the matter before it is either too serious or too trivial to merit consideration at that level, it may refer the matter to the Tribunal at the level of greater or lesser seriousness as the case may be.

2. a) It shall be the duty of all the disciplinary and review bodies to act with the greatest possible speed;
b) The Officer of Justice shall pay special attention to ensuring the prompt handling of matters, and shall recommend rules to the NEC covering the maximum periods which should normally be permitted for investigation, preparing the matter for hearing, and for the hearing itself.

Interpretation

This document should be interpreted in the light of the principles of justice set out in the introduction, and any doubts about its meaning should be resolved in the manner which will give the best effect to such principles.

The NEC

The NEC in its capacity as the highest organ of the

ANC in the period between Conferences and as the guardian of the interests of the membership as a whole, will be responsible for the overall supervision and control of the functioning of this Code. Although it will not ordinarily interfere with the due operation of the Code, where gaps exist or the Code is manifestly unsuited to resolving questions that have arisen, or where it is of the opinion from evidence before it that severe injustice may be committed or serious damage done to the interests of the organisation, it may issue such guidance or binding instructions as it deems fit.

Inquests

1. The NEC shall, when necessary, appoint and convene an Inquest Commission whose duty it is to hold inquests into death where there is reasonable cause to believe that the deceased died either a violent or unnatural death, or has died a sudden death the cause of which is unknown, or has died in prison.
2. The Inquest Commission shall consist of a Commissioner who shall, at the recommendation of interested persons or at his discretion, appoint as his assessor any person with special knowledge, skill and experience that may assist the Commission in arriving at a fair and just decision.
3. The Inquest Commissioner shall be chosen accord-

ing to the following personal qualities:

- i) Dedication to the principles and policies of the organisation;
 - ii) Integrity and correct personal behaviour;
 - iii) Maturity and capacity to handle difficult matters with dignity and serenity.
4. The Commission shall collaborate as closely as possible with all the relevant structures of the organisation in order to achieve the best results and strengthen the unity of the organisation.

5. Procedure

- a) The Commissioner is in complete charge of proceedings, may call any witness and ask any questions he thinks fit, and is bound by no rules of evidence, but his findings must be based upon evidence.
- b) The Commission will receive written or oral evidence or evidence on affidavit.
- c) A body of responsible people shall be instructed by the NEC to investigate and report to the Commission.
- d) After the disposal of the proceedings, the inquest Commissioner shall submit to the Secretary General a detailed record of the inquest evidence and findings. Copies of such record shall also be sent to the Officer of Justice and body of responsible investigators.

UMKHONTO WE SIZWE MILITARY CODE

Recognising that our army, Umkhonto we Sizwe, must define its aims and objects in clear and precise terms, and that the rights and duties of each member should be likewise defined without ambiguity, the Politico-Military Council, acting on behalf of the African National Congress of South Africa, has adopted and hereby decrees this code for the guidance of members in cell positions.

1. Umkhonto we Sizwe — a People's Army

The ANC and its allies created Umkhonto as a new and indispensable weapon in the struggle for people's power. Unlike the armed forces of the racist regime of South Africa, which we have vowed to crush and annihilate, and unlike all other armies of imperialism, Umkhonto we Sizwe is a People's Army organised and dedicated to waging a people's war for the liberation of our country.

Umkhonto is an army of volunteers. It consists of volunteers drawn from the revolutionary sections of our people. By joining Umkhonto, combatants commit themselves to the solemn and noble duty of serving our suffering and dispossessed people in the struggle that will continue for each and all of us until victory or death.

In the words of our founding Manifesto, published on the historic day of 16th December 1961: 'Umkhonto we Sizwe will be at the front line of the people's defence. It will be the fighting arm of the people against the racist government and its policies of racial oppression. It will be the striking force of the people

The founding Manifesto of Umkhonto we Sizwe is our definitive declaration of intent, and an essential guide to the reasons for the creation and aims of this, the People's Army. We append the Manifesto to this Code, to be studied and understood by every Umkhonto combatant. It was no coincidence that MK's first operations were launched on December 16th, Dingane's Day. Umkhonto will carry on the warrior traditions of our people under the conditions of modern guerrilla warfare.

Those who join Umkhonto we Sizwe, the People's Army, perform a sacred duty to our people, our nation and the South African Revolution. When we have liberated our country, Umkhonto will constitute the basis of the defence forces of our country and the Revolution, and will serve as an instrument of social progress.

An Umkhonto combatant has the opportunity to serve in the forefront of the liberation struggle, to meet the enemy and engage him with modern weapons, to become a steeled revolutionary who at all times is determined to serve and protect the people and his fellow comrades-in-arms.

We look back with great pride to the period of militant non-violent struggle waged by the ANC. During this period our people learnt through their own experience that they could not satisfy their aspirations except by means of armed struggle arising out of our mass political activity and culminating in a revolutionary seizure of power.

When the time was ripe for violent forms of struggle,

our people understood and supported the decision to take up arms. They clearly understood as long ago as December 1961, that our Movement had exhausted all peaceful avenues, and that the oppressor had imposed on us a war situation. The alternative to armed struggle was submission. As the Umkhonto Manifesto declared: 'The People's patience is not endless. The time comes in the life of any nation when there remains only two choices — submit or fight. That time has now come in South Africa. We shall not submit and we have no choice but to hit back by all means within our power in defence of our people, our future and our freedom.'

Political and Military Struggle

Umkhonto we Sizwe is the fighting arm of the ANC and its allies. Our armed struggle is a continuation of our political struggle by means that include armed force. The political leadership has primacy over the military. Our military line derives from our political line. Every commander, commissar, instructor and combatant must therefore be clearly acquainted with the policy with regard to all combat tasks and missions. All of us must know clearly who the enemy is, and for what we are fighting. Thus MK cadres are not only military units, they are also political leaders and organisers of our people. That is the major distinction between our people's revolutionary army and the army and wholly militarised authoritarian armed forces of the racists, imperialists and reactionary regimes. Umkhonto cadres, with arms in hand, are political activists and leaders, as well as warriors. This combination of political and military functions is characteristic of all popular, revolutionary armies especially in the phase of guerrilla warfare.

3. People's War

Umkhonto is a people's army fighting a people's war. We fight to liberate our oppressed and exploited people. We fight for their interests. Umkhonto has no mercenaries, no paid soldiers or conscripted troops. It consists of the sons and daughters of the most oppressed, the most exploited sections of our people. For these reasons we claim with pride and truth: Umkhonto is the Spear of the Nation.

We fight a people's war, not by armed struggle alone, but first and above all by political education, leadership and mobilisation. It is a people's war because the struggle is to win the active support and participation of all who resist oppression, discrimination, poverty and injustice.

The people support their army by providing it with recruits — their sons and daughters — food, shelter, and information about the enemy. The people open the way for our guerrillas and make the enemy's path hard. Everyone can become a freedom fighter. The struggle has many fronts and is not confined to trained soldiers alone.

The ANC mobilises the people in support of the revolution through skilful combination of all forms of struggle: violent and non-violent, legal and illegal, strikes and demonstrations, boycotts and non-

collaboration, propaganda, education and sabotage. A people's war is fought by the people with arms and all other forms and methods of struggle. Without the organised support of the people, armed struggle is in danger of being isolated and strangled. The enemy attempts to isolate us by launching campaigns to win the 'hearts and minds' of the people — of our people, the oppressed and suffering workers and peasants. To defeat the enemy, we must involve the entire people in the National Democratic Revolution.

The enemy controls the state, its armed forces, police and courts. But he does not command the hearts and minds of the people. They are with us in a just war for national liberation. Their support is our chief weapon. What gives the guerrilla his advantage is his political superiority and people's support. As pointed out in *Operation Mayibuye* (1963) the most important guarantee of victory is 'the support of the people who in certain situations are better protection than mountains and forests'.

4. Our People's Army

a) Umkhonto we Sizwe fights to liberate our people from racial discrimination, national oppression and exploitation.

b) The common enemy is the racist minority which identifies with and gives aid to the National Party regime, the creator and driving force of apartheid.

c) Our programme is the Freedom Charter; it defines the goals of all democrats regardless of colour, race or creed.

d) The interests of the people and the demands of the revolution are inseparable and the main concern of the people's army.

e) Our MK Manifesto declares that the army includes in its ranks South Africans of all races. But the overwhelming majority are members of the most oppressed and exploited people. By this dedication and commitment and training, they represent the vanguard of our people. In Umkhonto language, the army is the Spear of the Nation.

5. Umkhonto insists on a high standard of selfless devotion to the revolution on the part of all its members. They are required at all times to:

a) behave correctly to the people;

b) respect their persons and property;

c) refrain from molesting or interfering with their legitimate activities;

d) assist them to solve their problems and where possible give material aid in their labour; and

e) demonstrate high moral qualities in word and deed.

6. Revolutionary Discipline and Consciousness

To defeat the enemy in combat, our soldiers must be disciplined, trained to obey commands promptly, and ready to spring into battle immediately when ordered. Vigilance, alertness and readiness to engage the enemy at a moment's notice are qualities that can develop only out of discipline, proper training and political consciousness.

Bourgeois and reactionary armies like the army forces of the racists, instil a mechanical and robot-

like obedience in their units. The people's army has a different conception of discipline and loyalty. Umkhonto soldiers are volunteers, willing and trained to carry out orders in the knowledge that instant obedience is the only way to safeguard life, both of the individual and his comrades-in-arms, and to protect the people whom he serves.

Umkhonto soldiers pledge themselves to safeguard the revolution at all times regardless of personal hardships, suffering and danger. A soldier who breaks discipline, disobeys commands or by improper conduct betrays the high moral standards of our army will be punished. Such punishment is necessary to maintain the qualities expected of a people's army. Every attempt is made to correct bad behaviour and rehabilitate members who violate the army's code. But punishment is severe in cases of serious crimes, treachery and criminal neglect endangering the safety of others and the security of the army.

Our procedure and rules are well defined, precise and to the point. Military orders are issued with a definite purpose and must be obeyed. It is the duty and responsibility of every soldier to know and understand the army's code of conduct, to recognise his military commanders, to be clear about his own duties, and to carry out orders immediately and without question. Orders must be obeyed cheerfully, promptly and exactly. A soldier who does not understand an order has a right to have it explained. He must know when to raise problems, to whom he must report, and how to obtain clarification. He must not, in any circumstances, refuse to obey a command or argue over the execution of an order.

Outright disobedience and failure to obey an order promptly may have serious consequences. A soldier who thinks that he has been given a wrong order must obey it first and if need be complain afterwards to his commander. Our commanding officers, commissars, instructors and others who are entrusted with responsibility to lead must be above reproach. They are to be a shining example of modesty, sound moral behaviour, correct attitudes towards all members, respectful and helpful to every member of the army, regardless of his position. Commanders and Political Commissars occupy a central role in Umkhonto. Without them disorder can result. They are the principal target of the enemy and must be given maximum protection. Umkhonto is engaged in guerrilla warfare against a powerful and remorseless enemy which resorts to torture, banditry and terrorism.

During the stage of guerrilla warfare, great initiative and resourcefulness are required of every combatant. Under such conditions, formalities such as the courtesy of saluting commanders are reduced to a minimum, while discipline and vigilance are maintained at the highest levels.

In our external training bases, however, we have conditions and facilities similar to those of a regular army. Here we insist on full military procedures, including the practice of saluting commanding personnel; higher ranks; parades; roll calls; and fall-ins.

These are necessary for orderly camp life and discipline and co-operation among guerrillas in combat zones.

The inner forms of discipline, arising from political maturity and consciousness of our struggle, are far more important and enduring than a discipline enforced from above. But a proud bearing, alertness and quick response to commands, a smart uniform, and respect of leadership, commanders and commissars are the hallmarks of a good soldier who is proud of his platoon, detachment and army.

With the triumph of our revolution, Umkhonto will be the official army of our country, the true shield of our nation, defending the people against external aggression and internal counter-revolution. To prepare ourselves for these noble tasks, we must live up to the army's code of conduct in all respects and at all times during the present phase of our struggle.

General Regulations

1. All army units shall preserve and safeguard political and military and organisational information relating to the army's security and wellbeing. The wilful or negligent disclosure of classified information to unauthorised persons, and the unauthorised acquisition and/or retention of secrets and classified documents shall be an offence.

2. All combatants must defend the ANC and be loyal to it, the army and the revolution.

The following acts or omissions shall be an offence:

a) Disloyalty or deception designed or likely to give assistance to the enemy.

b) Rebellion or revolt against the army command or part of it or attempts to commit such an act of rebellion or revolt.

c) Conduct which causes despondency, spreads a spirit of defeatism, or undermines morale in any member or section of the army.

d) Cowardly conduct in the face of the enemy.

e) Wilful disobedience or refusal of orders properly given by a commander.

f) Desertion from the army.

3. All combatants shall act in such a manner that the people will put their trust in the army, recognise it as their protector, and accept the liberation movement as their legitimate and authentic representative.

The following acts or omissions shall be an offence:

a) Conduct that weakens the people's trust, confidence and faith in the ANC and Umkhonto.

b) Theft from a comrade or the people, looting of property, or other forcible seizure of goods.

c) Abuse of authority and/or power.

d) Cruelty inflicted on a member of the army or public.

e) Assaults, rape, disorderly conduct, the use of insulting and/or obscene language, bullying and intimidation, whether against a comrade or member of the public.

f) Shameful conduct likely to disgrace the ANC, army or the offender, or bring them into disrepute, or

provoke indignation and contempt against them, such as violating the rights and dignity of the opposite sex, whether in operational or base areas.

- g) Unjustifiable homicide.
- h) Ill-treatment of prisoners of war or persons in custody.

4. All combatants shall protect the leadership and property of the ANC and Umkhonto

The following acts or omissions shall be an offence:

- a) Failure to protect commanders and commissars against assaults or attacks.
- b) Wilful or negligent destruction, neglect or misuse of the property and/or funds of the ANC and army.
- c) Failure to submit and hand over to the commanding authority property seized or acquired during military operations.
- d) Negligence in handling, using or storing and loss of weapons.

5. All combatants shall be required to have the permission of a competent authority to travel, move from one place to another, or leave a camp, base or residence to which they are assigned.

The following acts or omissions shall be an offence:

- a) Absence without permission.
- b) Escaping or attempting to escape from the custody of a competent authority.

6. All combatants and members of the ANC and Umkhonto shall observe high moral standards and show an adequate sense of responsibility.

The following acts or omissions shall be an offence:

- a) Smoking dagga or using other harmful drugs or being in unauthorised possession of the same.
- b) Neglect of duty.
- c) Drunkenness on duty and/or in public.

7. All members of the ANC and combatants are required to promote and preserve the unity of the ANC, the army, the liberation movement and the people.

Any act or speech that provokes tribal or regional animosities or spreads disunity by means of factionalism and/or racism shall be an offence.

8. Punishment

All members of the ANC and combatants are required to respect the terms of the Geneva Convention on the Treatment of Prisoners of War in line with the formal acceptance by the ANC of these terms in 1981. Any violation of these terms shall be an offence. Subject to these proposals, the Commission recommended that:

- i) The codes be accepted in their entirety.
- ii) They come into force immediately.
- iii) Their operation be reviewed after two years' experience.
- iv) The Justice Officer be appointed as soon as possible and that amongst his first tasks be an investigation, in the light of the principles of the codes, of all cases of persons still serving sentences in terms of earlier proceedings, and of all cases awaiting trial.

v) The military code be strengthened by the inclusion of a section dealing with competence, hearings and appeals; the necessary drafting to be done by responsible officials in MK.

All members of the ANC and Umkhonto shall tactfully observe the general regulations and shall be liable to the penalties prescribed for offences under the regulations. The purpose of punishment is to deter members from committing an offence, assist offenders to rehabilitate and protect the ANC, Umkhonto, liberation and the revolution. In imposing punishment, the competent authorities shall be guided by high political principles to the exclusion of personal animosity or any trace of vendetta. Punishments shall be administered humanely and without undue harshness or cruelty.

The following punishments may be ordered for offences under the regulations according to the gravity of the offence and the circumstances under which it was committed:

1. Reprimand or rebuke administered in public.
2. Suspension from duty for a specified period.
3. Fatigue and drills.
4. Restriction with hard labour for a specified period determined by tribunal.
5. Demotion from a position of responsibility.
6. Restriction in a rehabilitation centre.
7. Dishonourable discharge.
8. Solitary confinement for a period determined by tribunal.
9. The maximum penalty.
10. Any other penalty not included herein but appearing in the schedule of penalties for grave or serious crimes and violations.

Rules and Regulations Covering the Handling of Weapons and Explosives of our Movement

Introduction

Amongst the most sacred duties of a soldier in MK is to protect and preserve the weaponry and other war material of our army — in certain circumstances even with his life. The loss of a weapon would be regarded in the same light as the loss of a limb and has serious consequences for the body of our army.

Our weaponry and other war materials are there to be used against our enemy and must, at all times, be maintained in a proper state of combat readiness and must only be used to further our revolution. This is the duty of every organ and individual soldier entrusted with the task of handling such material.

In the interests of our revolution the following rules and regulations will be strictly enforced:

1. The Politico-Military Council under the direction of the NEC shall be the organ which decides on the distribution and use of all weapons and explosives in any given area.
2. All members of the ANC who possess a personal weapon or weapons are under obligation to declare it or them to the authorised organs or persons in the Movement for registration and for determining whether

the comrade should be authorised to keep the weapon or surrender it.

3. All weapons not supplied by authorised persons in the hands of individuals or groups must be reported and declared immediately. Failing to fulfil this requirement constitutes a serious offence against the Movement and carries with it a heavy punishment.

4. Unauthorised possession and use of weapons is strictly prohibited

5. It is strictly forbidden to point a weapon, loaded or unloaded, at any person.

6. It is a serious offence to abandon without proper cause, lose, misuse, neglect or damage weapons, ammunition and explosives.

7. Unauthorised exchange, barter or transfer of a weapon(s) is strictly forbidden.

8. All weapons, ammunition and explosives must be handled by authorised persons and must be totally con-

cealed in public except during combat marches in our training camps and schools and where permission is granted to have weapons for the defence of ANC personnel and property.

9. All records, inventories of all war materials have to be kept by Ordnance, Security and by any organ entrusted with such material.

10. The use of war materials for emergency purposes has to be reported to the appropriate authority.

11. The security and care of weapons shall be the responsibility of the Ordnance Department.

12. All transfer and movement of war materials from one area to the other shall be entrusted to the Ordnance Department.

13. Safety measures must be observed when handling weapons and explosives.

14. Authorised persons are not allowed to handle weapons under the influence of liquor.

NB!

1. This document is for discussion only. It is no longer operational. It can only serve as a background paper to understand the ANC's views on a new system of justice.